

**ORDINANCE 2017-04**

**AN ORDINANCE ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY**

**WHEREAS**, the City of Franklin (“City”), Tennessee, desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

**WHEREAS**, the City recognizes that small wireless facilities are critical to delivering wireless access to advance technology, broadband and 9-1-1 services to homes, businesses, schools within the City; and

**WHEREAS**, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN FOR THE CITY OF FRANKLIN, TENNESSEE**, that Title 16 of the Municipal Code of the City of Franklin shall be amended by adding the following Chapter 14 that will read as follows:

**CHAPTER 14**

**Section 1 – Purpose and Scope**

- (A) **Purpose.** 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.
- (B) **Intent.** In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
  - (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
  - (2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
  - (3) prevent interference with the facilities and operations of facilities lawfully located in public rights-of-way or public property;
  - (4) protect against environmental damage, including damage to trees;
  - (5) preserve the character of the neighborhoods in which facilities are installed; and
  - (6) facilitate rapid deployment of Small Wireless Facilities to provide the benefits of advanced wireless services.
- (C) **Conflicts with Other Chapters.** This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

**Section 2 - Definitions**

- (A) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

- (B) "Annual Lease Fee" means the fee due to the City for the reimbursement for the installation of a Small Wireless Facility on City property irrespective of whether the property is owned, leased, or within the public right-of-way. Each installation/spot is a separate Annual Lease Fee.
- (C) "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.
- (D) "Applicant" means any person who submits an Application and is a Wireless Provider.
- (E) "Application" means a request submitted by an Applicant (i) for an Agreement to erect and/or install Small Wireless Facilities within the City of Franklin right-of-way; (ii) for a Permit to collocate Small Wireless Facilities; (iii) to approve the installation or modification of a Utility Pole or Wireless Support Structure, subject to the requirements of this Chapter.
- (F) "City" means City of Franklin, Tennessee.
- (G) "City Owned/Leased Pole" means (i) a Utility Pole owned/leased by the City in the Rights-of-Way, including a Utility Pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage; and (ii) a pole or similar structure owned/leased by the City in the Rights-of-Way that supports only Wireless Facilities.
- (H) "Collocate" means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole. "Collocation" has a corresponding meaning.
- (I) "Day" means calendar day.
- (J) "Fee" means a one-time charge.
- (K) "Permittee" means an Applicant who is party to an Agreement and/or has been granted a Permit.
- (L) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.
- (M) "Rate" means a recurring charge.
- (N) "Right(s)-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, skyways, or any other public place, area or property under the control of the City, and any unrestricted public utility easements established, dedicated, platted, improved or devoted for utility purposes but excluding lands other than streets that are owned by the City. The phrase "in the public right(s)-of-way" means "in, on, over, along, above and/or under the public right(s)-of-way."
- (O) "Right-of-Way Use Agreement" or "Agreement" means an agreement between the City and the Wireless Service Provider issued pursuant to this Title.
- (P) "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside 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 imaginary enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services, and Utility Poles or other support structures.
- (Q) "Right of Way Use Permit" or "Permit" means an excavation/road bore permit for excavation of a street for the construction or installation of fiber optic cable, conduit, and associated equipment in the Right-of-Way.

- (R) “Utility Pole” means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including City-owned/leased poles. Such term shall not include structures supporting only Wireless Facilities.
- (S) “Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- (T) “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 Wireless Support Structures, but that is not a Wireless Services Provider.
- (U) “Wireless Provider” means a wireless infrastructure provider or a Wireless Services Provider.
- (V) “Wireless Services” means any services, whether at a fixed location or mobile, provided using Wireless Facilities.
- (W) “Wireless Services Provider” means a person who provides Wireless Services.
- (X) “Wireless Support Structure” means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a utility pole.

