

**ORDINANCE – 19-28**

**AN ORDINANCE TO AMEND ORDINANCE 18-21, THE ZONING  
ORDINANCE OF THE CITY OF SPRING HILL, THE SAME BEING  
THE UNIFIED DEVELOPMENT CODE, AT ARTICLE 8.3.Z WIRELESS  
TELECOMMUNICATIONS AND 8.5 DEFINITIONS**

**(WIRELESS TELECOMMUNICATIONS)**

**WHEREAS**, the Spring Hill Municipal Planning Commission recommended to the Board of Mayor and Alderman on July 8, 2019 via Planning Commission Resolution 19-66 and a vote of 6-0 to amend Article 8.3.Z and 8.5 as contained herein; and

**WHEREAS**, all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

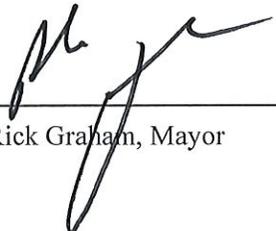
**WHEREAS**, the City of Spring Hill Board of Mayor and Alderman desire to amend the Wireless Telecommunications regulations of Spring Hill to address new technologies and Tennessee law; and

**WHEREAS**, that all resolutions or parts of resolutions in conflict herewith, be and the same hereby, repealed or modified as the case may be; and

**WHEREAS**, that this ordinance shall become effective immediately upon its adoption.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SPRING HILL, TENNESSEE, BOARD OF MAYOR AND ALDERMEN**, to amend Ordinance No. 18-21, the same being the Zoning Ordinance of the City of Spring Hill, by adopting the text amendments as contained in Exhibit A attached hereto, and as recommend by the Planning Commission via Resolution 19-66.

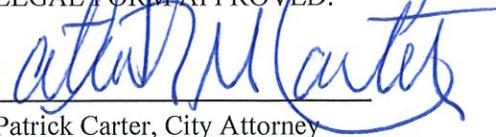
Passed and adopted by the City of Spring Hill Board of Mayor and Aldermen, this 16th day of September, 2019.

  
\_\_\_\_\_  
Rick Graham, Mayor

ATTEST:

  
\_\_\_\_\_  
April Goad, City Recorder

LEGAL FORM APPROVED:

  
\_\_\_\_\_  
Patrick Carter, City Attorney

Approved on 1<sup>st</sup> Reading: August 19, 2019 Approved on 2<sup>nd</sup> Reading: September 16, 2019

Ordinance 19- ~~ZTA~~ 716 Wireless Telecommunications

Ordinance 19-28  
September 16, 2019  
Page 1 of 1

## MEMORANDUM



**DATE:** August 5, 2019

**TO:** Board of Mayor and Aldermen (BOMA)

**FROM:** Steve Foote, Planning Director, AICP

**SUBJECT:** ZTA 716-2019 Wireless Telecommunications  
Unified Development Code  
Ordinance 19-28

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**ZTA 716-2019:** This request was initiated by the City of Spring Hill to amend the text of the zoning ordinance at Article 8.3.Z of the UDC. The proposed change will replace Section Z in its entirety with Exhibit A and replace Section 8.5 “Use Definitions” at “Wireless Telecommunications” with new use definitions from Exhibit A. Requested by the City of Spring Hill.

**Zoning Text Amendments:** Attached is the latest “working draft” of the text revisions. Staff is continuing to review and make needed revisions to improve the proposed regulations. However, since there are multiple groups with interest in siting cell towers and small cell facilities with the community, the code amendment process is being initiated now. In response to a request from the Planning Commission, staff has located an MTAS publication on the subject and is in the process of reviewing the information. Necessary adjustments will be incorporated into the draft.

The current adopted UDC addresses traditional cell towers in a less than comprehensive manner and does not address new technology, like small cell, in any respect. Staff has been contacted by several providers regarding the installation of small cell facilities within the community. The proposed regulations will provide a comprehensive approach to reviewing and regulating these facilities to the extent permitted by State and Federal law. In many ways, the city’s zoning authority has been preempted. Most of our review authority is limited to aesthetic considerations. In addition, a request may not be denied based on perceived impacts of electromagnetic signals used by the facilities.

The UDC allows the Code to be amended according to the procedure in Article 13. The process for amending the zoning regulations is intended to allow modifications in response to omissions or errors, changed conditions, or changes in City policy. Amendments are not intended to relieve particular hardships or confer special privileges or rights upon any person or party. The approval standards for zoning text amendments, as found in the Unified Development Code, Article 13, are below:

### 2. Approval Standards for Text Amendments

*The consistency of the proposed amendment with the Comprehensive Plan and any adopted land use policies. Whether the proposed amendment corrects an error or omission, adds clarification to existing requirements, or reflects a change in policy. The extent to which the proposed amendment creates nonconformities. The consistency of the proposed amendment with the intent and general regulations of this Code.*

### **Requested Zoning Text Amendments:**

The request includes the following changes:

City of Spring Hill, Tenn.

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199 Town Center Parkway | Spring Hill, TN 37174 | (931) 486-2252

1. Replace Section 8.3.Z in its entirety
2. Replace 8.5 Use Definitions, “Wireless Telecommunications” with new ‘use’ definitions from Exhibit A.

The proposed amendment separates regulations, allowances, application requirements and aesthetic considerations for cell towers and small cell/Distributed Antenna System facilities.

**Recommendation:** Adoption of the prepared ordinance on first read as forwarded by the Planning Commission. Staff has reviewed the materials provided by MTAS and revised definitions to match state regulations.

Article 8.3 Principal Use Standards:

Z. Wireless Telecommunications

The reader should also refer to Table 8-1: Use Matrix for use allowances and processes.

To the extent that this ordinance does not address a subject related to small cell communications refer to Tennessee Public Chapter 819 for guidance.

1. Purposes Generally.

- a. The general purpose of this article is to regulate the placement, construction, and modification of towers and telecommunications facilities in order to protect the health, safety, and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city.
- b. Specifically, the purposes of this article are to:
  - I. Regulate the location of towers and wireless telecommunications facilities in the city;
  - II. Protect residential areas and land uses from potential adverse impacts of towers and wireless telecommunications facilities;
  - III. Minimize adverse visual impact of towers and wireless telecommunications facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
  - IV. Promote and encourage shared use/colocation of towers and wireless antenna support structures as a primary option rather than construction of additional single-use towers and support structures;
  - V. Promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new tower structures to support antenna and wireless telecommunications facilities;
  - VI. Avoid potential damage to property caused by towers and wireless telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
  - VII. Ensure that towers and wireless telecommunications facilities are compatible with surrounding land uses.

2. 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:]

**Accessory equipment** means any equipment used to house, protect, serve or being used in conjunction with cell towers, wireless telecommunications, DAS, small cell technology, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures. Accessory equipment for a cell tower is typically contained within an equipment shed located on the ground, while accessory equipment for a small cell or DAS facility may be mounted on a Potential Support Structure (PSS).

**Antenna** means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of all types of wireless telecommunications services. This does not include satellite dish antennas.

**Applicant** means a person or entity with an application before the city for a permit for a tower, wireless telecommunications, or Potential Support Structure (PSS).

**Application** means a formal request submitted to the city to construct or install a cell tower, Potential Support Structure, antenna, or the wireless telecommunications equipment attached thereto. An application shall be deemed complete when all documents, information, and fees specifically enumerated in the city's regulations, ordinances and forms pertaining to the location, construction or operation of wireless facilities are submitted by the applicant to the city.

**Applicable Codes** means uniform building, fire, electrical, plumbing, or mechanical codes published by a recognized national code organization and adopted by the City of Spring Hill, as amended.

**City-owned PSS** means a Potential Support Structure owned or leased by the city in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage; and (ii) a pole or similar structure owned/leased by the city in the rights-of-way that supports only wireless facilities. City-owned PSS does not include a PSS owned by a distributor of electric power.

**City** means City of Spring Hill, Tennessee.

**Colocate, collocating, and colocation** mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, and/or replace antenna, small wireless facilities, or DAS equipment on a cell tower or Potential Support Structure (PSS). "Colocation" does not include the installation of a new cell tower or Potential Support Structure (PSS), or replacement of a PSS.

**Conceal** means to enclose a PSS within a natural or manmade feature, resulting in the facility being either invisible or hidden by the feature enclosing it.

**Distributed Antenna System (DAS)** is a network of spatially separated antenna nodes connected to a common source via fiber optic cable or other transport medium that

provides wireless service within a geographic area or structure. A distributed antenna system may be deployed indoors (an iDAS) or outdoors (an oDAS).

**Day** means calendar day.

**Design** means the appearance of a Potential Support Structure (PSS) or Wireless Telecommunication, including the structures, materials, colors and shape.

**Disguise** means to design a Potential Support Structure (PSS) or Wireless Telecommunications to appear to be something other than its conventional or traditional form, achieving a compatible appearance with the surrounding environs.

**Equipment compound** means an area, cabinet, or shed typically surrounding or adjacent to the base of a tower or typically located on a Potential Support Structure, either above or below ground, within which accessory equipment is located.

**Fall zone** means the area on the ground within a prescribed radius in all directions from the base of a tower, which is intended as a safety zone from potential falling debris or collapsing material.

**Federal Communications Commission (or FCC)** means the federal agency charged with licensing and regulating wireless communications at the national level.

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

**Guyed tower** means a mount that is anchored to the ground or to another surface by diagonally placed cables with the opportunity for antennas to be attached at the top of and/or along the primary structure.

**Height** means the distance measured from existing grade to the highest point of a tower or PSS, including any antenna(s).

**Lattice tower** means a mount with multiple legs and cross-bracing of structural steel with the opportunity for antennas to be attached at the top and/or along the structural support system.

**Macrocell** means a cell in a mobile phone network that provides radio coverage served by a high power cell site (tower, antenna or mast). Generally, macrocells provide coverage larger than microcell. The antennas for macrocells are mounted on ground-based masts, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macrocell base stations have power outputs of typically tens of watts.

**Mitigation** means the reduction or elimination of visual impacts by the use of one or more methods, including concealment, camouflage, and/or disguise.

**Monopole** means a type of mount that is self-supporting with a single shaft of wood, steel

or concrete without the use of guyed wires, and with the opportunity for antenna placement at the top of and/or along or within the shaft.

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

**Potential Support Structure for a small wireless facility** or “PSS” means a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the collocation of a small wireless facility. When “PSS” is modified by the term “new,” then “new PSS” means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part.

**Provider** means an entity offering any personal wireless service. Under this definition, a tower builder does not constitute a provider. A provider licensed by the FCC to offer a personal wireless service is considered a "licensed provider" for purposes of this article.

**Right-of-way or ROW** means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the City or Tennessee Department of Transportation (TDOT), and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the city.

**Site** means that portion of a specific property or right-of-way where a proposed Potential Support Structure (PSS) is to be placed.

**Siting** means how the tower or PSS will be placed within a proposed site.

**Small cell wireless technology** means: (1) individual small cell wireless antennas; or (2) networks of spatially separated small cell wireless antenna nodes connected to a common source via fiber optic transport medium that provides wireless service within a geographic area.

**Small cell technology potential support structure** means a Potential Support Structure (PSS), designed to support or capable of supporting small cell wireless technology. Means a structure used for the installation of small cell wireless technology or DAS systems in lieu of traditional monopoles, guyed towers and lattice towers. Such structures typically include poles less than 42 feet in height, placed in close proximity to one another and used to supplement wireless communications. Requests for Small Cell and Distributed Antenna System installations shall follow the regulations contained in Section 4: SMALL CELL AND DISTRIBUTED ANTENNA SYSTEMS (DAS) contained herein.

**Stealth technology** means a method of concealing or reducing the visual impact of small cell technology and/or small cell technology potential support structures by use of incorporating features or design elements of the installation which either totally or partially conceals the structure; achieves the result of having the structure blend into the surrounding environment; or otherwise minimizes the visual impact of the structure.

**Telecommunications Tower (Tower)** means a structure designed and constructed to support macrocell technology, including one or more wireless telecommunications antennas and including all appurtenant devices attached to it. All new towers must be monopole in design. Towers are generally over 100' in height.

**Wireless Facility** means equipment at a fixed location that enables wireless communications between user equipment and a communications network.

**Wireless Telecommunications** means the various technology and equipment hardware used to transmit and receive signals that facilitate wireless telecommunications. These facilities include, but are not limited to, towers, antennas, and support structures, accessory equipment that support macrocell facilities, Distributed Antenna Systems, and small cell facilities.

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

### 3. TELECOMMUNICATION TOWERS - GENERAL SITE DEVELOPMENT REQUIREMENTS:

#### a. *General Regulations.*

- I. New telecommunication towers require a special use per Table 8-1.
- II. Telecommunications towers must maintain a galvanized steel finish or, be painted a neutral color, so as to reduce visual obtrusiveness. A requirement to the contrary according to any applicable standards of the Federal Aviation Administration or Federal Communications Commission, shall be followed.
- III. At a tower site, the design of the buildings and related structures must, to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities into the natural setting and/or built environment.
- IV. Towers may not be artificially lighted, unless required by the Federal Aviation Administration, Federal Communications Commission or other applicable authority. If lighting is required, it must be done in a way that minimizes the disturbance to surrounding property, including right-of-way.
- V. The perceived environmental effects of radio frequency emissions may not serve as a basis to approve, deny or otherwise regulate a telecommunications tower to

the extent that emissions comply with Federal Communications Commission regulations.

