

ORDINANCE 2019-009

**AN ORDINANCE OF THE TOWN OF THOMPSON'S STATION, TENNESSEE,
PROVIDING THAT THE CODE OF ORDINANCES OF THE TOWN OF
THOMPSON'S STATION BE AMENDED BY ADDING A NEW CHAPTER TO TITLE
16 THEREIN, PROVIDING FOR THE INSTALLATION AND MAINTENANCE OF
COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

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

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

WHEREAS, the Town of Thompson's Station seeks to balance the need to accommodate advanced technologies in communications with regulations that provide for proper management of the right-of-way; and

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

NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF THOMPSON'S STATION, TENNESSEE, AS FOLLOWS:

SECTION 1: That Title 16 of the Code of Ordinances of the Town of Thompson's Station is hereby amended by adding a new Chapter, to be designated as Chapter 2 and to read as follows:

CHAPTER 2. WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Sec. 16-201. - Purpose and scope.

(a) *Purpose.* In accordance with Tennessee Code Annotated § 13-24-401, *et seq.*, known as "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018," the purpose of this chapter is to establish policies and procedures for the placement of small wireless facilities in the public rights-of-way within the 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 chapter, 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, areas, and zones 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.

Sec. 16-202. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

(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 or entity who submits an application pursuant to this part;

(e) *Application* means a request submitted by an applicant to the Town of Thompson's Station:

(1) For a permit to deploy or collocate small wireless facilities in the rights-of-way; or

(2) To approve the installation or modification of a Potential Support Structure (PSS) associated with deployment or collocation of small wireless facilities in the rights-of-way;

(f) *Authority-owned PSS or Town-owned PSS* means a PSS owned or leased by the Town in the rights-of-way, including (i) a utility pole that provides lighting or traffic control functions,

including light poles, traffic signals, and structures for traffic cameras or signage; and (ii) a pole or similar structure owned/leased by the Town in the rights-of-way that supports only wireless facilities. Authority-owned PSS does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned;

(g) *Town* means Town of Thompson's Station, Tennessee;

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

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

(j) *Communications service* means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;

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

(l) *Day* means calendar day;

(m) *Fee* means a one-time, non-recurring charge;

(n) *Micro wireless facility* means a small wireless facility that:

(1) Does not exceed twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height; and

(2) The exterior antenna, if any, does not exceed eleven inches (11") in length.

(o) *Permittee* means an applicant who has been granted a permit;

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

(q) *Potential support structure for a small wireless facility or PSS* means a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at

the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;

(r) *Rate* means a recurring charge;

(s) *Residential neighborhood* means an area within the Town's geographic boundary that is zoned or otherwise designated by the Town 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;

(t) *Right-of-way or ROW* means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the 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 authority that are contiguous to paved roads, but excluding lands other than streets that are owned by the Town;

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

(v) (1) *Small wireless facility* means a wireless facility with:

(A) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and

(B) Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision, "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services; and

(2) "Small wireless facility" includes a micro wireless facility;

(x) *Wireline backhaul facility* means a communications facility used to transport communications services by wire from a wireless facility to a network;

(y) (1) *Wireless facility* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(A) Equipment associated with wireless communications; and

(B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

(2) *Wireless facility* does not include:

(A) The structure or improvements on, under, or within which the equipment is collocated;

(B) Wireline backhaul facilities; or

(C) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna; and

(3) *Wireless facility* includes small wireless facilities.

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

(aa) *Wireless provider* means a wireless infrastructure provider or a wireless services provider;

(bb) *Wireless services* means any service using licensed or unlicensed spectrum, including the use of WIFI, whether at a fixed location or mobile, provided to the public;

(cc) *Wireless services provider* means a person who provides wireless services.

Sec. 16-203. - Permitted use; application and fees.

(a) *Permitted use.* Collocation of a small wireless facility or installation of a new, replacement, or modified PSS shall be a permitted use, subject to the restrictions in this title.

(b) *Permit required.* No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first obtaining a right-of-way use permit from the Town. 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 Town 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.

(c) *Permit applications.* All applications for right-of-way use permits filed pursuant to this chapter shall be on a form, paper or electronic, provided by the Town. The applicant may include up to twenty (20) small wireless facilities within a single application. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.