**Section 3 – Permitted Use; Application and Fees**

- (A) Permitted Use. Collocation of a Small Wireless Facility or installation of a new, replacement, or modified Utility Pole or Wireless Support Structure for the collocation of a Small Wireless Facility shall be a permitted use, subject to the restrictions in this Title.
- (B) Agreement and Permit Required. No person shall place a Small Wireless Facility in the Rights-of-Way, without first filing a Right-of-Way Use Agreement Application and a Right-of-Way Use Permit after the Agreement has been executed, except as otherwise provided in this Chapter.
- (C) Agreement and Permit Applications. All Applications for Right -of-Way Use Agreements and Permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by 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.
- (D) Application Requirements. The Application shall be made by the Wireless Provider or its duly authorized representative and shall contain the following:
  - (1) The Applicant’s name, address, telephone number, and e-mail address;
  - (2) 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;
  - (3) A general description of the proposed work and the purposes and intent of the Small Wireless Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed; and
  - (4) A statement that all Wireless Facilities shall comply with all applicable codes.

- (E) Information Updates. 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.
- (F) Application Fees. Unless otherwise provided by law, all Agreement and Permit Applications for Small Wireless Facility pursuant to this Chapter shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the City related to processing the application and inspection, in the amount specified in Appendix A – Comprehensive Fees and Penalties.

**Section 4 – Right-of-Way Use Agreement**

- (A) A Right-of-Way Use Agreement is required prior to the issuance of a Right-of-Way Use Permit under this Chapter.
- (B) A Right-of-Way Use Agreement shall be no longer than five (5) years but may be extended upon agreement of the City.

(C) The City Administrator shall have the authority to execute the Right-of Way Use Agreements.

~~(C)~~(D) A Right-of-Way Use Agreement shall provide for the Annual Lease Fee, which shall be due January 1 of each year of the Agreement. The initial Annual Lease payment shall be due upon execution of the Agreement and there are no provisions for pro-rating the initial payment.

~~(D)~~(E) Insurance. Each Permittee shall, at all times during the entire term of the Right-of-Way Use Agreement, 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:

- (1) Worker's compensation and employer's liability insurance. Tennessee statutory requirements.
- (2) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits as specified in Appendix A – Comprehensive Fees and Penalties but in no case less than one million dollars (\$1,000,000) per occurrence, combined single limit and two million dollars (\$2,000,000) in the aggregate.
- (3) Commercial Automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this Article XII for limits as specified in Appendix A – Comprehensive Fees and Penalties but in no case less than one million dollars (\$1,000,000) per occurrence combined single limit each accident.
- (4) 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 thirty (30) days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of premium of the policy coverages.

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

~~(E)~~(F) 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.

~~(F)~~(G) A Permittee desiring to renew a Right-of-Way Use Permit prior to the expiration of the Agreement and/or 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 Director of Streets, or his or her designee.

~~(G)~~(H) The City shall make a determination accepting or denying the renewal Application in writing to the Permittee.

~~(H)~~(I) A valid Right-of-Way Use Agreement is required to obtain a Permit for the installation of Small Cell Wire Facilities, Poles, and associated equipment.

~~(H)~~(J) The City shall timely process any renewal Application provided that (i) Permittee is not then in material default under any provision of the Right-of-Way Agreement or the Right-of-Way Use Permit, or in material non-compliance with this Chapter, and (ii) has otherwise satisfactorily performed all of its obligations under the Right-of-Way Agreement, the Right-of-Way Use 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.

~~(H)~~(K) 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 Department of Engineering (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 Open Records Act (Tenn. Code Ann. §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.

~~(K)~~(L) Right to inspect. With just and reasonable cause the City shall have the right to inspect all of the Small Wireless Facilities, including aerial facilities and underground facilities, to ensure general health and safety with respect to such facilities and to determine compliance with the

terms of this Chapter and other applicable laws and regulations. Any Permittee shall be required to cooperate with all such inspections and to provide reasonable and relevant information requested by the City as part of the inspection.

~~(L)~~(M) Transitional provisions.

- (1) Persons already authorized to use the Right-of-Way. Any Wireless Provider and/or entity holding a permit or other authorization from the City to own, construct, install, operate, and/or maintain Wireless 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 Right-of-Way Use Permit and Right-of-Way Use Agreement pursuant to this Chapter within 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 is Wireless Facilities in the Right-of-Way until such Right-of-Way Use Agreement becomes effective.
- (2) Operating without Right-of-Way Use Authorization. Any Person that owns or operates any Wireless 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 ninety (90) days from the effective date of this Chapter to apply for a Right-of-Way Use Agreement. Any Person timely filing such an Application shall not be subject to penalties for failure to hold a Right-of-Way Use Agreement or Right-of-Way Use Permit, provided that said Application remains pending. Nothing herein shall relieve any Person of any liability for its failure to obtain a Right-of-Way Use Agreement, Right-of-Way Use 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 Wireless Facilities installed in violation of this Chapter or City ordinances or regulations.