- VI. All decisions denying a request to place, construct or modify a telecommunications tower must be in writing and be supported by a written record documenting the reasons for the denial and the evidence in support of the decision. Decisions must be made within a reasonable time from the date a completed application is duly filed.
- VII. Each applicant requesting approval of a telecommunications tower must provide to the City of Spring Hill as a part of the application, an inventory of its existing towers that are either within the city or within one-quarter mile of the city boundaries, including information regarding the location, height and design of each tower. The City may share this information with other applicants or with other organizations seeking to locate a telecommunications tower within the city. In sharing this information, the City is not in any way representing or warranting that the sites are available or suitable.
- VIII. The city desires that colocation be the first priority over new towers when considering new telecommunications antenna. Prior to the approval of a new telecommunications tower, all opportunities to pursue and colocate on an existing tower or antenna support structure shall be exhausted.
- IX. No new telecommunication tower may be permitted unless the applicant demonstrates that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence must be submitted at the time of application demonstrating that no existing tower or structure can accommodate the applicant's proposed antenna and may consist of one or more of the following:
  - (A) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements;
  - (B) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements;
  - (C) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
  - (D) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna;
  - (E) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable; or
  - (F) There are other limiting factors that render existing towers and structures unsuitable.

Exhibit A – Wireless Telecommunications

- X. The placement of accessory equipment and buildings required to support an otherwise authorized telecommunication tower or antenna is specifically authorized.
- XI. No person, provider, or other entity shall build, erect, or construct a tower upon any parcel of land within any zoning district unless approvals required by this ordinance have been granted and required permits shall have been issued by the City. Application shall be made to the City in the manner provided in this article.
- XII. No new tower shall be built, constructed, or erected in the city unless the tower is capable of supporting another person, provider, or other entities operating telecommunications facilities comparable in weight, size, and surface area to the telecommunications facilities installed by the applicant on the tower. All new towers shall be designed to accommodate requests for colocation from other wireless providers.
- XIII. An application to develop a new tower shall, in addition to the requirements in Article 13-13.3, Special Use, include:
  - (A) The name, address, and telephone number of the owner and lessee of the parcel of land upon which the tower is situated.
  - (B) The legal description, folio number, and address of the parcel of land upon which tower is situated.
  - (C) The names, addresses, telephone numbers, and locations of all owners of other towers or usable antenna support structures within a one-half mile radius of the proposed new tower site, including city-owned property.
  - (D) An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to install or colocate the applicant's telecommunications facilities on city-owned towers or usable antenna support structures owned by other persons, located within a one-half mile radius of the proposed tower site.
  - (E) Written technical evidence, in the form of a written statement, from an engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another tower or usable antenna support structures owned by other persons located within one-half mile radius of the proposed tower site.
  - (F) A written statement from an engineer that the construction and placement of the tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and nonresidential properties.

- (G) A site plan, drawn to scale, showing the subject site, fall zones, setbacks, accessory equipment compound/shed, vehicle access, fencing, landscaping, adjacent property owners and zoning information.
  - (H) In order to assist city staff in evaluating visual impact, the applicant shall submit color photo simulations showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the closest residential property and from adjacent roadways.
  - (I) The FCC has sole jurisdiction of the field of regulation of RF emissions. The city may not condition or deny a request on the basis of RF impacts the approval of any telecommunications facility (whether mounted on towers or antenna support structures) which meet FCC standards. Applicants shall be required to submit information on the proposed power density of their proposed telecommunications facilities and demonstrate how this meets FCC standards.
- XIV. The planning department will cause the application to be presented to and reviewed by other essential city staff, as necessary to determine compliance with these regulations.
- b. Site Plan Requirements
- I. All wireless telecommunications towers must be set back no less than the tower height from all existing principal buildings on the lot, measured at the nearest external wall(s), as well as from the external boundaries of the lot upon which the tower is located. The setback distance is measured from the nearest point on the outside edge of a tower to the nearest point on the foundation of the building or lot line.
  - II. All Accessory Equipment and Equipment Compounds including accessory structures such as maintenance sheds, must be set back from all property lines in accordance with the minimum setback requirements for the zoning district.
  - III. Telecommunications towers and associated equipment must be entirely enclosed by an opaque security fence of at least six feet, and no more than eight feet, in height. Chain link fencing with slats shall not be used. Fencing shall be placed to enclose the base of the tower and equipment compound. A sign shall be mounted on the outside of the compound gate identifying the emergency name and phone number for the company.
  - IV. In addition to any other landscaping or buffer requirements that may apply, telecommunications towers must be landscaped with plant material that effectively screens the tower site from adjacent uses. Existing tree growth and natural land forms on-site must be preserved to the maximum extent possible. At a minimum, a landscaped strip ten feet in width must be provided around fencing required in 'III' above.

- V. The maximum height of a wireless telecommunications tower is the minimum needed to function satisfactorily, but in no case over 150' unless approved by the Board of Zoning Appeals through the special use process. The application for approval of a wireless telecommunications tower must demonstrate the minimum height needed for the tower to function, which will be reviewed and approved as part of special use review.
  - VI. Building-mounted antennas in residential zoning districts must be visually screened from view of all abutting lots. Building-mounted antennas in other zoning districts must be screened or designed and installed so as to make the antenna and related equipment as visually unobtrusive as possible.
  - VII. Antennas may be located on or in structures permitted within zoning districts, such as water towers, clock towers, streetlights, traffic lights, light poles, penthouses, parapet walls (must be behind the parapet wall), and steeples, and must be designed to blend in with the structure.
  - VIII. No antenna may increase the overall height of any structure on which it is mounted by more than 12 feet.
- c. Miscellaneous Regulations
- I. *Signs.* The use of signs shall be minimized to the greatest extent possible. No signs shall be permitted at any Wireless Telecommunications site other than for owner identification with contact phone numbers and for public safety purposes as may be required by federal or state agencies. No single sign shall be larger than four square feet, unless otherwise required.
  - II. *Exterior treatment.* All Wireless Telecommunications equipment shelters and public utility buildings that are visible to the public shall be designed and constructed of materials durable materials, including brick, stone, cementous fiber board, so as to be architecturally compatible with the architectural character of the surrounding area.
  - III. *Wireless Telecommunications Security barriers.* A security barrier shall be required around the perimeter of any Wireless Telecommunications related equipment shelter, and any anchor points. In the case of a roof-mounted Wireless Telecommunications, a security barrier shall be required to prevent public access to the antenna and exposed equipment. No security barrier shall be required around any structure mounted and related equipment, provided the placement and design precludes public access to exposed equipment and the antenna array. The provider and/or mount owner shall maintain the security features during the life of the installation. The application shall identify the party to be responsible for maintaining the security barriers.
  - IV. *Public safety communications interference.* No new or existing Wireless Telecommunications shall interfere with public safety communications. If a potential problem is identified, the city may require applicants for new or modified

Wireless Telecommunications to provide a technical evaluation study under the city's direction to identify any potential interference to public safety communications from existing and proposed transmissions and implement corrective solutions to resolve the problem.

- V. Proposed towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this article:
    - (A) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed, by a minimum of 750 feet.
  - VI. Specific Standards for Wireless Telecommunications Facilities
    - (A) Any buildings, cabinets, or shelters may house only equipment and supplies for operation of the wireless telecommunication tower. Any equipment not used in direct support of such operation must not be stored on the site.
    - (B) Commercial advertising signs are prohibited. Only signs that are part of the equipment as manufactured or warning signs are permitted.
  - VII. Specific Standards for Wireless Telecommunications Towers
    - (A) The use of guyed towers and lattice towers is prohibited. Towers must be monopoles, meaning self-supporting with no wires, cables, or beams.
    - (B) Wireless telecommunications towers must be designed to accommodate other telecommunications providers. The area surrounding a tower must be of a sufficient size to accommodate wireless telecommunications facilities for other telecommunications providers.
    - (C) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration or the City, towers must have a galvanized silver or gray finish.
- d. Preexisting Telecommunications Tower.
- I. Any Telecommunications Tower approved by the City of Spring Hill prior to adoption of this article shall be deemed a permitted use, subject to the conditions and requirements placed on the approval, and provided that substantial
  - II. Structures shall also be subject to the provisions of Article 14, Nonconformities.
- e. REQUIRED APPROVAL PROCESS

Wireless Telecommunications Towers and Antenna are permitted as shown in Table 8-1. When permitted by right, the use shall be subject to administrative site plan approval by the planning department. For uses requiring a special use, the request shall be subject

to review and approval by the Board of Zoning Appeals. Approval by the Board of Zoning Appeals shall also serve as and satisfy the requirement for site plan approval. Refer to Section 8.3.Z for Use Standards applicable to Wireless Telecommunication facilities.

Except as may be allowed elsewhere herein, it shall be unlawful for any individual, corporation or provider to erect, construct, place, re-erect, or replace any Telecommunications Tower without making application to the planning department and securing the approval of the city as required. In addition to complying with the performance, technical and development standards of this article, the approval authority may require additional conditions for the issuance of permits in locations where it is deemed necessary to protect and preserve existing land uses in the area. All denials of permits shall be in writing and supported by findings based on the provisions of this article.

- I. *Special land use permit approval criteria.* In reviewing and acting on special land use permit applications for new telecommunication towers, authorized review and decision-making bodies must consider the following factors in addition to the generally applicable special land use permit approval criteria of Section 13.3:
  - (A) Height of the proposed tower;
  - (B) Proximity of the tower to residential structures;
  - (C) Nature of uses on adjacent and nearby properties;
  - (D) Surrounding topography;
  - (E) Surrounding tree cover and foliage;
  - (F) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
  - (G) Compliance with telecommunication tower regulations of this section.
- II. Administrative approval through the planning department shall be required for all non-new tower applications. Planning Department review shall be on a form and require the submittal of information as determined by the Planning Director.
- III. Approval of a special use for a new tower shall expire according to Section 13.3 of the Unified Development Code. Administrative approvals from the planning department shall expire per Section 13.6.H.
- IV. The regulations of this section apply to all telecommunications towers and antennas.
  - (A) Antennas that are attached or affixed to existing telecommunications towers or other existing structures are permitted as of right in all zoning districts, subject to administrative approval by the planning department, and provided that the antenna does not substantially change the physical

dimensions of such structure. Refer to Section b, below. Substantial changes require approval as a Special Use by the Board of Zoning Appeals.

- (B) Colocation antennas that substantially change the physical dimensions of such structure, require Special Use Permit approval. For the purpose of this section, "substantial change" shall mean:

*Increases height by more than ten percent or 10' (right-of-way) or 20' feet (private property), whichever is greater. Appurtenance added protrudes from body of structure more than six (6) feet in width (right-of-way) or 20 feet in width (private property).*

- (1) Involves the installation of cabinets that are not screened from view off-site, or are taller than the existing screening fencing, such as stacked or elevated cabinets.
- (2) Involves excavation or deployment outside the current "site." "Site" shall be defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements (private property) or the area in proximity to the structure and other transmission equipment already deployed on the ground (right-of-way).
- (3) For concealed or stealth-designed facilities, if a modification would defeat the concealment elements of the wireless tower or base station.
- (4) The modification would not comply with other conditions imposed on the applicable wireless tower or base station, unless the non-compliance is due to an increase in height, increase in width, or new excavation that does not exceed the above thresholds.

- f. Ongoing monitoring; abandonment; relocation.

The operation of each Telecommunications Tower shall be monitored by the city. Any permitted Telecommunications Tower installation shall satisfy the following requirements:

- i. *Reporting.* On or before January 1 of every fifth year, each provider and authorized tower owner shall file an annual written report to the planning department, minimally outlining the location and status of all Telecommunications Towers in the city. The report shall also disclose the presence of any hazardous materials at the site and compliance with FCC guidelines on radio frequency radiation emissions. The department shall establish in writing minimum reporting standards for the annual report and may require additional information as may be needed to fully assess the status of operations.

- II. *Periodic inspection.* Each provider and tower owner shall conduct an inspection of mounts following completion of construction and at least once every five years thereafter. Upon completion, a statement from a qualified licensed professional engineer shall be provided to the planning and codes department verifying the structural integrity of the mount and identification of all providers operating from the mount. If the report indicates the need for repair, the work shall be accomplished within 60 days from receipt of the report.
  - III. *Abandonment and removal.* Any Telecommunications Tower and mount that is not operated or used for a continuous period of 18 months shall be considered abandoned. In such cases, the owner shall remove the Telecommunications Tower, including associated mounts, foundation, and equipment, within 90 days after notice from the city. If such Telecommunications Tower is not removed within said 90 days, the city may have the Telecommunications Tower removed at the expense of the owner.
- g. Maintenance - Certifications and inspections for Potential Support Structures
- I. All towers shall be certified by an engineer to be structurally sound and in conformance with the requirements of the standards set forth by this Code and federal and state law. For new monopole towers, such certification shall be submitted with an application and every five years thereafter. For existing monopole towers, certifications shall be submitted within 60 days of the effective date of the ordinance from which this article is derived and then every five years thereafter. The owner of the PSS is solely responsible for providing certifications to the City of Spring Hill. The tower owner may be required by the city to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is jeopardized.
  - II. The city or its agents shall have authority to enter onto the property upon which a tower is located, between the inspection and certification required in subsection (a) of this section, to inspect the tower for the purpose of determining whether it complies with the building code and all other construction standards provided by this Code and federal and state law.
  - III. The city reserves the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the city shall be borne by the tower owner.
  - IV. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
  - V. Tower owners shall install and maintain towers, telecommunications facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local

regulations, and in such manner that will not interfere with the use of other property.

- VI. All maintenance or construction of towers, telecommunications facilities, or antenna support structures shall be performed by licensed maintenance and construction personnel.
  - VII. All towers shall maintain compliance with current RF emission standards of the FCC.
  - VIII. In the event that the use of a tower is discontinued by the tower owner, the tower owner shall provide written notice to the city of its intent to discontinue use and the date when the use shall be discontinued.
  - IX. Any wireless telecommunications system that is not operated for a period of 180 consecutive days is considered abandoned. The owner must immediately remove the tower or facility, and all aboveground equipment and related debris. The City may ensure and enforce removal by means of its existing regulatory authority.
- h. Nonconformities
- I. Ordinary maintenance, including replacement/upgrading, of antenna equipment may be performed on nonconforming antennas or towers. However, if the proposed alteration intensifies a nonconforming characteristic of the antenna or tower it must be processed as a new application.
  - II. Colocation of an antenna on an existing nonconforming tower is permitted as a by right, provided that the addition of the antenna and any additional wireless telecommunications facilities do not increase the overall height of the nonconforming tower.

