

ORDINANCE 2023 - 02

AN ORDINANCE TO AMEND TITLE XI, CHAPTER 117, OF THE TOWN OF COLLIERVILLE CODE OF ORDINANCES RELATED TO SMALL WIRELESS FACILITIES AND TITLE XV, CHAPTER 151, § 151.025 ACCESSORY USES PERMITTED IN EACH ZONING DISTRICT RELATED TO ACCESSORY STRUCTURES.

WHEREAS, it is deemed in the public interest to amend the Town Code from time to time to ensure that it comports with applicable Tennessee law; and,

WHEREAS, the Board of Mayor and Aldermen, consistent with the police powers vested in it by applicable law, has identified a need to update and revise the Town's zoning regulations as it relates to Small Wireless Facilities and Residential Accessory Structures; and,

WHEREAS, the Collierville Planning Commission reviewed the proposed amendment at the regular meeting held on March 2, 2023, and made a recommendation to the Board of Mayor and Aldermen to approve the proposed amendments; and,

WHEREAS, a public hearing before the Board of Mayor and Aldermen was held on April 10, 2023, pursuant to notice thereof published in a newspaper of general circulation within the community on March 23, 2023.

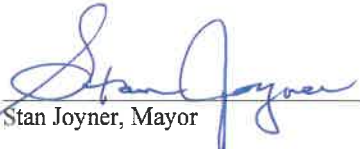
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN FOR THE TOWN OF COLLIERVILLE, TENNESSEE, THAT:

- Section 1. § 151.025 Accessory Uses Permitted in Each Zoning District, is hereby amended as depicted in Attachment A.
- Section 2. § 117.120 through § 117.999 Small Wireless Facilities, is hereby amended as depicted in Attachment B.
- Section 3. BE IT FURTHER ORDAINED that this ordinance shall become effective upon third and final reading, in accordance with the Charter of the Town of Collierville, the public welfare requiring it.

Passed First Reading: March 27, 2023

Passed Second Reading: April 10, 2023

Passed Third Reading: April 24, 2023


Stan Joyner, Mayor


Lynn Carmack, Town Clerk

§ 151.025 Accessory Uses Permitted in Each Zoning District

NOTE:

New text to be added is in **bold underlined** print.
Text to be deleted is ~~struck-through~~.

§ 151.025 ACCESSORY USES PERMITTED IN EACH ZONING DISTRICT.

(A) *Accessory activity, use, building or structure.* This section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses. The intent of this section is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, they comply with the standards set forth in this section, and they do not create adverse impacts on surrounding lots or site.

(B) *Exemptions for accessory uses.* The following are exempt from the regulations of § 151.025, as they are regulated by other provisions of the Zoning Ordinance. These structures shall not be located within platted or recorded easement or over underground utility; however, this requirement shall not prevent utility installations, such as cable, telephone boxes, gas, and sewer meters. Furthermore, the following will not be counted towards any maximum number of accessory structures on a lot.

- (1) Accessory residential housing.
- (2) Fences and walls.
- (3) Signs.
- (4) Pools.
- (5) Wireless communication facilities and antennas.

(C) *General standards and limitations for accessory uses.* Except for accessory structures exempted in § 151.025(B), accessory uses or structures shall:

- (1) Directly serve the principal use or structure;
- (2) Be accessory and clearly incidental to the principal use or structure;
- (3) Be clearly subordinate in area, extent, and purpose to the principal use or structure;
- (4) Be owned or operated by the same person as the principal use or structure;
- (5) Be located on the same lot as the principal use or structure;
- (6) Not exceed the height of the principal structure, except for those structures exempt from the height requirements of this ordinance;
- (7) Be located at least five feet from any other structures (except fences, walls, or open-air arbors);
- (8) Not take place within required front or side yards or project beyond the front building line of the principal structure (except where expressly permitted within § 151.025(D));
- (9) Not be located within platted or recorded easements or over underground utilities;
- (10) Not violate the bulk, density, parking, landscaping, or open space standards of this ordinance when taken together with the principal use or structure;
- (11) Not be constructed or established prior to the time the principal use or structure is constructed or established; and
- (12) Except for fences, walls, or hedges, no accessory structure may be constructed except on a lot with a principal building.