(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;
- (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 collocate 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 party that will respond in the event of an emergency related to the small wireless facility;
- (7) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements (as set forth below); rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the 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 Town imposes on a general and non-discriminatory 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; and

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

(e) *Approval or Denial of Application; Response Time.* The Town responds to the applications for permit per the timelines prescribed in federal law and in T.C.A. Section 13-24-409(b), as may be amended, regarding the approval or denial of applications, and the Town shall respond to applications per the specific requirements of T.C.A. Section 13-24-409(b)(3), as may be amended. The Town reserves the right to require a surcharge as indicated in T.C.A. Section 13-24-409(b)(7)(F)(i), as may be amended, for high-volume applicants.

(f) *Deployment after Permit.* An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the 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. 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 associated with the new application.

(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, as priority for locations shall be given on a first come, first served bases and as allowed.

(h) *Bridge and/or Overpass Special Provision.* If the Applicant's site plan includes any colocation 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.* Except as otherwise provided herein, any amendment to information contained in a permit application shall be submitted in writing to the Town within 30 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 chapter shall be accompanied by a fee in accordance with T.C.A. § 13-24-407. This fee shall be one hundred dollars (\$100.00) each for the first five (5) small wireless facilities and fifty dollars (\$50.00) each for additional small wireless facilities included in a single application. There shall also be a fee of two hundred dollars (\$200.00) for all first-time applicants. Applications fees shall increase by ten percent (10%) on January 1, 2020, and every five (5) years thereafter, rounded to the nearest dollar.

Sec. 16-204. - 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, PSSs for the collocation of small wireless facilities, and associated equipment shall be consistent in size, mass, shape, and color to similar facilities and equipment in the immediate area, and its design for the PSS shall meet the adopted aesthetic plan, subject to following requirements:

(1) Collocation is recommended, when possible. Should the wireless provider not be able to collocate, the wireless provider shall provide justification in the application;

(2) When unable to match the design and color of existing utility poles/PSSs in the immediate area small wireless facilities and/or new PSSs shall be designed using stealth or camouflaging techniques, to make the installation as minimally intrusive as possible including stealth poles that are black or bronze in color, powder-coated and that do not exceed 16 inches in diameter. The Town reserves the right to require a street light on the PSS. New wooden PSSs shall be strictly prohibited;

(3) When an Applicant seeks to deploy a small wireless facility, and associated equipment, within a residential neighborhood, then the Applicant must deploy the facility in the right of way within twenty-five (25) feet of the property boundaries separating residential lots larger than 0.75 acres and within fifteen (15) feet of the property boundaries separating residential lots if lots are 0.75 acres or smaller; and

(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.

(b) *Compliance with Underground Facilities.* Subject to waivers as determined by the Town of Thompson's Station Planning Commission, an Applicant must comply with existing requirements to place all electric, cable, and communications facilities underground in a designated area of a ROW, as determined by the Town's zoning 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, subject to T.C.A. § 13-24-408(g), as may be amended.

(2) The Town reserves the right to require a street light on the new PSS.

(d) *Maximum Height.* A new PSS installed or an existing PSS replaced in the ROW shall not exceed the greater of:

- (1) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;
- (2) Fifty feet (50') above ground level; or
- (3) For a PSS installed in a residential neighborhood, forty feet (40') above ground level.

(f) *Maximum Height for Small wireless facilities.* Small wireless facilities shall not extend:

- (1) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or
- (2) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(g) *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.

(h) *Town of Thompson's Station Planning Commission Approval.* Unless otherwise provided in this ordinance, the Town of Thompson's Station Planning Commission approval 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)—(g) above.
- (2) New PSSs shall not be permitted to be installed in the rights-of-way in areas in which no utility poles, streetlight poles, or PSSs exist at the time of application without prior approval by the Town of Thompson's Station Planning Commission.

(i) 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 prior to their effective date and compiled into a set of guidelines titled, "Town of Thompson's Station Guidelines for Wireless Communications Facilities in the Public Right-of-Way." In no case, shall any guidelines be retroactive. Facilities approved for which right-of-way use permits have been issued prior to the effective date of a new guideline shall not be affected.

Sec. 16-205. - 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 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 90 days, the permit expires.

(c) *Termination of permit.* In all other circumstances, the permit expires in 12 months.