4. SMALL CELL AND DISTRIBUTED ANTENNA SYSTEMS (DAS)

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

- a. *Intent.* In enacting this chapter, the city is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
- I. Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
  - II. Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
  - III. Prevent interference with the facilities and operations of facilities lawfully located in public rights-of-way or public property;
  - IV. Protect against environmental damage, including damage to trees;
  - V. Preserve the character of the neighborhoods in which facilities are installed;
  - VI. Facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services.

b. APPROVAL PROCESS, APPLICATION

All applications for the installation of a new antenna(s) on an existing pole or new poles shall first be submitted to the City of Spring Hill, Planning Department for review and approval. The application shall be made on forms provided by the department and according to the application requirements set forth.

- I. *Permit required.* No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first obtaining authorization from the city. Any proposed use of the right-of-way shall be reviewed, issued and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the city may from time to time establish for effective management of the right-of-way, and otherwise shall conform to the requirements of this chapter and applicable law.
- II. *Permit applications.* All applications for use of the right-of-way filed pursuant to this chapter shall be on a form, paper or electronic, provided by the city. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

- III. *Application requirements.* The application shall be made by the wireless provider or its duly authorized representative and shall contain the following:
- (A) The applicant's name, business name, address, telephone number, and e-mail address;
  - (B) The names, addresses, telephone numbers, and e-mail addresses of all consultants, contractors and subcontractors, if any, acting on behalf of the applicant with respect to the filing of the application or who may be involved in doing any work on behalf of the applicant;
  - (C) A site plan for each proposed location with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the City to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices.
  - (D) The location of the site(s), including the latitudinal and longitudinal coordinates of the specific location(s) of the site;
  - (E) Location of all PSS and ownership within a 50' radius of the proposed site;
  - (F) Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;
  - (G) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.
  - (H) Provide a statement that all wireless facilities shall comply with all applicable codes.
- IV. *Approval or Denial of Application; Response Time.* The City responds to the applications for permit per the timelines prescribed in T.C.A. Section 13-24-409(b) regarding the approval or denial of applications, and the City shall respond to applications per the specific requirements of T.C.A. Section 13-24-409(b)(3). The City reserves the right to require a surcharge as indicated in T.C.A. Section 13-24-409(b)(7)(F)(i) for high-volume applicants.
- V. *Deployment after Permit.* An applicant must complete installation of the applicant's wireless facilities within nine (9) months of approval of applications for

the wireless facilities unless the City and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection (h), then the City may require that the applicant complete a new application and pay an application fee.

- VI. *Multiple Permit Applications at Same Location.* If the City receives multiple applications seeking to deploy or colocate wireless facilities at the same location in an incompatible manner, then the City may deny the later filed application.

c. DESIGN AND SITE DEVELOPMENT STANDARDS

If a distributed antenna systems (DAS) is installed and entirely enclosed within a principal building, the requirements of this Code do not apply. Otherwise, unless written to the contrary, the following regulations are intended to apply as practicable to the installation of both small cell and Distributed Antenna Systems.

Placement on existing building roofs or ground mount structures and reconfiguration of existing light standards/poles (with no increase in height) is preferred to the installation of a new ground mount.

- I. All equipment must be mounted/co-located on existing poles or other existing support structures unless it can be shown that an alternate location will be less obtrusive and/or more beneficial to the public.
- II. An applicant seeking installation of these wireless systems must demonstrate that it has made efforts to blend or camouflage the system with existing facilities and surroundings or has otherwise screened or concealed the system from view. Approved blending methods include, but are not limited to, location of equipment other than antennas within a tree canopy or other inconspicuous location, use of green, brown or other colored equipment (if commercially available to the applicant) designed to mimic the colors and/or materials of the tree canopy, colocation structure or other nearby structures, as well as use of textures and shapes as appropriate, all with the intent of minimizing the visual impact of the system. Unnatural colors and exposed cables are prohibited.
- III. All pole-mounted distributed antenna systems must be installed at a minimum height of nine feet above the ground. Equipment may be housed in a cabinet at ground level only with the approval of the City as to location and with appropriate screening.
- IV. Distributed antenna systems may not extend more than seven feet above the height of the existing pole or other structure on which it is installed.
- V. Where distributed antenna systems are placed in residential districts, every effort must be made to avoid placement at right of way locations directly in front of a

residence. If placement directly in front of a residence is absolutely necessary for technological reasons, the City has the right to require screening or impose other design mitigation requirements.

- VI. The City may request that a particular node or nodes be placed in an alternative location to that proposed by the applicant. Where a request for an alternative location is unable to be accommodated by an applicant, the applicant must supply an explanation in writing as to why the suggested alternative location will materially compromise the functioning of the system or is otherwise impractical.
- VII. PSS. Potential Support Structures shall be consistent in material and color with city standards for support structures in public right-of-ways, as determined by the public works department. Whenever practicable, a PSS shall not be placed in a curb lawn between the road and sidewalk. A PSS shall maintain a minimum 2' separation from a sidewalk, multi-use trail or similar facility.
- VIII. Placement of roof-mounted PSS on commercial, industrial, or institutional buildings with flat roofs is acceptable, provided such placement does not extend above the maximum height limit in the applicable zoning district.
- IX. *Disguise techniques.* To the greatest extent possible, PSS should be concealed within existing structures, camouflaged within the immediate surroundings, or placed on inconspicuous ground mounts that are compatible with nearby poles in the right-of-way or on the property.
- X. *Color/exterior appearance.* A PSS should be painted with durable colors that are compatible with the immediate surroundings, or complementary with natural features (including trees and sky). Wiring and other cabling shall be internally contained within the mounts and equipment and not directly visible. Exterior and side mounted antennas array shall not extend more than 24 inches from the surface of the mounting structure.
- XI. *Height.* The maximum height of any PSS should be consistent with the height of legally conforming pole structures in the immediate area and no greater than 42 feet without Board of Zoning Appeals approval. Roof-mounted PSS shall not extend more than ten feet above the roof surface of the building or above the maximum building height of the zoning district.
- XII. *Equipment cabinet/shelter.* A PSS equipment cabinet/shelter must be fully screened from public visibility at the time of installation. Unobtrusive pole mounts are acceptable if they do not project more than three (3) feet from the pole. The preferred method is through use of underground vaults. If this option is not practical or feasible, such equipment may be placed in adjoining wooded areas or screened through a combination of substantial landscaping, earthen berms, walls, fences, etc. The city may waive such screening requirements in locations that are not normally accessible or visible to the public.

- XIII. *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. Written approval from the bridge owner is required.
  - XIV. *Information updates.* Except as otherwise provided herein, any amendment to information contained in a permit application shall be submitted in writing to the city within 30 days after the change necessitating the amendment.
  - xv. *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.
- d. The following additional requirements shall apply to the installation of *small cell technologies and Distributed Antenna Systems in the right-of-way.*
- I. Any small cell technology in a city right-of-way shall be co-located on the property of a utility, or other franchisee, legally existing in the public right-of-way, unless the applicant can demonstrate that no colocation opportunities exist.
  - II. In applying for a request to install a new Potential Support Structure (pole) the review process, including timelines, shall be in accordance with any applicable state and federal law. In reviewing the application, the planning department shall have the authority to assess the location(s) applied for and condition the approval on reasonably alleviating certain aesthetic and safety concerns of the request.
  - III. In applying for a request to install a new Potential Support Structure the review process, including timelines, shall be in accordance with 47 U.S.C. § 332(c)(7) of the Federal Telecommunications Act, and the FCC rules interpreting same, as well as the consideration of the following factors by the planning department to determine if the administrative variance is appropriate:
    - (A) Demonstrated need for the small cell technologies within the geographic area requested in order to deliver adequate service.
    - (B) Proof that all colocation sites in the area of need are/were pursued and have been denied; or that there does not exist the ability to co-locate using

existing structures. The applicant must demonstrate all actions taken to achieve colocation.

- (C) The character of the area in which the small cell technology Potential Support Structure is requested, including evidence of surrounding properties and uses.
- (D) Stealth technology, if any, proposed to be utilized by the applicant, or proof that stealth technology is either unnecessary or cannot be used.
- (E) Proof that the proposed small cell technology Potential Support Structure is the minimal physical installation which will achieve the applicant's goals.
- (F) The safety and aesthetic impact of: any proposed small cell technology Potential Support Structure; related accessory equipment; and/or equipment compound.

e. Facilities in the ROW; maximum height; other requirements.

- I. *Aesthetic Plan.* Unless otherwise determined by city staff, in an attempt to blend into the built environment, all small wireless facilities, new or modified utility poles, PSS for the colocation of small wireless facilities, and associated equipment shall be consistent in size, mass, and color to similar facilities and equipment in the immediate area, subject to following requirements:
  - (A) When unable to match the design and color of existing utility poles in the immediate area small wireless facilities and/or new PSS shall be designed using stealth or camouflaging techniques, to make the installation as minimally intrusive as possible including stealth poles that are black or dark green in color, powder-coated steel and that do not exceed 16 inches in diameter. The city reserves the right to require a street light on the utility pole utilized for PSS. New wooden PSS shall be strictly prohibited.
  - (B) 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.
- II. All permanent power used to operate the PSS shall be via underground connection to a permanent power source. Portable generators may be utilized on a temporary basis for a period not to exceed 30 days.
- III. *Historic preservation.* For applications within 300 feet of a recognized historic property, the applicant must consider the impact facilities may have on the historic property and make reasonable efforts to minimize or avoid such impacts.
- IV. *Replacing an existing City-owned PSS.* City-owned PSS may be replaced for the colocation of small wireless facilities. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced, and

must continue to be capable of performing the same function in a comparable manner as it performed prior to replacement.

- (A) When replacing a City-owned PSS, the replacement PSS becomes the property of the City, subject to T.C.A. 13-24-408(g).
- (B) The city reserves the right to require a street light on the new PSS pole.

V. *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.

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

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

VII. *Maximum Height for Small wireless facilities.* Small wireless facilities shall not extend:

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

f. Maintenance, Relocation and Abandonment

- I. *Notice.* Within 90 days following written notice from the city, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the city has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations

of the city in or upon, the rights-of-way. The city agrees to use good faith efforts to accommodate any such disconnection, removal, relocation, change, or alteration and to assist with identifying and securing a mutually agreed upon alternative location.

- II. *Maintenance of existing facilities.* With respect to each wireless facility installed pursuant to a right-of-way use permit, permittee is hereby permitted to enter the right-of-way at any time to conduct repairs, maintenance or replacement not substantially changing the physical dimension of the wireless facility. Permittee shall comply with all rules, standards and restrictions applied by the city to all work within the right-of-way. If required by city, permittee shall submit a "maintenance of traffic" plan for any work resulting in significant blockage of the right-of-way. However, no excavation or work of any kind may be performed without a permit, except in the event of an emergency. In the event of emergency, permittee shall attempt to provide advance written or oral notice to the City of Spring Hill, Public Works Department.
- III. *Removal of existing facilities.* If the permittee removes any wireless facilities, it shall notify the city of such change prior to removal.
- IV. *Damage to facilities or property.* A permittee, including any contractor or subcontractor working for a permittee, shall avoid damage to any wireless facilities and/or public or private property. If any wireless facilities and/or public or private property are damaged by permittee, including any contractor or subcontractor working for permittee, the permittee shall promptly commence such repair and restore such property within ten business days. Permittee shall utilize the Tennessee One Call System prior to any disturbance of the rights-of-way and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.
- V. *Emergency removal or relocation of facilities.* The city retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any serious public health or safety emergency. If circumstances permit, the city shall notify the wireless provider in writing and provide the wireless provider a reasonable opportunity to move its own wireless facilities prior to cutting or removing a wireless facility and shall notify the wireless provider after cutting or removing a wireless facility. Any removal shall be at the wireless providers sole cost. Should the wireless facility be collocate on property owned by a third-party, the city shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal.
- VI. *Abandonment of facilities.* Upon abandonment of a small wireless facility within the rights-of-way of the city, the wireless provider shall notify the city within 90 days. Following receipt of such notice the city may direct the wireless provider to remove all or any portion of the small wireless facility, above and below ground, if the city determines that such removal will be in the best interest of the public health, safety and welfare. Should the wireless facility be collocate on property owned by a third-party, the city shall rely on the third-party to remove the wireless

facility and shall be provided adequate notice and time to facilitate such removal. Any removal shall be at the wireless providers sole cost. Notify the City 90 days before abandonment.

- VII. Failure to remove wireless facilities pursuant to this Code will result in no future permits being granted.
- VIII. If the PSS is to be removed the property owner shall contact the planning department to schedule the removal and any applicable inspections.
- IX. Any wireless telecommunications system that is not operated for a period of 180 consecutive days is considered abandoned. The owner must immediately remove the facility, and all aboveground equipment and related debris. The City may ensure and enforce removal by means of its existing regulatory authority.
  - i. Pre-existing Potential Support Structure
    - a. *Previously authorized PSS.* Any PSS approved by the City of Spring Hill prior to adoption of this article shall be deemed a permitted use, subject to the conditions and requirements placed on the approval, and provided that substantial construction of the PSS has begun within 12 months of approval.
    - b. *Nonauthorized PSS.* Any PSS installed or colocated without a permit after the adoption of this article shall be considered in violation of the provisions herein and the provider and/or facility owner shall be subject to appropriate legal action to ensure removal of the PSS and to prevent the continued operation of the unauthorized PSS. Any PSS either located at an unauthorized site or colocated at a legally authorized PSS site without the Board of Zoning Appeals approval prior to adoption of this article shall be considered in violation of the provisions herein and shall not be allowed to remain in operation unless a valid permit is obtained from the city within six months after adoption of this article. The issuance of a permit for any such PSS shall be in accordance with the provisions of this article. If the PSS is not brought into compliance within the six month time limit, then in addition to any penalties which may be imposed for violation of this article, the provider and/or facility owner shall be subject to appropriate legal action to ensure removal of the PSS and to prevent the continued operation of the unauthorized PSS.
    - c. *Repair/rehabilitation of existing PSS.* If a legally authorized PSS is damaged or destroyed due to any reason, it may be repaired and restored to its former use, location and physical dimensions upon issuance of a building permit. In no event shall a provider and/or facility owner upgrade or expand any PSS without submission of a new application for a permit that is in full compliance with this article.
    - d. *Colocation of PSS on nonconforming structure.* The colocation of a new PSS on a legal nonconforming structure shall be allowed if the provider obtains a permit for the new PSS pursuant to the provisions set forth in this article.
    - e. Structures shall also be subject to the provisions of Article 14, Nonconformities.