(D) *Listed accessory activities, uses, buildings, or structures.*

...

(1) *Residential accessory structures.* Any building, such as a detached garage or storage shed, accessory to a principal single family detached, two family (duplex), or mobile home use, shall comply with the following:

(a) **On residential lots less than two acres in size, a** maximum of two accessory **structures are permitted** ~~may be constructed~~ on each lot. Children's play structures, animal shelters, open-air arbors, concrete slabs, swimming pools, below-grade structures (e.g. underground shelter), or any accessory structure with a height less than 18 inches shall not be counted towards the maximum number.

(b) *Location of residential accessory structures.*

1. Accessory structures must not be erected in any required front yard or between a principal building and a street, except for reversed frontage lots. On reversed frontage lots, accessory structures may be located between the principal structure and the non-accessible street upon which it fronts, provided a minimum setback of 20 feet is provided from the right-of-way of the non-accessible street and all other applicable provisions are met.

2. Accessory structures must not be erected within any required side yard, except for a corner lot, where accessory structures may be placed in a required side yard provided all other applicable provisions are met.

3. The required setback for accessory structures depends upon the type of zoning district:

a. Within conventional zoning districts, accessory structures must have a setback from a property line that is equal to or greater than its height, but in no case shall an accessory structure be located closer than five feet from a property line or other building or structure. .

b. Within traditional zoning districts, accessory structures must be located at least five feet from all lot lines and five feet from any other structures (except fences, walls, and open-air arbors). .

(c) *Height of residential accessory structures.*

1. Accessory structures must not exceed 14 feet or one story in height, except for on those lots of record that are either one acre in size or greater or within one of the traditional zoning districts.

2. On lots either one acre in size or greater or within one of the traditional zoning districts, accessory structures must not exceed 25 feet or two stories in height.

3. No accessory structure shall exceed the height of the principal structure, except as provided otherwise in the code of ordinances.

(d) *Size and lot coverage.*

1. On residential lots **less than two acres in size**, the combined gross floor area of all accessory structures shall be no more than 30% of the total gross floor area of the principal building.

2. ~~On residential lots less than one acre in size, accessory structures greater than 800 square feet in gross floor area require the approval of the Planning Commission. On residential lots one acre in size or greater, accessory structures greater than 1,200 square feet in gross floor area require the approval of the Planning Commission. The Planning Commission shall base its determination on the following: A building permit shall not be issued until the Development Director or his/her designee determines that:~~

a. The accessory structure is consistent with the overall character of existing development in the immediate vicinity of the subject property, and will not materially adversely affect other property in the area in which it is located; and

b. The accessory structure will not adversely affect a known archaeological, environmental, historical, or cultural resource.

(e) *Architectural style and materials.*

1. For single-family residential lots, accessory structures greater than 150 square feet in gross floor area must be constructed in a like manner to the principal building in terms of architectural style, roof style, and building materials. The intent of this requirement is not to require an accessory structure to exactly match the principal structure, but to ensure compatibility with the principal structure.

2. Metal and plastic are prohibited as primary siding materials for accessory structures greater than 150 square feet in gross floor area except where the material is the primary material on the principal structure.

(3) *Agricultural accessory buildings or structures.* Accessory buildings or structures essential to general farming activities conducted on the property, including, but not limited to, those that house livestock, protect farm equipment, or for harvesting crops, shall be regulated as follows:

(a) ~~When an accessory structure houses livestock, a~~ **A** minimum lot size of two acres is required.

(b) Agricultural accessory structures are permitted in any required front, side, or rear yard, and may be between a principal building and a street; however, any **agricultural** accessory structure shall **not** be located ~~no closer than~~ **within** 30 feet ~~of from~~ a property line at any point.