Sec. 16-206. - Maintenance, removal, 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 rights-of-way 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 rights-of-way. The Town 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 Town to all work within the right-of-way. If required by the Town, 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, as provided herein, except in the event of an emergency. In the event of emergency, permittee shall attempt to provide advance written or oral notice to the public works director or other Town designee.

(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 public works director or his designee. Permittee shall utilize the Tennessee One Call System prior to any disturbance of the rights-of-way and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.

(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 rights-of-way 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 providers sole cost. Should the wireless facility be collocated 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.

(f) *Abandonment of facilities.* Upon abandonment of a small wireless facility within the rights-of-way 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 collocated 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 providers sole cost.

(g) No application, fee, rate, and/or approval is required for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in T.C.A. § 68-101-104.

Sec. 16-207. - Public right-of-way rates—Attachment to Town-owned/leased PSSs and new PSSs installed within the public right-of-way or Town-owned/leased property.

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

(b) A wireless provider authorized to place a new PSS within public right-of-way on Town-owned or leased property shall pay to the Town for use of the right-of-way or property in the amount of one hundred dollars (\$100.00). This rate will be due January 1 of each year of the permit.

Sec. 16-208. - Remedies; violations.

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

Sec. 16-209. - General provisions.

(a) *Insurance.* Each permittee shall, at all times during the entire term of the right-of-way use permit, maintain and require each contractor and subcontractor to maintain insurance with a reputable insurance company authorized to do business in the State of Tennessee and which has an A.A. Best rating (or equivalent) no less than “A” indemnifying the Town 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 \$1,000,000.00 per occurrence, combined single limit and \$2,000,000.00 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 \$1,000,000.00 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 Town 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 Town with at least 30 days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of premium of the policy coverages.

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

(b) *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 rights-of-way. 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 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.

(c) *As-built maps.* As the Town controls and maintains the right-of-way for the benefit of its citizens, it is the responsibility of the Town to ensure that such public right-of-way meet 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 Engineering Department (or shall have otherwise maintained on file with the department) as-built maps and engineering specifications depicting and certifying the location of all its existing small wireless facilities within the right-of-way, provided in standard electronic or paper format in a manner established by the Town, or his or her designee. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Public Records Act (Tennessee Code Annotated § 10-7-101 *et seq.*) to the maximum extent of the law. After submittal of the as-built maps as required under this section, each permittee having small wireless facilities in the Town rights-of-way shall update such maps as required under this chapter upon written request by the Town.

(d) *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 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 Town as part of the inspection.

(e) *Proprietary information.* If a person considers information it is obligated to provide to the Town under this chapter to be a business or trade secret or otherwise proprietary or confidential in nature and desires to protect the information from disclosure, then the person shall mark such information as proprietary and confidential. Subject to the requirements of the Tennessee Public Records Act (Tennessee Code Annotated § 10-7-101 *et seq.*) as amended, and other applicable law, the 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 chapter or the exercise of its police or regulatory powers. In the event the person does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within 30 days following receipt of the Town's notice, then the Town may disclose the information without further written notice to the person.

(f) *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 chapter; 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 chapter.

(g) *No substitute for other required permissions.* No right-of-way use permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the 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.

(h) *No waiver.* The failure of the Town to insist on timely performance or compliance by any permittee holding a right-of-way 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 right-of-way use permit. The failure of the Town 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 Town 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.

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

(j) *Police powers.* The Town, 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 Town under applicable federal, state and local laws and regulations.

(k) *Severability.* If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this chapter invalid.

SECTION 2. All Prior Conflicting Ordinances Repealed; Interpretation. That upon the effective date of this ordinance, all prior ordinances and resolutions in conflict herewith be

repealed. In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the Town, the provision that establishes the higher standard shall be controlling.

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

SECTION 4. Effective date; applicability. This ordinance shall take effect upon publication in a newspaper of general circulation within the Town after final reading, the public welfare requiring it.

Duly approved and adopted by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee.

Corey Napier, Mayor

ATTEST:

Town Recorder

Passed First Reading: _____

Passed Second Reading: _____

Submitted to Public Hearing on the ____ day of _____ 2019, at 7:00 p.m., after being advertised in the *Williamson AM* Newspaper on the ____ day of _____, 2019.

APPROVED AS TO FORM AND LEGALITY:

Town Attorney