Exhibit A – Wireless Telecommunications

PRINCIPAL USE	R-A	R-R	R-1	R-2	R-3	R-4	R-5	R-6	R-7	R-MH	C-1	C-2	C-3	C-4	C-5	C-D	C-G	I-1	I-2	RD	IC	AG	PR	NA	USE STANDARD	
Wind Energy System	S	S																S	S	S	S	S			Sec. 8.3.Y	
Winery	S																					S				
Wireless Telecommunications – Colocation, Antenna	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		Sec. 8.3.Z
Wireless Telecommunications – New Towers	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		Sec. 8.3.Z
Wireless Telecommunications – Small Cell & DAS Colocation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		Sec. 8.3.Z
Wireless Telecommunications – Small Cell & DAS New Pole	<u>PS</u>	<u>P</u> <u>S</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>P</u> <u>S</u>	<u>PS</u>	<u>PS</u>		Sec. 8.3.Z														

**RESOLUTION 19-66  
OF THE PLANNING COMMISSION  
OF THE CITY OF SPRING HILL, TENNESSEE**

**A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION  
ZTA 716-2019 (Article 8.3Z) TO THE BOARD OF MAYOR AND  
ALDERMAN**

**WHEREAS**, pursuant to TCA 13-4-103, authority is granted to the Municipal Planning Commission to make recommendations relating to the plan and development of the municipality to public officials; and

**WHEREAS**, the Planning Commission had a regular meeting on the 8<sup>th</sup> day of July, 2019 and heard public testimony and input regarding application ZTA 716-2019; and

**WHEREAS**, the Planning Commission considered the materials submitted by the applicant and the reports written by City Staff;

**NOW, THEREFORE BE IT RESOLVED**, that the Spring Hill Planning Commission forwards a recommendation of approval for application ZTA 716-2019 to the Board of Mayor and Alderman, to amend the Unified Development Code as provided in items A and B below.

- A. Proposed Change to replace Section 8.3.Z in its entirety
  
- B. Proposed Change to replace 8.5 Use Definitions, "Wireless Communications" with the new "use" definitions from Exhibit A.

Passed and adopted this 8<sup>th</sup> day of July, 2019.

  
\_\_\_\_\_  
Paul Downing, Chairman

  
\_\_\_\_\_  
Steve Foote, Secretary



# Small Cells

Competitive Wireless Broadband Investment,  
Deployment, and Safety Act of 2018

Public Chapter 819

“Competitive Wireless Broadband Investment, Deployment,  
and Safety Act of 2018”

Chapter 819 of the Public Acts of 2018. Enacted on April 24, 2018.

Prepared by  
Elisha Hodge, Legal Consultant  
Municipal Technical Advisory Service, University of Tennessee  
and  
Chad Jenkins, Deputy Director  
Tennessee Municipal League

Graphics and artwork by Mark Barrett, TML Legislative Analyst  
Layout and design by Carole Graves, TML Communications Director

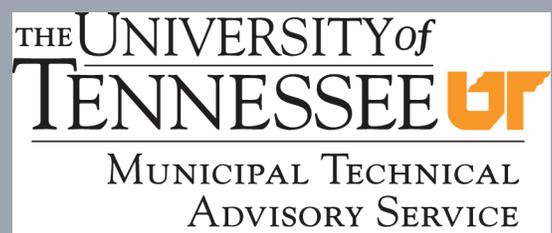


TABLE OF CONTENTS

<b>SECTION 1 ..... Summary of Public Chapter 819 .....</b>	<b>1</b>
General Overview .....	2
Effective date .....	4
Uniform Application, Time Limits, and Fees .....	4
When an application may be required .....	4
What a city may require in an application .....	5
The application process .....	5
Deadline for deploying approved small cell facility .....	5
Application time line .....	6
Initial review period .....	6
Incomplete application .....	6
Single application includes multiple requests .....	7
Conference with provider .....	7
Regulatory sign, breakaway support requirements .....	9
Application fees .....	10
Right of Way .....	10
Exclusive franchise agreement, site license agreement, access agreement .....	10
Parameters concerning local governance of rights of way .....	10
Enforcement of Americans with Disabilities Act and related policies .....	10
Vegetation control requirements .....	10
Small cell within a residential neighborhood .....	11
Undergrounding requirements .....	11
Public utility easement .....	11
Historic areas .....	12
Concealment measures .....	12
Aesthetic plan .....	12
Potential Support Structures (PSS) and small cells .....	13
Methods of deployment .....	13
Standard rate for deploying small cell .....	13
Size of small cell .....	14
Height of new or modified PSS and small cell .....	15
Exceptions to standard height limit .....	15

Installing new or modified PSS .....	16
Mitigate potential risks associated with assumption of ownership of PSS .....	16
Installing PSS or small cell on bridge or overpass .....	17
Mast arm that is routinely removed .....	17
TACIR report .....	17

**SECTION 2 .....Text of the “Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018,” Public Chapter 819 of the Act of 2018 ..... 18**

**SECTION 3 ..... Section-by-Section Summary of Public Chapter 819 ..... 32**

13-24-402 Key Definitions .....	33
13-24-403 Construction and applicability of part .....	33
13-24-404 Local option and local preemption .....	33
13-24-405 Existing law unaffected .....	34
13-24-406 Prohibited activities .....	35
13-24-407 Uniform local authority fees for deployment of small cells; exceptions .....	35
13-24-408 Uniform local requirements for deployment and maintenance .....	36
13-24-409 Uniform application procedures for local authorities .....	37
13-24-410 Provisions applicable solely to the state as an authority .....	39
13-24-411 Authority powers preserved .....	39

**SECTION 4 ..... Quick Reference Guide ..... 41**

Aesthetic plan .....	42
Application requirements .....	42
Concealment .....	43
Distance requirements .....	43
Effective date .....	43
Exclusive agreements .....	44
Fees and rates .....	44
General limitations .....	44
In-kind donations .....	45
Legal action .....	45
Mast arm .....	45
Multiple applications for same location .....	45

Notice .....	45
Ownership, maintenance and repair .....	45
Pole height .....	46
Public utility easement .....	46
Right of way .....	46
Shot clock .....	48
Signs .....	49
Timeframe for deployment .....	49
Undergrounding .....	49
Work permits .....	49

**SECTION 5 ..... “May” and “May Not” Quick Reference Guide ..... 50**

Aesthetic plan .....	51
Application requirements .....	51
Concealment .....	52
Distance requirements .....	52
Exclusive agreements .....	52
Fees and rates .....	52
General limitations .....	53
In-kind donations .....	53
Mast arm .....	53
Multiple applications for same location .....	53
Notice .....	54
Ownership, maintenance and repair .....	54
Pole height .....	54
Public utility easement .....	55
Right of way .....	55
Shot clock .....	56
Signs .....	57
Timeframe for deployment .....	58
Undergrounding .....	58
Work permits .....	58

“Competitive Wireless Broadband Investment,  
Deployment, and Safety Act of 2018”  
Chapter 819 of the Public Acts of 2018.

# Section I

Summary of Public Chapter 819

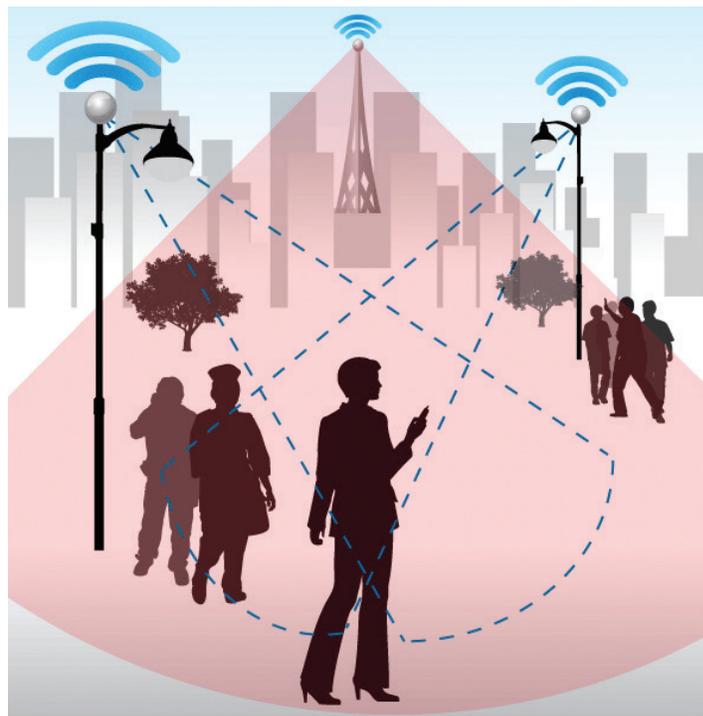
# Summary of the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018 – Public Chapter 819

## General Overview

A man and a woman approach each other on a city sidewalk, both are talking on their cell phones. As they meet, they pass three others waiting at a bus stop – all three persons are on their phones. One is talking to a contractor about a kitchen remodeling project. Another is busy reviewing social media feeds. The third, a foodie, is updating her blog. A car passes, carrying a mother and her two children. One child holds her mom's laptop and streams cartoons, while the other child plays video games on his tablet and listens to music streaming on his phone. In the front seat, mom is scanning the real-time directions being delivered over her phone in an effort to determine whether she should turn at the end of this block or the next. Inside the businesses and restaurant that line this city street, the employees and customers are also making use of their phones, laptops, and tablets. A single city street, many people consuming vast amounts of data simultaneously. This situation exists on any city street, in any city and on any day.

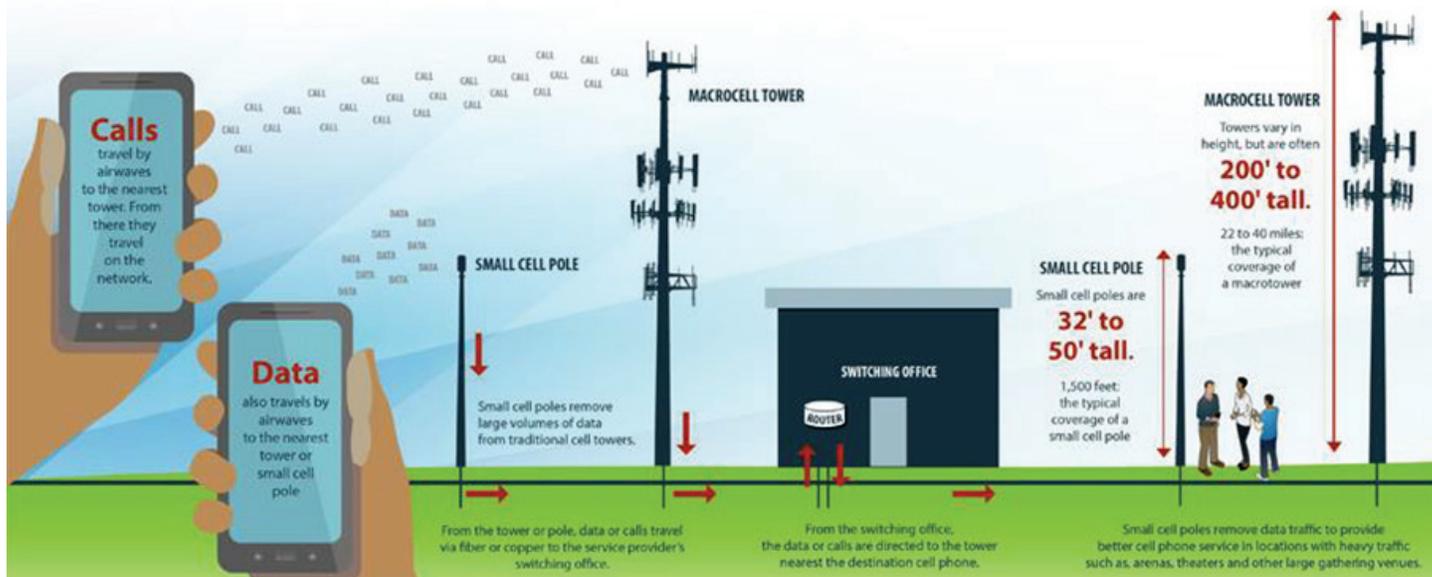
As a result of the proliferation of wireless-dependent devices, an exponential growth in the amount of data consumed by the average user and consumers' demand for immediate and unencumbered access to multiple platforms and functions simultaneously, the wireless industry finds itself approaching a capacity crisis.

Having determined that the existing array of tall and unsightly cell towers deployed across this country is incapable of handling the current demand, and that the construction of tens of thousands more cell towers is an expensive, insufficient and untenable remedy, the wireless



industry has decided that small cells are the immediate answer to its capacity problems.

In short, small cells are short range cell facilities that work in conjunction with a provider's existing larger cell tower infrastructure to expand its network and to strategically add localized capacity to areas where its customers experience inadequate or inconsistent coverage. Unlike cell towers that require a fairly significant footprint, these small cells are being deployed on existing public and privately-owned structures, such as street lights, electric poles, buildings and billboards.



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In 2018, the cellular industry in Tennessee followed its peers in some 34 states and pursued state legislation seeking to create a uniform framework to facilitate the deployment of small cells in communities across the state. In addition to this authority, the legislation sought to create a framework for local approval, to institute uniform fees and rates as well as to establish parameters for local governance of small cell facilities deployed within the right of way.

In making its case for the legislation, the industry offered three primary arguments.