~~—(c) Agricultural accessory structures shall not apply towards the maximum number of accessory structures for a principal use.~~

(d) Building structures not exempted by § [151.005](#) may exceed the maximum building height as required by § [151.027](#) if the **Development Director or his/her designee** ~~the Planning Commission~~ finds that:

1. The accessory structure is consistent with the overall character of existing development in the immediate vicinity of the subject property, and will not materially adversely affect other property in the area in which it is located; and

2. The accessory structure will not adversely affect a known archaeological, environmental, historical, or cultural resource.

§ 117.120 through § 117.999 SMALL WIRELESS FACILITIES

NOTE:

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SMALL WIRELESS FACILITIES

§ 117.120 PURPOSE AND INTENT.

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

(B) *Intent.* In enacting this subchapter, the town 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 sections or laws.* This chapter supersedes all sections or parts of sections adopted prior hereto that are in conflict herewith, to the extent of such conflict. In the event of any conflict between a provision hereof and a provision of Tenn. Code Ann. §§ 13-24-401, *et seq.*, the provisions of such state statute shall control. (Ord. 2018-03, passed 10-28-19)

§ 117.121 DEFINITIONS.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AESTHETIC PLAN. 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 the adoption of the **AESTHETIC PLAN**. 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**.

ANNUAL LEASE FEE. The fee due to the town for the reimbursement for the installation of a small wireless facility on town property, irrespective of whether the property is owned, leased, or within the public ROW. Each installation/spot requires a separate **ANNUAL LEASE FEE**.

ANTENNA. Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

APPLICABLE CODES. 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 subchapter.

APPLICANT. Any person who submits an application pursuant to this subchapter.

APPLICATION. A request submitted by an applicant to an authority:

- (1) For a permit to deploy or colocate small wireless facilities in the ROW; or
- (2) To approve the installation or modification of a PSS associated with deployment or

colocation of small wireless facilities in the ROW.

AUTHORITY. Shall mean:

- (1) Within a town boundary, the town;
- (2) Within a county and outside a town boundary, the county; or
- (3) Upon state-owned property, the state.

AUTHORITY does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this subchapter, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this subchapter.

AUTHORITY-OWNED PSS (OR TOWN-OWNED PSS). A PSS owned by an authority, but not including a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned.

COLOCATE, COLOCATING, AND COLOCATION. In their respective noun and verb forms, shall 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 wireless support structure replacement of authority-owned PSS or wireless support structure.

COMMUNICATIONS FACILITY. The set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service.

COMMUNICATIONS SERVICE. Cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47

U.S.C. § 153(24) or wireless service.

COMMUNICATIONS SERVICE PROVIDER. A cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in Tenn. Code Ann. § 7-59-303, or a wireless provider.

DAY. Calendar day.

FEE. A one-time, nonrecurring charge.

HISTORIC DISTRICT. A property or area zoned as a historic district pursuant to Tenn. Code Ann. § 13-7-404.

LOCAL AUTHORITY. An authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state.

MICRO WIRELESS FACILITY. A small wireless facility that:

- (1) Does not exceed 24 inches in length, 15 inches in width, and 12 inches in height; and
- (2) The exterior antenna, if any, does not exceed 11 inches in length.

PERMITEE. An applicant who is party to an application and/or has been granted a permit.

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

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

RATE. A recurring charge.

RESIDENTIAL NEIGHBORHOOD. 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 (ROW). The space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the town, and any unrestricted public utility easement established,

dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the town, but excluding lands other than streets that are owned by the town.

RIGHT-OF-WAY USE PERMIT ("PERMIT"). 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.

SMALL WIRELESS FACILITY. A wireless facility with:

- (1) An antenna that could fit within an enclosure of no more than six cubic feet in volume; and
- (2) Other wireless equipment in addition to the antenna that is cumulatively no more than 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.

TOWN. The Town of Collierville, Tennessee.

UTILITY POLE. 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 town- owned/leased poles. Such term shall not include structures supporting only wireless facilities.

WIRELINE BACKHAUL FACILITY. A communications facility used to transport communications services by wire from a wireless facility to a network.