**Section 5—Permit Applications**

- (A) No Person which has been issued a Right-of-Way Use Agreement by the City 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 Chapter and applicable law.
- (B) The City shall review the Application in light of its conformity with applicable regulations of this Chapter, and shall issue a Permit on nondiscriminatory terms and conditions subject to the following requirements:
  - (1) The Applicant must have entered into a Right-of-Way Use Agreement with the City; and
  - (2) The City must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial without paying an additional Application Fee. Unless, approval is required by the Franklin Municipal

Planning Commission, the City shall approve or deny the revised Application within thirty (30) days of receipt of the amended Application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.

- (C) An Applicant seeking to construct, modify or replace a network of Small Wireless Facilities may after execution of an Agreement, file a consolidated Permit Application and receive a single Permit for the installation of multiple Small Wireless Facilities as approved in their Agreement. The City, at their discretion may issue a single permit for each location to facilitate the timely installation, inspection, and documenting of installed facilities. The City's denial of any site or sites within a single Permit Application shall not affect the validity of other sites submitted in the same Application and the City shall grant Permit(s) for all sites approved in the Agreement to facilitate the timely installation, inspection, and documenting of installed facilities.

**Section 6 –Facilities in the ROW; Maximum Height; Other Requirements**

- (A) Unless otherwise determined by City staff, in an attempt to blend into the built environment, all Small Wireless Facilities, new or modified Utility Poles, Wireless Support Structures for the Collocation of Small Wireless Facilities, and associated equipment shall be similar in size, mass, and color to similar facilities and equipment in the immediate area subject to following requirements:
  - (1) Collocation is required, when possible. Should the Wireless Provider not be able to collocate, the Wireless Provider shall provide justification in the application.
  - (2) Any collocation or new installation that occurs within 500 feet of an existing single-family residential uses shall require approval of the Franklin Municipal Planning Commission.
  - (3) Utility Poles - Maximum Height, Diameter, Design, Color. Newly erected Utility Poles shall be similar and match the height design, and color of existing Utility Poles in the immediate area but in no case, shall new or modified Utility Pole or Wireless Support Structure installed in the Rights-of-Way exceed the greater of:
    - (a) Six (6) feet above the tallest existing Utility Pole in the Rights-of-Way in place as of the effective date of this Chapter located within 500 feet of the new pole; or
    - (b) Forty (40) feet above ground level.
    - (c) Wood poles are not allowed.
    - (d) When unable to match the design and color of existing Utility Poles in the immediate area new poles shall be designed using stealth or camouflaging techniques, to make the installation as least intrusive as possible including stealth poles that are black or dark green in color, powder-coated, that do not exceed 16 inches in diameter. The City reserves the right to require a street light on the Utility Pole.
- (B) The Franklin Municipal Planning Commission shall have approved the installation of new Utility Poles where no Utility Poles exist.
- (C) New Small Wireless Facilities, Antennas, and associated equipment shall be similar 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, including but not limited to:
  - (1) Any associated equipment that is required for a Small Wireless Facility shall be mounted at least 8 feet above grade on the pole and located in a shelter or case that does not extend more than 126 (twelvesix) inches past the edge of the pole it is mounted on. In the case of collation, the mounts shall be on the same side of the pole. City staff has the discretion for authorizing ground-mounted equipment when unique or exceptional circumstances exist to protect the character of the surround area.
- (D) 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 30 days and compiled into a set of guidelines titled, City of Franklin Guidelines for Wireless Communications Facilities in the Public Right-of-Way. In no case, shall any Guidelines be retroactive. Facilities approved in executed Agreements or facilities for which Right-of-Way Use Permits have been issued prior to the effective date of a new Guideline shall not be affected.