First, the industry noted the current predicament regarding capacity and the adverse impact lack of capacity would have on the free flow of commerce and information, economic activity and on consumers use and enjoyment of existing technology.

Second, the industry asserted that an immediate solution was required to mitigate the adverse impacts associated with inadequate wireless capacity.

Third, the industry argued that the current process of gaining the approval of up to 345 cities and 95 county governments – each with its own unique set of standards for approval, varying fees and rate structures, and requirements governing use of a right of way – was impractical and inconsistent with the industry’s desire to deploy small cells in an expeditious manner.



While most cities were willing to consider the imposition of a uniform statewide process, municipal officials were very concerned about the potential loss of control of activities in the right of way and the threat to public safety and order posed by such a loss.

City officials were also concerned that the unencumbered deployment of small cells would harm the character and aesthetic appeal of their communities that they and residents had invested resources and energy in establishing, protecting and promoting. Lastly, municipal officials wanted to ensure that local taxpayers were justly compensated for the private use of publicly-owned spaces and infrastructure.

## Small Cell Legislation Considered in 34 States

<b>Arizona</b>	<i>Nebraska</i>
<i>California</i> (veto)	<b>New Mexico</b>
<b>Colorado</b>	<i>New York</i>
<b>Connecticut</b>	<b>North Carolina</b>
<b>Delaware</b>	<b>Ohio</b> (2x)
<b>Florida</b>	<b>Oklahoma</b>
<i>Georgia</i>	<i>Pennsylvania</i>
<b>Hawaii</b>	<b>Rhode Island</b>
<b>Illinois</b>	<i>South Carolina</i>
<b>Indiana</b>	<b>Tennessee</b>
<b>Iowa</b>	<b>Texas</b> (challenge)
<b>Kansas</b>	<b>Utah</b>
<i>Maine</i>	<b>Vermont</b>
<i>Maryland</i>	<b>Virginia</b>
<i>Michigan</i>	<i>Washington</i>
<b>Minnesota</b>	<i>West Virginia</i>
<b>Missouri</b>	<i>Wisconsin</i>

\* **Bold** = passed, *Italics* = pending

### Industry Arguments for Legislation

- Lack of capacity affecting commerce and use by consumers
- An immediate solution is needed to mitigate capacity challenges
- Current process of local approval in all 345 cities and 95 counties is impractical and too burdensome

### Municipal Government Concerns

- Control of Rights-of-Way
- Safety
- Protecting character and aesthetics
- Taxpayer compensation

## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

On April 24, 2018, Tennessee Governor Bill Haslam signed the “Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018,” which was enacted as Public Chapter 819, Acts of 2018. The provisions of this Act reflect the result of months-long negotiations between the wireless industry and the bill’s sponsors and representatives of local government, municipal electric providers, electric cooperatives and the cable industry. While this Act reflects the agreement reached between the parties, it is an imperfect solution that required compromise. That said, the Act addresses municipal concerns in a manner that safeguards municipal interests.

The Act creates a framework by which wireless providers are able to deploy small wireless facilities (small cells) throughout the state.

Again, a small cell functions as an element of a larger interconnected network, which serves to take the demand load off a single, large cell tower, thereby increasing the provider’s wireless capacity within a localized area.

The Act provides that small cells may be deployed on a “Potential Support Structure” (PSS), pursuant to a city’s approval. The new law defines a PSS as an electric pole, light pole, traffic signal or sign. The PSS may be city-owned or belong to a third party.

A small cell may be deployed in any one of three methods. First, the small cell may be physically attached, or collocated, to an existing pole or sign. Second, the small cell may be incorporated into the design of a new pole that replaces the existing pole, referred to as either a modified PSS or replacement PSS. Third, the provider may install a new pole in a location in which there is not currently a pole and the small cell may either be attached to or incorporated into its design.

The Act does not grant unfettered authority to deploy small cells. Cities are permitted to promulgate limits, permitting requirements, zoning requirements, approval policies or processes regulating the deployment of small cells within their jurisdictional boundaries. However, any limits, requirements, policies or processes may not be more restrictive or in excess of what is permitted under the new law. In the event of a conflict between a city’s limits, requirements, or policies, and the new law, the provisions of the new law generally prevail. However, the law includes several exceptions to this general declaration.

### Statewide Legislation

The Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018:

- Uniform application process
- Uniform timeline for decisions
- Uniform fees and rates
- Uniform requirements and application



## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

The **effective date of the Act** varies based upon the timing and disposition of applications seeking to deploy small cells. Any applications to either install a new small cell or to collocate a small cell on an existing or modified pole that had been submitted prior to April 24, 2018, must be approved or denied within either 90 days of the effective date or 90 days from the date the application was submitted, whichever is later.

The clock begins to run on July 1, 2018 for any application submitted between April 24, 2018 and July 1, 2018. Once the clock has begun, the timing of the consideration shall be carried out pursuant to the time lines established under the new law.

Any application submitted on or after July 1, 2018, will be considered pursuant to the time line detailed in the new law and the clock will begin on the date the application is submitted.

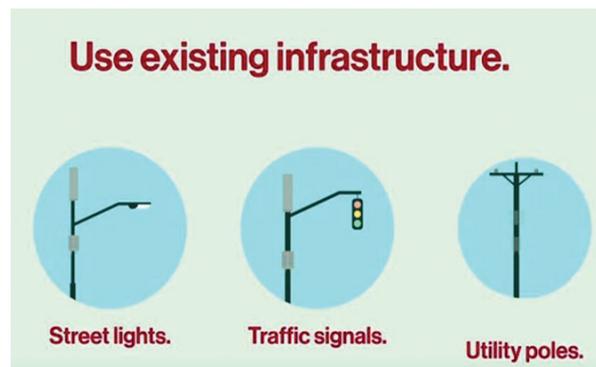
A city must implement processes and requirements consistent with the law and render decisions in accordance with the new law. If a city fails to abide by the new law, then a provider may seek relief in chancery court.

### When an application may be required

A city may require that prior to deploying a small cell facility, installing of a new or modified PSS, or replacement of its own PSS, a provider must first submit a complete application, pay all application fees and secure the approval of the municipality. The same is true if the provider is seeking to completely replace its own small cell facility with a larger small cell facility. Once deployed, the small cell provider must continue to pay the required annual rate and abide by the requirements of the Act.

However, there are certain situations or conditions under which a municipality may not require a small cell provider to file an application, gain approval, or to pay any rate or fee. If a provider is conducting regular maintenance, making repairs or replacing parts or components on the applicant's own small wireless facilities, then no application, approval, permits or fee may be required. Likewise, if a provider is replacing its own small cell facility with another that is either the same size as the existing facility or smaller than the qualifying dimensions of a small wireless facility, then no application, approval, rate or fee may be required.

In addition, a city may not require a provider to complete an application, obtain approval or to pay any rate or fee for



The Act provides that small cells may be deployed on a “Potential Support Structure” (PSS), pursuant to a city’s approval. The new law defines a PSS as an electric pole, light pole, traffic signal or sign.

### Uniform Application, Process and Fees

The Act establishes a uniform statewide requirements concerning application for deployment of small cells, which include time lines. These time lines are not static but rather are dependent upon decisions made by either the city or a provider. In addition to the application requirements and time lines, this process also introduces an application fee schedule.

#### Application Permitted

- Deploying a small cell
- Installing new or modified PSS
- Provider replacing own PSS

#### Application Not Permitted

- Provider making repairs, replacing parts on own cell
- Provider replacing own cell with same or smaller
- Installing micor wireless facility

installing a micro wireless facility on a strand of wire that is strung between two poles holding small cells.

Finally, a city may not condition the approval of a small cell on a provider agreeing to enter into an access agreement or site license agreement.

## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

### What a city may require in an application

A city may require a small cell provider to disclose its identifying information and that of the owner of the small cell, if different, as well as an emergency contact.

In addition, a city may also require a small cell provider to identify the location of the proposed site and to submit a preliminary site plan with a diagram or engineering drawing. A city may also require a provider to certify that its proposed site plan and design meets or exceeds all applicable engineering, materials, electrical and safety standards, including standards related to structural integrity and weight-bearing capacity. In an instance in which certification of standards related to engineering is required, then such certification may be required to be made by licensed professional engineer.

The city may also require the provider to certify that it agrees to pay all rates and fees and to comply with all applicable requirements governing the rights of way, including the maintenance of facilities, the removal of inactive facilities and the timely repair, removal or relocation of facilities in an emergency.

A provider may be required to certify that it has complied with any requirements concerning indemnification, a surety bond or insurance relating to the deployment of a small cell.

If a provider is seeking to attach its small cell facility to a pole or structure that is owned by a third party, then a city may require the provider to identify the third party and to certify that it has obtained the third party's approval to attach.

### The application process

A city is not required to establish or implement an application process. However, a municipality may elect to implement an application process and to require a provider seeking to deploy a small cell within its corporate boundaries to file an application and to obtain approval prior to installing a new, modified or replacement small cell, consistent with the Act. Any city that elects to establish and require such application must ensure its processes and requirements are consistent with the new law.

A single application made by a provider may include application for up to 20 individual requests for deployment of a small cell. In the event that a single application seeks approval for multiple facilities, then the municipality must evaluate and make a determination with respect to status or treatment each individual requests. A city may not deny all requests included within a single application simply because one of the requests merits denial. Similarly, a city may not delay all requests contained within a single application simply because it seeks a conference concerning one or more of the requested deployments. In short, each individual request for deployment stands on its own. Thus, the decision concerning the applicability of the 60-day decision deadline is to be made with respect to each individual request.

If a municipality denies a request to deploy a small cell,

### Application Requirements

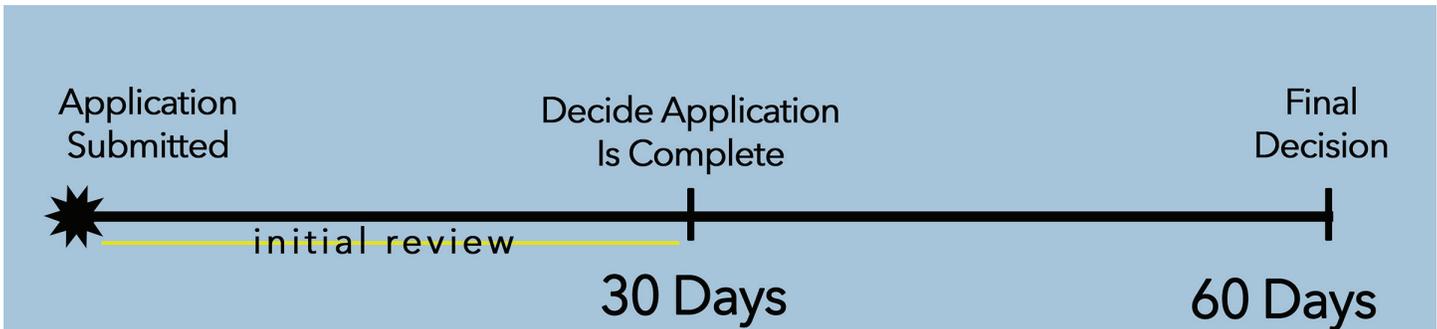
- Application Permitted
- Application Contents
- Time Limits (Shot Clock)
- Fees

then the municipality must provide a written explanation of the denial to the provider. Upon receipt of such a denial, a provider may submit a revised application. In turn, a city must complete its review of a revised application. Such a review is limited to only those items encompassed in the initial denial or changes that were not contained in the original application.

If a municipality approves an application, then the provider has up to **nine months to complete deployment**. If a provider fails to complete deployment for any reason other than the absence of either commercial power or a communications transport facility, then the city may require the provider to restart the application process.

# Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

## Application Time Line

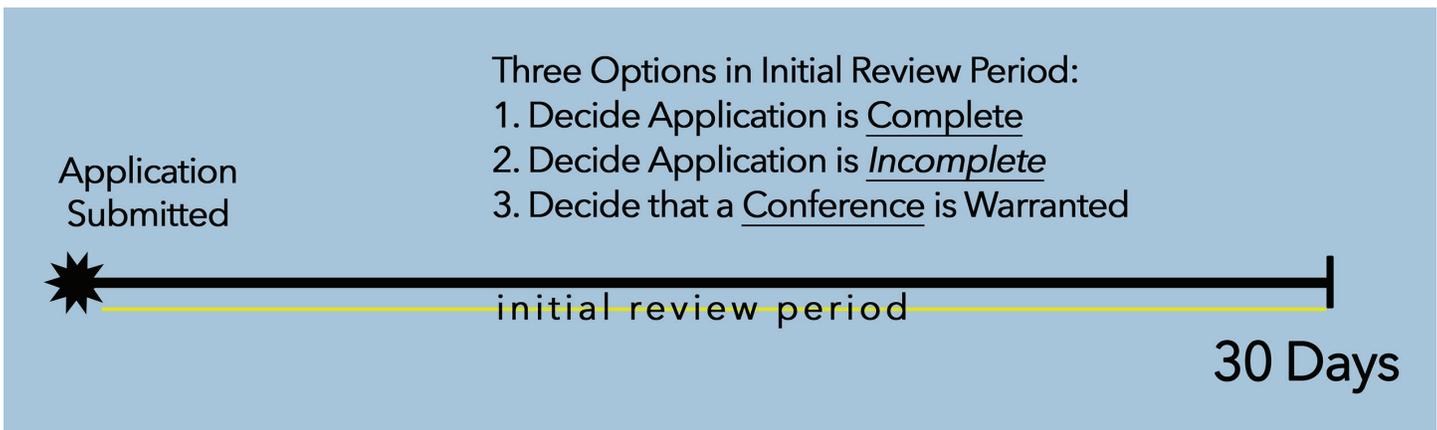


A municipality must complete its initial review of an application within 30 days of its receipt and determine whether it will approve or deny the application within 60 days of its receipt.