WIRELESS FACILITY. Equipment at a fixed location that enables wireless communications between the user equipment and a communications network, including:

- (1) Equipment associated with wireless communications; and
- (2) 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:

- (1) The structure or improvements on, under, or within which the equipment is colocated;
- (2) Wireline backhaul facilities; or
- (3) 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 INFRASTRUCTURE PROVIDER. A 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.

WIRELESS PROVIDER. A person who provides wireless service.

WIRELESS SERVICES. Any service using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

WIRELESS SERVICES PROVIDER. A person who provides wireless services.

WIRELESS SUPPORT STRUCTURE. A freestanding structure, such as a monopole; tower, either guyed or self-supporting; or other existing or proposed structure designed to support or capable of supporting wireless facilities. **WIRELESS SUPPORT STRUCTURE** shall not include a utility pole. (Ord. 2018-03, passed 10-28-19)

§ 117.122 RIGHT-OF-WAY USE PERMIT.

(A) *Permitted use.* Colocation of a small wireless facility or installation of a new, replacement, or modified utility pole or wireless support structure for the colocation of a small wireless facility shall be a permitted use, subject to the restrictions in this subchapter.

(B) *Permit required.* No person may construct, install and/or operate wireless facilities that occupy the right-of-way without first obtaining approval of a right-of-way use permit from the town. Any right- of-way use permit **shall be reviewed and issued once approval for the installation of small cell wire facilities, poles, and associated equipment has been obtained;** shall be reviewed, issued, and administered in a non-discriminatory manner; shall be subject to such reasonable conditions as the Town may from time to time establish for effective management of the ROW; and otherwise shall conform to the requirements of this subchapter and applicable law.

(C) *Permit applications.* All applications for ROW use permits filed pursuant to this subchapter shall be on a form, paper or electronic, provided by the town. The applicant may include up to 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.

(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 site plan for each proposed location with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the town to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;

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

(5) Identification of any third party upon whose PSS the applicant intends to colocate **or replace** and certification by the applicant that it has obtained approval from the third party;

(6) 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 person that will respond in the event of an emergency related to the small wireless facility;

(7) The applicant's certification of compliance with insurance and/or indemnification requirements (as set forth in § [117.128](#) below); rules requiring maintenance of infrastructure deployed in ROW; rules requiring relocation or timely removal of infrastructure in ROW no longer utilized; any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the town imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the city imposes on a general and nondiscriminatory basis upon entities that are entitled to deploy infrastructure in the ROW;

(8) 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.

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

(10) An approved address certificate issued by Memphis Light, Gas and Water Division.

(E) *Approval or denial of application; response time.* The town responds to the applications for ROW use permit per the timelines in accordance with state legislation regarding the approval or denial of applications, and the town shall respond to applications in accordance with state legislation. The town reserves the right to require a surcharge in accordance with state legislation for high- volume applicants.

(F) *Deployment after permit.*

(1) An applicant must complete deployment of the applicant's small wireless facilities within nine

(9) months of approval of applications for the small wireless facilities unless the town and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site.

(2) If an applicant fails to complete deployment within the time required pursuant to this subsection, then the town may require that the applicant complete a new application and pay an application fee.

(G) *Multiple permit applications at same location.* If the town receives multiple

applications seeking to deploy or collocate small wireless facilities at the same location in an incompatible manner, then the town may deny the later filed application.

(H) *Bridge and/or overpass special provision.* If the applicant's site plan includes any collocation design that includes attachment of any facility or structure to a bridge or overpass, then the applicant must designate a safety contact. After the applicant's construction is complete, the applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, then the applicant shall provide notice of the evidence to the safety contact.

(I) *Information updates.* Any amendment to information contained in a permit application shall be submitted in writing to the town within ten days after the change necessitating the amendment.

(J) *Application fees.* Unless otherwise provided by law, all permit applications for small wireless facility pursuant to this subchapter shall be accompanied by a fee in accordance with Tenn. Code Ann. § 13-24-407 as stated in the town's fee schedule.