- (E) 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.
- (F) Franklin Municipal Planning Commission Approval. Unless otherwise provided in this ordinance, the Franklin Municipal Planning Commission approval shall be required for:
  - (1) Any Wireless Provider that seeks to construct or modify a Utility Pole, Wireless Support Structure or Wireless Facility that is determined to not comply with the Height, Diameter, Design, Color standards and expectations set forth in Sections 6(A)–(D) above.
  - (2) New Utility Poles or Wireless Support Structures shall not be permitted to be installed in the Rights-of-Way in areas in which no Utility Poles, streetlight poles, or Wireless Support Structures exist at the time of Application without prior approval by the Franklin Municipal Planning Commission.

#### **Section 7 – Effect of Permit**

- (A) Authority Granted; No Property Right or Other Interest Created. A Permit authorizes an Applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Rights-of-Way.
- (B) 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.
- (C) Termination of Permit. In all other circumstances, the Permit expires in twelve (12) months.

#### **Section 8 – Maintenance, Removal, Relocation or Modification of Small Wireless Facility and Fiber in the ROW**

- (A) 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.
- (B) 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 Streets Director.

- (C) Removal of existing Facilities. If the Permittee removes any Wireless Facilities, it shall notify the City of such change within sixty (60) days.
- (D) 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 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.
- (E) 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.
- (F) 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 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 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.
- (G) Use Agreement Expiration. At the expiration of each Agreement, the Applicant shall remove all Wireless Facilities. Should the Applicant not remove the Wireless Facilities, the City shall remove the Wireless Facilities and shall assess costs to the Applicant and shall use all available remedies to recover said costs. 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.
- (H) Failure to remove Wireless Facilities pursuant to this Code will result in no future permits being granted.

**Section 9 – Public Right-of-Way Rates - Attachment to City-Owned/Leased Utility Poles and New Utility Poles installed within the Public Right-of-Way or City-Owned/Leased Property.**

- (A) Annual Rate. The rate to place a Small Wireless Facility on a City-owned or leased pole in the Right-of-Way shall be reasonable direct cost-based compensation in the amount stated in Appendix A – Comprehensive Fees and Penalties per year for all City-owned or leased poles 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 pole. Such compensation, for the first year, 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 Agreement.

- (B) 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 reasonable direct cost-based compensation for use of the Right-of-Way or property in the amount stated in Appendix A – Comprehensive Fees and Penalties. This rate will be due January 1 of each year of the Agreement..
- (C) Make-Ready. For City-Owned or leased Utility Poles in the Rights-of-Way, the City shall provide a good faith reasonable direct cost-based estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Provider.

### **Section 10 – Remedies; violations.**

In the event a reasonable determination is made that a Person has violated any provision of this Chapter, Right-of-Way Use Agreement, or a Right-of-Way Use Permit, such Person shall be provided written notice of the determination and the specific, detailed reasons therefor. Except in the case of an emergency, the Person shall have thirty (30) days to commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the 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 11-General provisions.**

- (A) Historic Preservation Overlay. For Applications for property located inside the Historic Preservation Overlay, the Applicant must also obtain approval from the Historic Zoning Commission prior to execution of an Agreement.
- (B) 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 (Tenn. Code Ann. §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.
- (C) 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.

- (D) No substitute for other required permissions. No Right-of-Way Use Agreement or 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.
- (E) No waiver. The failure of the City to insist on timely performance or compliance by any Permittee holding a Right-of-Way Use Agreement 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 Agreement. 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.
- (F) 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.
- (G) 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.
- (H) 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 12 – Effective Date**

This Ordinance shall take effect immediately upon its passage, approval, and publication.

**ATTEST:**

**CITY OF FRANKLIN, TENNESSEE:**

By: \_\_\_\_\_  
**Eric Stuckey**  
 City Administrator/Recorder

By: \_\_\_\_\_  
**Dr. Ken Moore**  
 Mayor

Approved as to form by:

\_\_\_\_\_  
 Shauna R. Billingsley  
 City Attorney

PASSED FIRST READING: \_\_\_\_\_

PASSED SECOND READING: \_\_\_\_\_