Generally, a municipality must complete its initial review of an application within 30 days of its receipt and determine whether it will approve or deny the application within 60 days of its receipt. However, there are a myriad of circumstances and decisions that would stop the clock from ticking (toll the time) on the 60-day decision deadline and alter the timing of an application’s consideration.

The first decisions a city must make with regard to an application occurs during the **initial review period**, which commences upon receipt and concludes 30 days thereafter. During this initial 30-day period, a municipality must decide whether the individual requests for deployment included within an application are complete or whether any individual requests warrant a conference.

## Initial Review Period



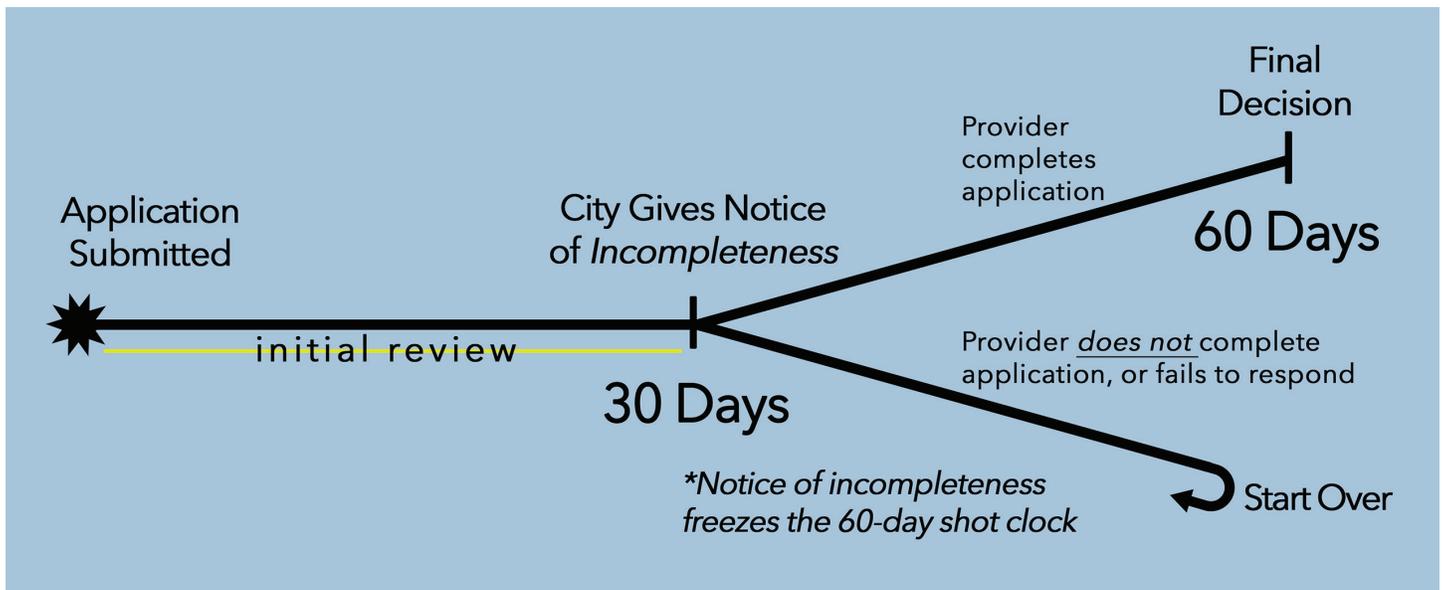
During this initial 30-day period, a municipality must decide whether the individual requests for deployment included within an application are complete or whether any individual request is incomplete and warrants a conference.

If a city determines the **application is incomplete**, then the city must notify the provider of its incompleteness. The provider has 30 days from receipt of such notification to provide the additional information. During the 30-day period in which the city is awaiting additional information, the clock stops ticking on the 60-day final decision period. If the additional information is provided

within the 30-days allotted and the application otherwise satisfies the requirements, then the 60-day clock resumes ticking. However, if the provider fails to provide all information or fails to respond within this 30-day period, then the application may be denied and the provider may be required to begin the process again, including payment of another application fee.

## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

### Application is Incomplete



If a city determines the application is incomplete, then the city must notify the provider of its incompleteness. The provider has 30 days from receipt of such notification to provide the additional information. During the 30-day period in which the city is awaiting additional information, the clock stops ticking on the 60-day final decision period. If the additional information is provided within the 30-days allotted and the application otherwise satisfies the requirements, then the 60-day clock resumes ticking.

If a **single application includes requests for multiple deployments**, then a city must also decide, within the initial 30-day period, whether each individual request for deployment is complete or whether any of the individual requests warrant a conference.

Assume a single application included 10 individual requests for deployment of small cells. Further assume that the city determined that four of the individual requests were complete and satisfied all requirements, while four required additional information, and a conference was warranted on an additional two requests. The city would be required to separate the 10 individual requests into three separate groupings. In which case, the four that were complete should be separated and allowed to move on towards the 60-day final decision deadline. The four that were incomplete should be separated and the provider notified of their incompleteness. The final two should be separated into a third grouping and the process and time line governing a conference should be initiated.

A city must also use this initial 30-day review period to review the application in order to determine whether a **conference with the provider** is warranted. Under the Act, a conference with the provider is warranted if a city

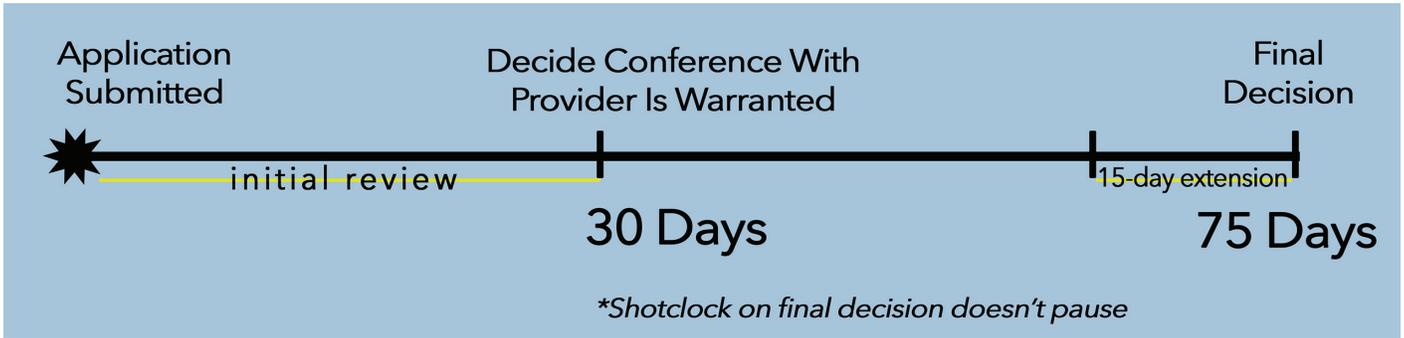
determines that it has concerns about the safety of a proposed deployment. A conference may also be warranted if the city discovers two or more providers have requested deployments at or near the same location. A city may also initiate a conference to alert the provider to the fact that a proposed deployment may be affected by planned construction or projects in the area.

Moreover, a city might initiate a conference if it believes that an alternative design might allow for the collocation of a small cell on existing infrastructure rather than requiring the installation of a new pole. Finally, a conference is warranted if the city would like the provider to consider an alternative design that would allow for the inclusion of additional elements or features that would benefit the city. While these specific reasons are detailed in the new law, the law also provides that these are not the only justifications for a conference.

Once a city has notified a provider of its request for a conference, then the 60-days allowed for a final decision is automatically extended to 75 days. The city must permit the conference to be conducted via telephone, if requested, and the clock does not stop on the 75-day period while the conference is being arranged or conducted.

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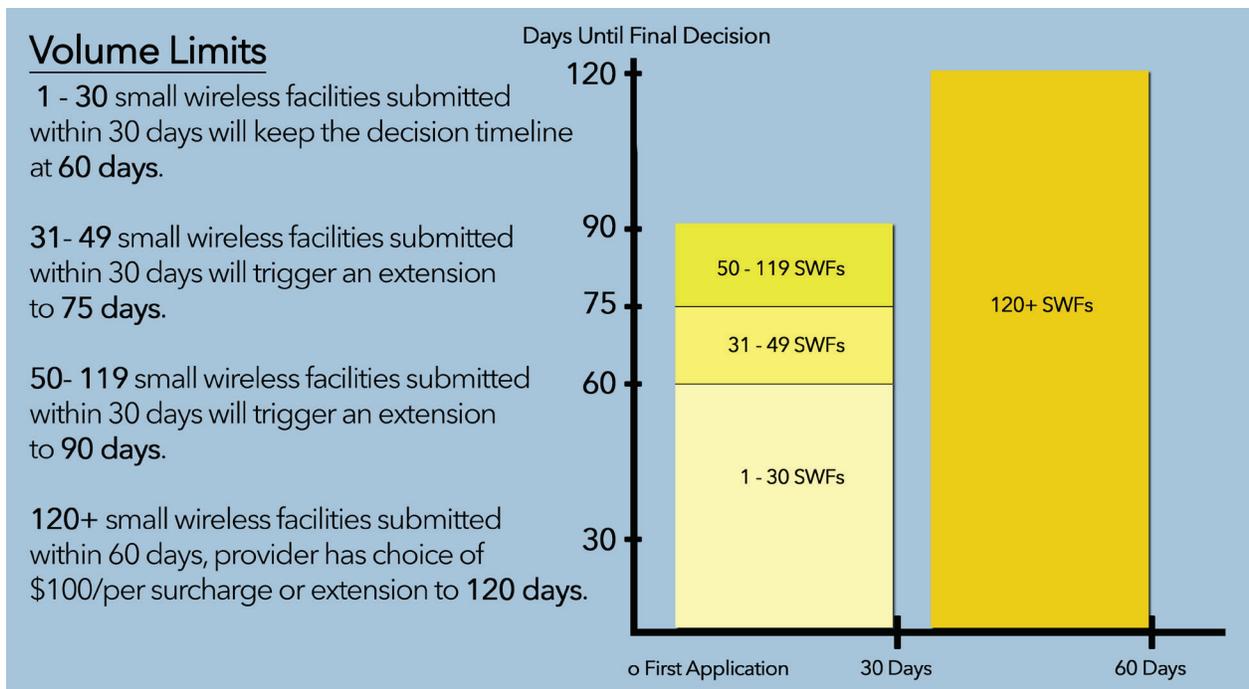
## Conference with Provider



Once a city has notified a provider of its request for a conference, then the 60-days allowed for a final decision is automatically extended to 75 days. The city must permit the conference to be conducted via telephone, if requested, and the clock does not stop on the 75-day period while the conference is being arranged or conducted.

The new law includes **volume limits** that, if exceeded, also alter the 60-day decision time line. If any provider submits applications seeking to deploy 31-49 small cells within the same city in any 30-day period, then the 60-day decision period is extended to 75 days. Similarly, if any provider submits 50 or more individual applications seeking to deploy small cells within the same city in any 30-day period, then the 60-day decision period is extended to 90 days. These extensions may not be further extended, unless both the city and the provider agree to such an extension.

Additionally, the 60-day decision period may be extended if any provider submits applications for consideration that include more than 120 small cells to the same city within any 60-day period. In the event that the 120 small cell request limit is reached, then the city may notify the provider that it must pay a surcharge of \$100 per individual small cell within five days to have the specified small cells considered within the applicable time line. If the surcharge is not paid within five days, then the city may extend the 60-day decision deadline to 120 days.

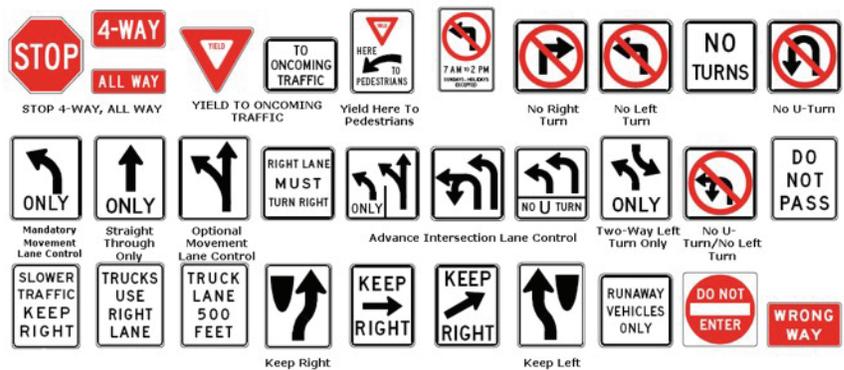


The new law includes volume limits that, if exceeded, also alter the 60-day decision time line.