(K) *Increase in maximum fee.* Beginning on January 1, 2020, and at each five-year interval thereafter, the maximum application fees established by the preceding subsection (J) may increase in an amount of 10% rounded to the nearest dollar, if the town amends its fee schedule.

(L) *Annual lease fee.* A ROW use permit shall provide for the annual lease fee, which shall be due January 1 of each year of the agreement, as set forth in § 117.126 below. The initial annual lease fee payment shall be due upon approval of the ROW use permit.

(M) *ROW use permit renewal.* A permittee desiring to renew a ROW use permit prior to the expiration of the agreement and/or permit shall file an application with the town 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 Town Engineer, or his or her designee.

(N) *Acceptance or denial of renewal application.* The town shall make a determination accepting or denying the renewal application in writing to the permittee.

(O) *Valid ROW use permit required.* A valid ROW use permit is required **once to obtain an approval for the installation of small cell wire facilities, poles, and associated equipment has been obtained.**

(P) *Timely process of renewal Application.* The town shall timely process any renewal application provided that (i) permittee is not then in material default under any provision of the ROW use permit, or in material non-compliance with this subchapter, and (ii) has otherwise satisfactorily performed all of its obligations under the ROW use permit and this subchapter during the expiring term. In the event the town 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 town shall not unreasonably delay, condition, withhold, or deny the issuance of a renewal ROW use permit.

(Ord. 2018-03, passed 10-28-19)

§ 117.123 AESTHETIC PLAN FACILITIES IN THE ROW; MAXIMUM HEIGHT; OTHER REQUIREMENTS.

(A) *Aesthetic plan.* Unless otherwise determined by town staff, in an attempt to blend into the built environment, all small wireless facilities, new or modified utility poles, wireless support structures for the collocation of small wireless facilities, and associated equipment shall be similar in size, mass, and color to similar existing facilities and equipment in the immediate area subject to following requirements:

(1) Collocation **on or replacement of an existing PSS** is required **unless the owner of the existing PSS nearest to the proposed PSS location refuses in writing to allow collocation or replacement.** Should the wireless provider not be able to collocate **or replace,** the wireless provider shall provide **written justification and a copy of the nearest PSS owner's written refusal with** in the application.

(2) When unable to match the design and color of existing utility poles/PSS's in the immediate area, small wireless facilities and/or new PSS's shall be designed using

stealth or camouflaging techniques, to make the installation as minimally intrusive as possible, ~~including, without limitation, Ss~~ stealth poles that are **metal shall be** black or Collierville Green in color, **and** powder-coated, ~~and that do not exceed 18 inches in diameter. In areas where there are no existing utility poles, streetlight poles, or PSS's within 1,000 feet at the time of application, metal poles shall be required.~~

The town reserves the right to require a streetlight on the PSS. New wooden PSS's ~~are~~ **shall be** strictly prohibited **except where replacing existing wooden PSS's where overhead utilities are currently located.**

(3) When an applicant seeks to deploy a small wireless facility and associated equipment within a residential neighborhood, the applicant must deploy the facility in the ROW within 25 feet of the property boundaries separating residential lots larger than 0.75 acres and within 15 feet of the property boundaries separating residential lots if lots are 0.75 acres or smaller.

(4) 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.

(5) Poles for PSS's shall not exceed 18 inches in diameter.

(B) *Compliance with underground facilities.* Subject to waivers as determined by the town, an applicant must comply with existing requirements to place all electric, cable, and communications facilities underground in a designated area of a ROW, as determined by the town's zoning and subdivision regulations.

(C) *Replacing an existing town-owned PSS.* Town-owned PSS may be replaced for the collocation of small wireless facilities. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced, and must continue to be capable of performing the same function in a comparable manner as it performed prior to replacement.

(1) When replacing a town-owned PSS, the replacement PSS becomes the property of the town, in accordance with state legislation.

(2) The town reserves the right to require a streetlight on the new PSS.