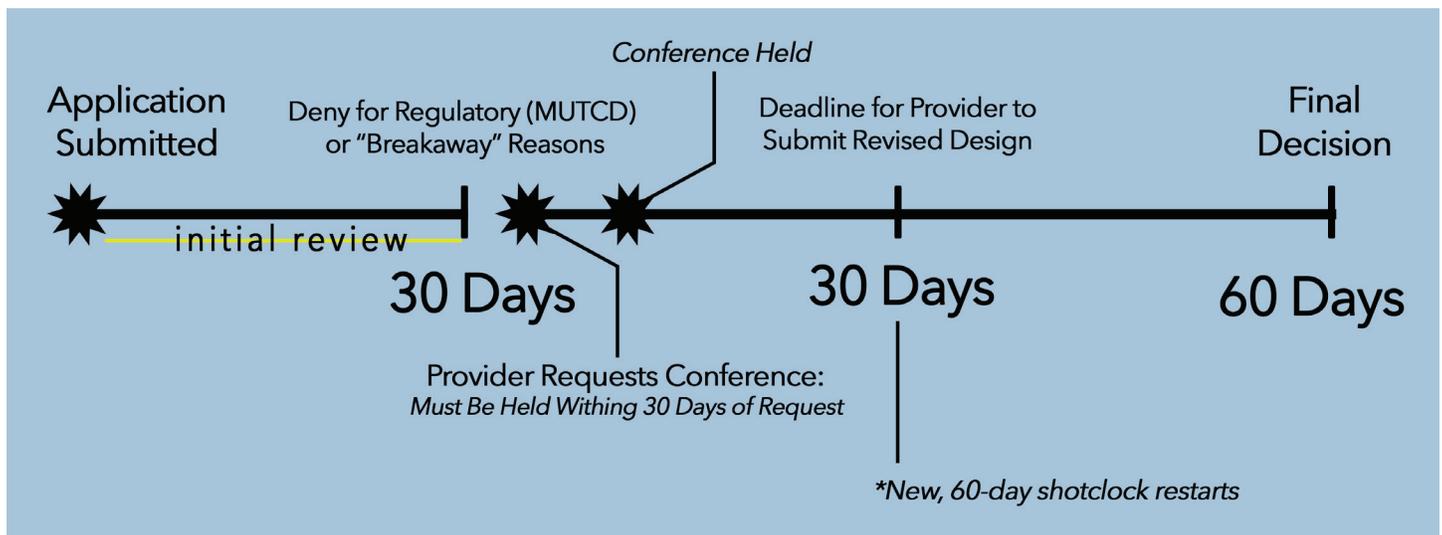
# Summary of the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018 – Public Chapter 819

## Volume Thresholds Triggering Timeline Extensions

There is one last circumstance under which the 60-day decision deadline may be extended. In the event that a small cell application proposes deployment **related to a regulatory sign**, as identified in the Manual of Uniform Traffic Control Devices (MUTCD), **or any sign subject to requirements for breakaway support**, then the city may deny the application. If a provider's application is denied on this basis, then the provider may request a conference for the purpose of considering an alternative design. Such a conference must be held within 30 days of the provider's request. The provider must submit a revised design and respond to the city's concerns within 30 days following the conference. Once the city is in receipt of the provider's revised design, then the 60-day clock begins to tick on a final decision regarding the revised application.



## Conference Held - New 60-day Shotclock Restarts



If a small cell application proposes the use of a regulatory sign, then the city may deny the application. The provider may request a conference to consider an alternative design. Once the city is in receipt of the provider's revised design, then the 60-day clock begins to tick on a final decision.

# Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

## Application Fees

The new law permits a city to charge an application fee for each individual application filed. These fees are in addition to and do not limit any other fees a city may charge related to its operation in the right of way, including fees related to work or traffic permits.

### Fees Permitted

A city may collect a one-time special application fee of \$200 for the first application a provider files in the city. Additionally, a city may charge up to \$100 for the first five requests for deployment of a small cell included in each application and up to \$50 each for any additional requests included in a single application. Beginning January 1, 2020 and every five year interval after that, the maximum allowable application fee will increase by 10 percent.

### Fees Not Permitted

A city may only collect these fees when a provider files an application seeking to deploy a small cell facility or to install a new or modified PSS. A provider is not subject to such fees when it is performing regular maintenance, making repairs or replacing parts or components on its own small cell. In addition, a provider is not subject to the application fees when it is replacing its own small cell with another that is the same size or smaller.

## Rights-of-Way

A city's ability to maintain control of its rights of way, protect facilities within its right of way, to ensure the public's interest and to promote the safety of pedestrians and the motoring public was a significant concern to city officials.

Under the Act, a city may not use its policies and requirements to restrict small cell providers' access to the rights of way or to effectively prohibit the deployment of small cells in the right of way. Additionally, a provider may not be required to enter into an **exclusive franchise agreement, site license agreement or access agreement** as a condition of deploying small cells within its right of way.

However, the Act establishes **parameters concerning local governance of providers' use of rights of way**. Cities are permitted to require providers to obtain the same work and traffic permits required of other entities performing construction in the right of way and to charge the same fees for such permits.

A city may ensure that any small cell is constructed

## Application Fees

- City may elect to assess fee
- One-time \$200
- Each deployment subject to fee
- Maximum fee per application:
  - \$100 - first 5 small cells
  - \$50 - 6-20 small cells

## Fees Permitted

- Collocate small cell
- Install Modified PSS
- Install New PSS

## Fees Not Permitted

- Maintenance, repairs, replacing components
- Replacing own small cell - same or smaller
- Install micro cell

and maintained in a manner that does not impair the free flow of pedestrian or automobile traffic, including but not limited to the **enforcement of any policies or requirements relating to the Americans with Disabilities Act**.

In addition, cities may require providers to construct or place facilities in such a way as to not preclude the use of the right of way by other operators and to abide by the same **vegetation control requirements** as required of other entities maintaining facilities in the right of way.

Moreover, a city may enforce any requirement or safety regulations concerning **breakaway sign supports**, provided those requirements and regulations are applied to others operating in its rights of way.

Furthermore, a city may require a provider to maintain any small cell in proper working order or to remove the small cell when it is creating a hazard or is no longer in operation. Similarly, a city may require a provider to repair any small cell that is damaged or to relocate a small cell in the event of construction or an emergency.

# Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

## Lots larger than .75 acres



If the provider is seeking to deploy a small cell within a residential neighborhood, then the city may require the provider to deploy the small cell in the right of way within 25 feet of the property boundary of lots larger than .75 acres (pictured above) and within 15 feet of the boundary if lots are .75 acres or smaller. (pictured below)

In the event that the provider causes damage to city streets or to facilities owned by the city or another entity operating in the right of way, then the provider may be required to repair the damage. Moreover, a city may require a provider to secure insurance or a surety bond or to provide indemnification for any claims arising from the provider's negligence so long as such requirements are required of others operating in the right of way.

If the provider is seeking to deploy **a small cell within a residential neighborhood**, then the city may require the provider to deploy the small cell in the right of

way within 25 feet of the property boundary of lots larger than .75 acres and within 15 feet of the boundary if lots are .75 acres or smaller.

In addition to the regulation of rights of way, the Act permits municipalities to require providers to comply with **undergrounding requirements**, provided certain criteria are satisfied. First, any regulations or requirements must be in place at the time the provider submits an application, in order to be applicable. Second, the regulations may not prohibit or preclude the deployment of small cells, if they otherwise comply with the regulations

and an aesthetic plan. Third, any underground regulation must afford a provider the opportunity to seek a waiver of the requirements for the placement of small cells in the area.

The Act also permits cities to restrict deployment of a small cell in any **public utility easement** that is not contiguous with a paved road or alley on which vehicles travel or when the easement is located along the rear of a residential lot. Cities may also restrict deployment of small cells in a public utility easement that is located in an area where telephone or electric poles are prohibited.

## Lots Smaller than .75 Acres



## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

### Historic Areas

The Act protects a city's ability to require compliance with **concealment measures** within duly designated historic areas. If a city imposes such requirements, then it may provide general guidance regarding preferred designs of such concealment measures.

However, any concealment measures must be reasonable, technology neutral, and cannot prohibit or reduce the functionality of small cells. In the event that the preferred designs are found to reduce the functionality of the small cell or are otherwise unworkable, then the city may initiate a conference for the purpose of considering additional design alternatives.

In addition, cities may continue to enforce historic preservation zoning regulations as well as several federal provisions related to historic zoning.

### Aesthetic Plan

Another principal concern consistently expressed by municipal officials was the fear of losing the ability to protect the look and character of their city streets, neighborhoods, downtowns, historic areas and other special developments under the small cells legislation. The Act affords municipalities the ability to adopt and enforce limits or requirements throughout the city, or within a portion of the city, for the purposes of preserving and promoting the desired aesthetics. Under the Act, this is accomplished, in large part, through the adoption and implementation of an aesthetic plan.

Despite the implication, an "Aesthetic Plan" is not necessarily any singular, overarching document. Rather, it is a general term that is defined under the small cells law to include any written resolution, regulation, policy, site plan or approved plat that imposes any aesthetic restrictions or requirements. Additionally, the new law provides that such restrictions or requirements are only valid if they apply to any providers operating within the affected area. In other words, a written regulation would not qualify as an aesthetic plan if it only applied to small cell providers but not utility operators. Similarly, a policy would not qualify as an aesthetic plan if it applied to one small cell provider but not others. Moreover, an aesthetic plan is not valid if the requirements have the effect of precluding the deployment of any small cells.

The Act provides that an aesthetic plan is an allowable exception to the general requirements of the new law. Therefore, in the event that any provision of the new small cells law is in conflict with a city's aesthetic plan, then the city's aesthetic plan prevails and providers must comply with its requirements. Again, the only disqualifying factors that would negate this exception would be if such require-



The Act affords municipalities the ability to adopt and enforce limits or requirements throughout the city, or within a portion of the city, for the purposes of preserving and promoting the desired aesthetics.

ments or conditions were not applied to all types of providers and operators within the covered area or if such requirements or conditions precluded the deployment of small cells altogether.

The Act includes no specific criteria regarding either the nature of or the specific elements that may be restricted or required, pursuant to an aesthetic plan. As such, a municipality's requirements concerning the color or design of street lights would constitute an aesthetic plan, provided such requirements applied to all street lights in the designated area. A city's regulations governing the locating of above-ground structures on a sidewalk would also constitute an aesthetic plan. Additionally, if the site plan for a development limited the height or number of vertical structures permitted within the area or required all utilities to be buried underground, then these elements of the site plan would also constitute an aesthetic plan.

The inclusion of an exception to the general requirements of the new small cells law, allowing for the implementation and enforcement of aesthetic plans, affords municipalities a means to continue to preserve the character of their city and to promote the desired aesthetics throughout their community.

## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

Existing Pole within 500 ft.



Under the law, a new or modified PSS is permitted to be up to 50 feet tall, unless there is an existing pole or sign within 500 feet of the proposed location for the new or modified pole that rises more than 40 feet above the ground.

### Potential Support Structures (PSS) and Small Cells

The Act allows providers the option of deploying a small cell on either a pole, sign or other qualifying structure, referred to as a potential support structure, or PSS. Generally, a PSS may be a pole supporting a traffic signal, a light pole, an electric pole or telephone pole. A PSS may also be a wayfinder sign or directional sign. It should be noted that while any sign classified as a regulatory sign under the MUTCD may qualify as a PSS, the new law assigns unique standards and processes for such signs. A PSS may also be a bridge, overpass, building or similar structure. However, a large cell tower, water tower or billboard may not qualify as a PSS.

There are **three means by which a provider may choose to deploy a small cell** – collocation on an existing PSS, collocation on a new PSS that replaces an existing PSS and is designed to incorporate a small cell within its structure, or the installation of a new PSS where one does not currently exist.

While a city's approval is required before a provider may deploy a small cell, a city may not dictate or alter the design of a provider's network by either mandating the location of small cells, imposing a minimum separation

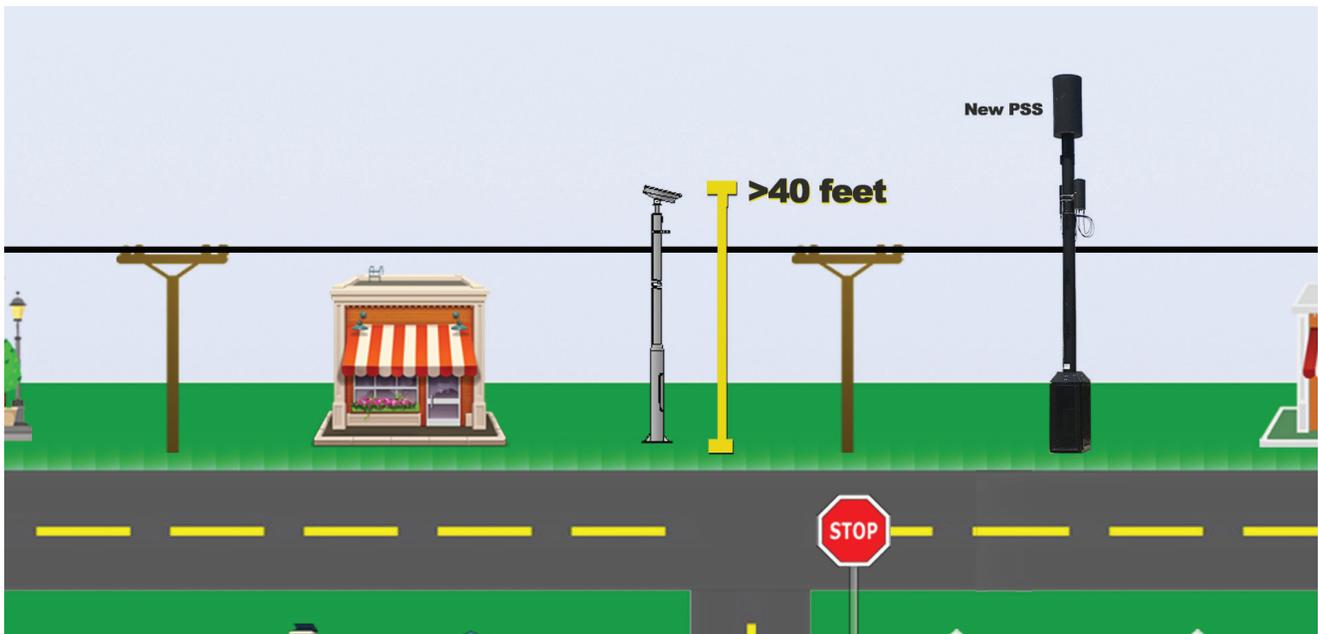
distance between small cells, or requiring small cells to be attached to a specific PSS or type of PSS, unless the proposed deployment encompasses a regulatory sign, a sign subject to breakaway support requirements, or a pole with a mast arm that is routinely removed.

The new law generally prohibits a city from restricting the size, height, appearance or placement of a small cell or the collocation of a small cell on a PSS. However, this does not mean that a provider can deploy small cells at will. Despite the general prohibition, there are some uniform standards that apply. Additionally, the new law includes exceptions to this general prohibition that afford a city an opportunity to achieve its' desired outcome. Some of these opportunities are described below.

Lastly, the Act institutes **a standard rate for deploying or collocating a small cell**. Municipalities are free to assess a provider an annual rate for each small cell deployed on a municipally-owned street light, traffic signal, sign or utility pole. However, a city may not establish an annual rate in excess of \$100. Moreover, a city is prohibited from creating and levying a new tax or fee that exceeds the cost-based fees allowed for use of the right of way under existing law.

# Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

**Existing pole is greater than 40 ft.**

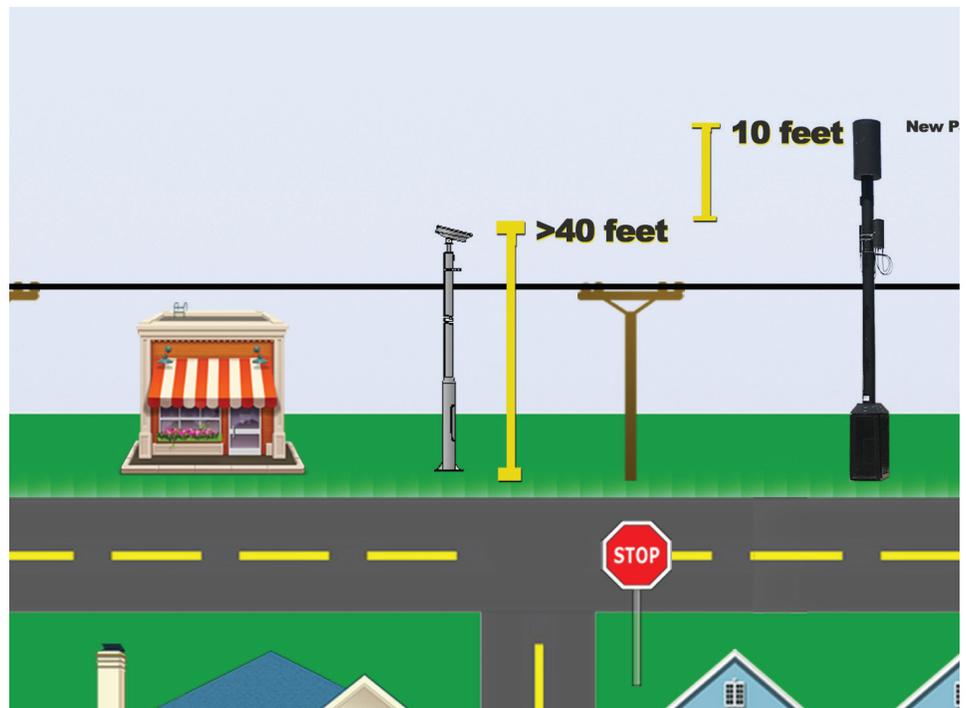


If the proposed location of the new or modified PSS lies within a residential neighborhood, then the height is limited to 40 feet above the ground, unless there is an existing pole or sign located in the same neighborhood and within 500 feet of the proposed location that rises more than 30 feet above the ground. (pictured above) In such a case, the new or modified pole may reach a height of 10 feet above this pole or sign. (pictured below)

## Size of Small Cell

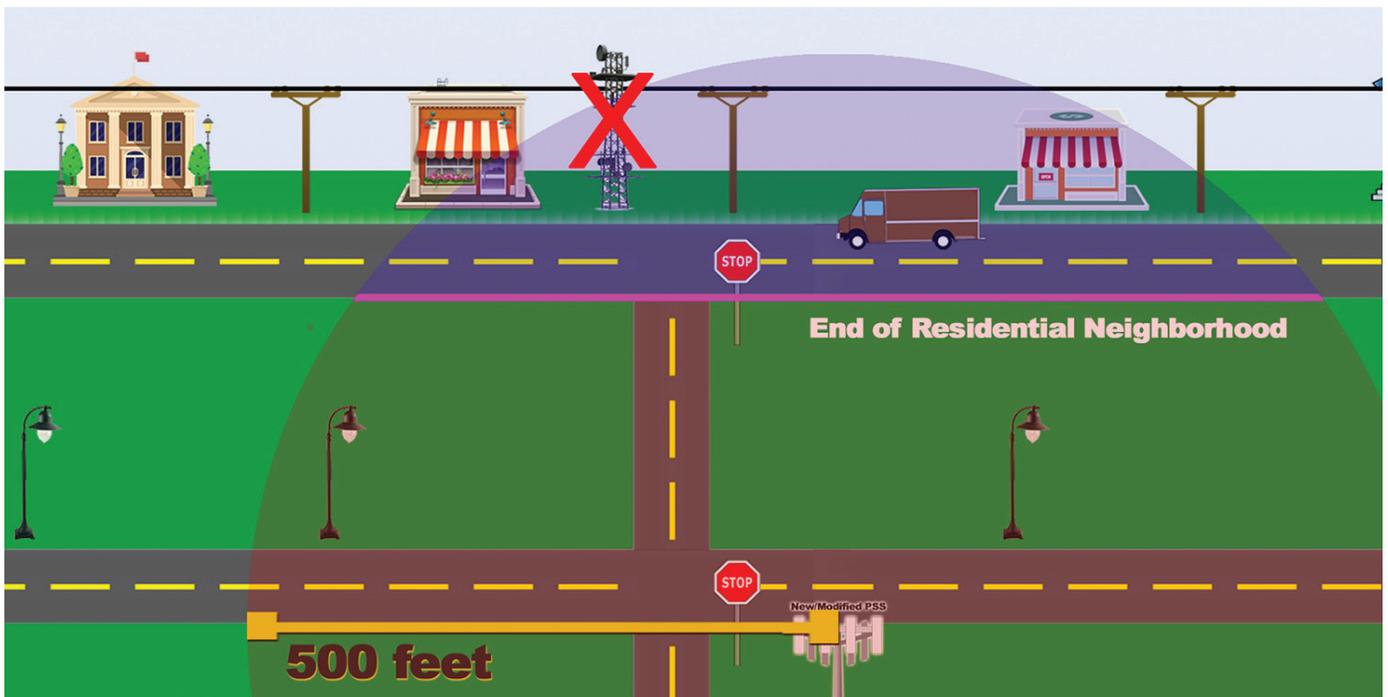
Although a city may not regulate the size of a small cell, the new law establishes a standard size that must be observed. A small cell includes two primary components. The first component includes wireless equipment, which the law says must be cumulatively limited to 28 cubic feet or less in volume. The second component is the antenna, which must fit within an enclosure that is no more than six cubic feet in volume. In addition to these two elements, a provider will likely deploy several related components in association with a small cell, such as an electric meter, cut-off switch, vertical power cables or grounding equipment. These associated elements are not included in the definition of a small cell and are; therefore, outside of the standard size restriction established under the Act.

**New or modified PSS may reach a height of 10 feet above existing pole or sign.**



## Summary of the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018 – Public Chapter 819

500 ft. radius is limited to existing structures within residential neighborhood.



### Height of a PSS or Small Cell

While the Act prohibits a city from restricting the height of a new or modified PSS, the Act includes uniform height provisions for a new pole or sign installed to host a small cell or a modified pole or sign installed as a replacement for an existing pole or sign, on which a small cell is to be hosted. Under the law, a new or modified PSS is permitted to be up to 50 feet tall, unless there is an existing pole or sign within 500 feet of the proposed location for the new or modified pole that rises more than 40 feet above the ground. In such a case, the new or modified PSS may reach a height of 10 feet above this pole or sign.

However, if the proposed location of the new or modified PSS lies within a residential neighborhood, then the height is limited to 40 feet above the ground, unless there is an existing pole or sign located in the same neighborhood and within 500 feet of the proposed location that rises more than 30 feet above the ground. In such a case, the new or modified pole may reach a height of 10 feet above this pole or sign.

In addition to the height limits for a new or modified PSS, the new law also imposes a height limit for any small cell and its antenna. A small cell and its antenna may not reach higher than 10 feet above the allowable height for a new or modified PSS in that same location.

Notwithstanding the prohibition on a city setting a height limit or the provisions establishing a uniform height limit, the new law provides **exceptions to the standard height limit**. First, a PSS or small cell may exceed the standard height limit, if the city's zoning regulations allow for taller structures in the area or if approved pursuant to a zoning appeal. Second, the law permits a city to regulate the height of either a new or modified PSS or small cell through the application of an aesthetic plan.

While a city may not regulate the appearance of a PSS, a provider may be required to ensure that the appearance of any new or modified PSS is consistent with the design of the pole or sign being replaced. Moreover, the appearance of a new or modified pole may also be regulated by a requirement imposed under an aesthetic plan or as a result of a conference.

Although the new law forbids a city from dictating the placement of a PSS, limiting the distance between a PSS or requiring the collocation of a small cell on a specific PSS, it permits a city to attempt to accomplish these objectives through either the implementation of an aesthetic plan or by means of a conference. Additionally, the law permits a city to deny a request for deployment of a small cell on a **regulatory sign** or on a pole with a **mast arm that is routinely removed**.

## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

### Installing an approved new or modified PSS

A provider has up to **9 months from the date an application is approved to install a small cell**. This time period may only be extended by mutual agreement of the parties or if the selected location lacks either commercial power or communications transport facilities. If the provider has not completed installation of a small cell within the allotted 9 months and no extension has been granted, then a city may require the applicant to complete a new application and pay an additional application fee.

Once an approved new or modified PSS has been installed, the PSS becomes the property of the city. Understandably, this fact sparked a number of questions and concerns. On one hand, a city has an interest in maintaining control of public infrastructure for operational purposes. The city also has an obligation to ensure that taxpayers are kept whole for any investment in infrastructure that is subsequently removed and replaced. As such, it makes sense for a city to assume ownership of any pole or sign that is installed within its right of way and that has such a profound impact upon safety.

On the other hand, this proposition raised serious concerns regarding a potential threat to public safety and associated liability should the new or modified PSS experience a structural or mechanical failure. Additionally, cities were concerned about the potential costs associated with repairing or removing a pole or sign that incorporated a provider's technology in the event that it ceased operating or was damaged in some way.

Clearly, these questions and concerns had to be addressed prior to enactment. Consequently, the Act includes **several provisions intended to mitigate any potential risks associated with a city assuming ownership of any new or modified pole** installed pursuant to this grant of authority.

First, a provider may be required to certify that it has secured a surety bond, insurance or indemnification associated with deployment of a small cell on a new or modified PSS, upon making application. Moreover, the provider may also be required to certify that the proposed site and design meets or exceeds all applicable engineering, materials, electrical and safety standards related to the structural integrity and weight-bearing capacity of the small cell and associated PSS, upon making application. If after reviewing an application a city still has concerns about the impact the deployment may have on the motorists or pedestrians, then it may initiate a conference.



Second, the new law provides that upon approval of an application seeking deployment of a PSS by means of the installation of either a new or modified PSS, a city may also require the provider to provide a professional engineer's certification that the new or modified PSS has been suc-

## Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

design submitted and that satisfies all applicable safety and engineering standards. A city does not assume ownership of a new or modified pole or sign until such time as the provider makes any necessary improvements to secure such certification.

Third, any PSS that replaces an existing pole or sign and is designed to incorporate a small cell within its structure must continue to perform the same functions as the pole or sign being replaced. For example, if a provider's application to remove an existing traffic signal and replace it with a new pole that incorporates a small cell within its structure, then that new pole must also continue to function as a traffic signal. Similarly, if the pole being replaced is used for lighting, a provider may be required to provide lighting on the new pole that is equivalent to the quality and standards of the lighting included on the pole being replaced. No replacement pole shall become the property of the city until the city has conducted an inspection and determined that the replacement pole maintains the functionality of the pole being replaced and, in the case of light pole, the lighting is of the same quality and standards as included on the pole being replaced.

Fourth, any provider seeking to deploy a small cell on a **bridge or overpass** may be required to provide a professional engineer's certification that the small cell was deployed consistent with the submitted design, that the bridge or overpass maintains the same structural integrity as before the installation, and that during the installation process neither the provider nor its contractors discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If the provider or contractor discovers such evidence, then the provider must provide notice to the city.

Fifth, when making application, a provider may be also required to certify that it will repair all damage to its facilities or any damage incurred by other parties in association with its deployment of a small cell or PSS. Additionally, the provider may be required to certify that it will comply with any regulations governing the removal of inoperable or damaged facilities within the right of way as well as requirements concerning the relocation of facilities in the event of an emergency, upon making application. Finally, if the provider proposes to replace an existing pole or sign with a new pole that incorporates a small cell within its structure, then the provider may be required to indicate on its application whether it will assume responsibility for maintenance and repairs in case of damage to the facility

or structure, or whether it will allow the city to replace its damaged PSS with a pole of the city's choosing and to require the provider to remove and dispose of the associated small cell.

Finally, the new law allows a city to reject an application to collocate a small cell on a sign designated as a "regulatory sign" under the MUTCD, infrastructure subject to requirements for breakaway support, or a pole with a mast arm that is routinely removed.

A **regulatory sign** includes stop signs, signs denoting parking or loading zones, speed limit signs, school crossing signs, signs denoting maximum weight limits and a host of other such signs. If a city rejects an application seeking to collocate a small cell on **infrastructure that is subject to breakaway support requirements** or a regulatory sign to replace such a sign with a modified PSS, then the provider may seek reconsideration of the design, through a conference. While the city is obligated to convene the conference and to consider any new designs submitted, it is under no obligation to approve the new designs.

The process for rejecting an application to collocate a small cell on a traffic signal or utility pole with a **mast arm that is routinely removed** to accommodate frequent events is less involved. Qualifying poles must be identified and included on a list of such PSSs that is posted to the city's website prior to the date on which the application is submitted.

### TACIR Report

The Act requires the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to prepare and submit a report to the House Business and Utilities Committee and the Senate Commerce and Insurance Committee by January 1, 2021.

The report is to include the commission's findings with respect to the new law's impact on deployment of broadband. The report is to also include an analysis of the fiscal impact on authorities resulting from the administrative process required under the new law. The report must also identify the best practices from the perspective of cities and providers as well as best practices in other states. Additionally, the report must identify opportunities to advance the quality of transportation in Tennessee by utilizing technological applications, sometimes referred to as "smart transportation applications," that are supported by small cells. Finally, the report is to include any recommended changes to the Act.