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

(1) Ten feet in height above the tallest existing PSS in place as of the effective date of this part that is located within 500 feet of the new PSS in the ROW 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 ROW;

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

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

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

(1) More than ten feet above an existing PSS in place as of the effective date of this subchapter;

or

(2) On a new PSS, ten feet above the height permitted for a new PSS under this subchapter.

(F) *Existing infrastructure.* If the facility is to be on existing infrastructure, the following shall apply:

(1) Applicant must provide a site plan indicating the location of any infrastructure upon which such small cell is proposed. The site plan shall indicate the location of all proposed accessory structures/facilities necessary for the support of the small cell. The site plan shall show all existing infrastructure (i.e., curb/gutter, sidewalk, underground utilities, roadways) in the immediate vicinity.

(2) Applicant must provide structural analysis from a licensed professional engineer indicating that existing infrastructure is adequate to support the proposed small cell with appropriate safety factors. If the existing infrastructure is inadequate, the applicant shall replace the existing infrastructure with infrastructure that is adequate to support the small cell. The town has review/approval authority of replacement infrastructure.

(3) If the existing infrastructure is a mast arm signalized intersection, all components of the small cell are to be Collierville Green in color, unless otherwise approved by the town.

(4) In the event it is necessary for fiber optics and/or electrical power to be installed with the proposed small cell, and the applicant chooses to install those utilities by directional boring construction techniques, applicant is responsible for providing proof that the directional boring activities shall not adversely affect existing storm drain

and/or sanitary sewer connections. "Proof entails providing pre and post video evidence of all storm drain and/or sewer service connections within the limits of the boring activities.

(5) The applicant is responsible for maintaining all small cell and accessory infrastructure in perpetuity. This includes any landscaping materials that may be required by the town.

(G) *Applicant-installed infrastructure.* If the proposed location is on applicant-installed infrastructure, the following shall apply:

(1) Any new infrastructure to be installed with small cell must be Collierville Green or black in color and must be break-away as per AASHTO (Green Book) guidelines.

(2) All items in § 117.123(F) shall apply here also.

(H) *New small wireless facilities, antennas, and associated equipment.* 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 such as 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 that is required for a Small Wireless Facility shall ~~be mounted at least eight feet above grade on the pole and located in a shelter or case that does~~ not extend more than ~~24~~ 12 inches past the edge of the pole it is mounted on. ~~In the case of co-location, the mounts shall be on the same side of the pole.~~ Town staff has the discretion for authorizing ground-mounted equipment when unique or exceptional circumstances exist to protect the character of the surrounding area.

(2) New small wireless facilities and antennas shall be mounted at least eight feet above grade on the pole and not extend more than 24 inches past the edge of the pole it is mounted on.

(I) *Construction in the ROW.* All construction, installation, maintenance, and operation of wireless facilities in the ROW by any wireless provider shall conform to the requirements of the following publications, as from time to time amended: the rules of the Tennessee Department of Transportation Right-of-Way Division, the National Electrical Code, and the National Electrical Safety Code, as might apply.

(J) ~~**Appeals.** *Design-Review Commission or Historic-District Commission approval.* Unless otherwise provided for in this subchapter, the Town Design-Review Commission or Historic-District Commission approval, as applicable, shall be required for:~~

~~— (1) 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 (A) through (I) above.~~

~~— (2) New PSSs shall not be permitted to be installed in the ROW in areas where there are no existing utility poles, streetlight poles, or PSS's within 1,000 feet at the time of application without prior approval by the Town Design-Review Commission, or Historic-District Commission, as applicable.~~

The Board of Mayor and Aldermen shall hear and decide appeals by any wireless provider from any order, requirement, decision, or determination made by any Town official charged with the responsibility of enforcing the provisions of this chapter, whereby it is alleged in writing that such official is in error or has acted in an arbitrary manner. An appeal shall be filed with the Planning Division not later than thirty (30) calendar days from the date of any written order, requirement, decision, or determination made by a Town Official charged with the responsibility of applying and enforcing the provisions of this chapter. No action shall be taken by the Board on the appeal until after a public hearing and notice thereof has been provided to the applicant and the public. The public notice of public hearing shall be published in a newspaper of general circulation to the Town of Collierville at least ten calendar days before the date set for a public hearing. A written notice of the hearing shall be sent by mail to applicant and property owners located within 300 feet of the subject parcel on all sides at least ten calendar days before the hearing.

§ 117.124 EFFECT OF PERMIT.

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 ROW. (Ord. 2018-03, passed 10-28-19)

§ 117.125 MAINTENANCE, RENEWAL, RELOCATION, OR MODIFICATION OF SMALL WIRELESS FACILITY AND FIBER IN THE ROW.

(A) *Notice.* Within 90 days following written notice from the town, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any small wireless facilities and support structures within the ROW whenever the town has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the town in or upon, the ROW. The town shall 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 ROW use permit, permittee is hereby permitted to enter the ROW at any time to conduct repairs, maintenance, or replacement not substantially changing the physical dimension of the wireless facility. The permittee shall comply with all rules, standards, and restrictions applied by the town to all work within the ROW. If required by the town, permittee shall submit a "maintenance of traffic" plan for any work resulting in significant blockage of the ROW. 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 an emergency, permittee shall attempt to provide advance written or oral notice to the Town Engineer.

(C) *Removal of existing facilities.* If the permittee removes any wireless facilities, it shall notify the town of such change within 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 (to a comparable or better condition) such property within ten business days, unless such time period is extended by the Town Engineer or his or her designee. The permittee shall utilize the Tennessee One Call System prior to any disturbance of the ROW and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.

(E) *Emergency removal or relocation of facilities.* The town retains the right and privilege to cut or move any small wireless facility located within the ROW of the town, as the town may determine to be necessary, appropriate, or useful in response to any serious public health or safety emergency. If circumstances permit, the town shall notify the wireless provider in writing and provide the wireless provider a reasonable opportunity to move its own wireless facilities prior to cutting or removing a wireless facility and shall notify the wireless provider after cutting or removing a wireless facility. Any removal shall be at the wireless provider's sole cost. Should the wireless facility be colocated on property owned by a third-party, the town shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal. If the third-party fails to remove the wireless facility in a timely manner, the town shall have the right to remove the facility at the third-party's expense.

(F) *Abandonment of facilities.* Upon abandonment of a small wireless facility within the ROW of the town, the wireless provider shall notify the town within 90 days. Following receipt of such notice, the town may direct the wireless provider to remove all or any portion of the small wireless facility if the town reasonably determines that such removal will be in the best interest of the public health, safety, and welfare. Should the wireless facility be colocated on property owned by a third-party, the town shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal. Any removal shall be at the wireless provider's sole cost. Failure to remove wireless facilities pursuant to this section will result in no future permits being granted. If the third-party fails to remove the wireless facility in a timely manner, the town shall have the right to remove the facility at the third-party's expense.

(G) *Fee for micro wireless facility.* 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 PSS's, in compliance with the National Electrical Safety Code as set out in Tenn. Code Ann. § 68-101-104.

(Ord. 2018-03, passed 10-28-19)

§ 117.126 PUBLIC RIGHT-OF-WAY RATES.

Annual lease fee. The rate to place a small wireless facility on a town-owned or leased PSS shall be \$100 per year for all PSS's in the ROW. All equipment attached to a town-owned pole shall

constitute a single attachment and therefore a single use of a town-owned or leased PSS. Such fee, together with the application fee specified in this subchapter, shall be the sole amounts that the wireless provider shall be required to pay the town. This rate will be due January 1 of each year of the permit.

(Ord. 2018-03, passed 10-28-19)

§ 117.127 REMEDIES; VIOLATIONS.

In the event a reasonable determination is made by the Development Director of his/her designee that a person has violated any provision of this subchapter, a small wireless facility application, or a ROW 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 commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the town, in its reasonable judgment, may extend the time period to cure, provided that the person has commenced curing and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the town may take all actions authorized by this subchapter and/or Tennessee law and regulations.

(Ord. 2018-03, passed 10-28-19)

§ 117.128 GENERAL PROVISIONS.

(A) *Insurance.* Each permittee shall, at all times during the entire term of the ROW use permit, maintain and require each contractor and subcontractor to maintain insurance substantially the same insurance as required of permittee, 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 town from and against 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 ROW. The amounts of such coverage shall be not less than the following:

(3) *Worker's compensation* in compliance with the statutory requirements of the state(s) of operation and employer's liability insurance - Tennessee with a limit of \$1,000,000 each accident/disease/policy limit.

(4) *Commercial general liability.* Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal and advertising injury coverage, in the amount of \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 general aggregate.

(5) *Commercial automobile liability.* Commercial automobile liability coverage for all owned, non-owned, and hired vehicles involved in operations, in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage.

(B) *Additional insured.* The town shall be included as an additional insured as their interest may appear under this agreement under each of the insurance policies required by this section, except worker's compensation and employer's liability insurance. Upon receipt of notice from its insurer(s) the Permittee shall provide the town with 30 days' advance written notice of cancellation of any required insurance policy. Permittee shall impose similar insurance requirements as identified in this section on its contractors and subcontractors.

(C) *Indemnification.* Each permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the town, its elected and appointed officials, employees, and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by, or connected with any act or omission of the permittee, its officers, agents, employees, or contractors, arising out of, but not limited to, the construction, installation, operation, maintenance, or removal of permittee's wireless system or wireless facilities in the ROW. Each permittee shall defend any actions or proceedings against the town in which it is claimed that personal injury, including death, or property damage was caused by the permittee's construction, installation, operation, maintenance, or removal of

permittee's wireless system or wireless facilities in the ROW. 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.

(D) *As-built maps.* As the town controls and maintains the ROW for the benefit of its citizens, it is the responsibility of the town to ensure that such public ROW meets the highest possible public safety standards. Upon request by the town and within 30 days of such a request, a permittee shall submit to the Town 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 ROW, provided in standard electronic or paper format in a manner established by the Town Engineer, 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 town ROW shall update such maps as required under this subchapter upon written request by the town.

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

(F) *Proprietary information.* If a person considers information it is obligated to provide to the town under this section 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 town shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure to the maximum extent of the law. The town shall provide written notice to the person in the following circumstances: i) if the town receives a request for disclosure of such proprietary and confidential information and the Town Attorney determines that the information is or may be subject to disclosure under applicable law; or ii) if the Town Attorney determines that the information should be disclosed in relation to its enforcement of this subchapter 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 town's notice, then the town may disclose the information without further written notice to the person.

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

(H) *No substitute for other required permissions.* No small wireless facility application or ROW use permit includes, means, or is in whole or in part a substitute for any other permit or authorization required by the laws and regulations of the town for the privilege of transacting and carrying on a business within the Town or any permit or agreement for occupying any other property of the town.

(I) *No waiver.* The failure of the town to insist on timely performance or compliance by any permittee holding a ROW use permit shall not constitute a waiver of the town's right to later insist on timely performance or compliance by that permittee or any other permittee holding such ROW use permit. The failure of the town to enforce any provision of this subchapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this subchapter on any other occasion, nor shall the failure to enforce any prior ordinance or Town Charter provision affecting the ROW, any wireless facilities, or any user or occupant of the ROW act as a

waiver or estoppel against enforcement of this subchapter or any other provision of applicable law.

(J) *Policies and procedures.* The town is authorized to establish such written policies and procedures consistent with this subchapter as the town reasonably deems necessary for the implementation of this subchapter.

(K) *Police powers.* The town, by granting any permit or taking any other action pursuant to this subchapter, does not waive, reduce, lessen, or impair the lawful police powers vested in the town under applicable federal, state, and local laws and regulations.

(Ord. 2018-03, passed 10-28-19)

§ 117.999 PENALTY.

Any person, firm, partnership, corporation or other legal entity violating any of the ordinances of the Town shall be fined not more than \$50 or the maximum amount permitted by state law, whichever is greater, for each offense, and a separate offense shall be deemed committed for each day of violation.