

First Reading: July 11, 2017
Second Reading: July 18, 2017

ORDINANCE NO. 13205

AN ORDINANCE TO AMEND THE CHATTANOOGA CITY CODE PART II, CHAPTER 38, ZONING ORDINANCE BY AMENDING ARTICLE VIII, BOARD OF APPEALS FOR VARIANCE AND SPECIAL PERMITS, TO DELETE AND REPLACE SECTION 568(16) REGARDING ALL TELECOMMUNICATIONS FACILITIES, TO DELETE AND REPLACE WORDING IN SECTION 568(24) REGARDING WIRELESS COMMUNICATIONS WITH TELECOMMUNICATIONS FACILITIES AND TO DELETE AND REPLACE WORDING IN ADDITIONAL LISTED SECTIONS WITHIN ALL DIVISION ZONES OF ARTICLE V THAT ALLOW SUCH USE AS A SPECIAL PERMIT, AND WORDING IN ARTICLE II OF LISTED DEFINITIONS, AND TO DELETE AND REPLACE WORDING IN ARTICLE XVI, DOWNTOWN CHATTANOOGA FORM-BASED CODE.

WHEREAS, it is necessary and beneficial for the health, safety, and welfare of the community to update the zoning regulations for development of Telecommunications Facilities in the City of Chattanooga; and,

WHEREAS, it is important to accommodate the growing need and demand for telecommunications services while protecting the character of the City and its neighborhoods; and,

WHEREAS, there is a need to establish standards for location, aesthetics and compatibility for small cell communication structures and uses, and to update the standards for other kinds of Telecommunications Facilities; and,

WHEREAS, the City is committed to encouraging a safe, reliable, efficient, integrated and connected system of Green and Complete Streets that promotes access, mobility and health for all people, regardless of their age, physical ability, or mode of transportation; and,

WHEREAS, the City desires to promote public safety while also supporting a consistent, visually-appealing standard for support structures within its rights-of-way by adopting a smart pole program within the Form Based Code Area, and other areas of the City, where feasible, which integrates street lights, Telecommunications Facilities, and other new technological features into one, new structure; and,

WHEREAS, it is necessary to encourage the location and Collocation of Transmission Equipment on existing structures, where feasible, in order to reduce the need for new Towers and poles, thereby minimizing visual clutter, public safety impacts, and effects upon the natural environment and wildlife as well as to encourage concealed technologies and the use of public lands, buildings, structures, and rights of way as locations for Telecommunications Facilities; and,

WHEREAS, there is a need to encourage the availability of affordable, high-speed internet and cellular telephone access for business and residents, acknowledging that a growing number of businesses are conducted in whole or in part from homes and/or on-the-go, that increasingly education incorporates online learning necessitating good home internet connections for students and faculty, and that government participation and emergency services to the general public are enhanced by fast and reliable cellular and home internet connectivity; and,

WHEREAS, it is important to encourage coordination between suppliers and providers of telecommunications services to maximize use of existing facilities, structures, and rights of way; and,

WHEREAS, establishing predictable and balanced regulations within the authority reserved for local land use determination is in the best interest of the citizens of the City of Chattanooga; and,

WHEREAS, there have been recent changes to mandates in the Telecommunications Act of 1996 and the Middle Class Tax Relief and Job Creation Action of 2012, and other applicable federal and state laws limiting local discretion to regulate location of personal wireless service facilities (PWSF); and,

WHEREAS, a mechanism for the zoning and/or permitting of small cell telecommunications uses and an update of existing zoning provisions for other kinds of telecommunications uses is in the best interest of the citizens of Chattanooga; and,

WHEREAS, such changes have been determined necessary and beneficial to the community to update the zoning regulations, and has;

WHEREAS, such changes have been referred to the Planning Agency staff for review and recommendation to the Planning Commission, and;

SECTION 1. NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 38, Article VIII, Section 38-568(16), relative to Powers, etc., of board; hearings be amended by removing said subsection in its entirety and substituting in lieu thereof the following:

(16) All Telecommunications Facilities are subject to the following conditions:

(A) For purposes of this subsection, the following General Definitions are included to provide greater clarity to this ordinance for specific terms referenced herein:

“Advanced Wireless Research Program Participant” means a person or entity deploying and using a Telecommunications Facility in conjunction with a Platform for Advanced Wireless Research (PAWR) program operated for non-commercial applications in the pursuit of the public good by a non-profit organization designated and authorized by the City.

“Alternative Structure” means a structure that is not primarily constructed for the purpose of holding Antennas but on which one or more Antennas may be mounted, including but not limited to buildings, water tanks, pole signs, billboards, church steeples, electric power transmission poles/towers, utility structures, and streetlights.

“Antenna” means any apparatus designed for the transmitting and/or receiving of electromagnetic waves, including telephonic, radio or television communications. Types of elements include omni-directional (whip) Antennas, sectionalized or sectorized (panel) Antennas, multi or single bay (FM & TV), yagi, or parabolic (dish) Antennas.

“Base Station” means equipment and non-Tower supporting structure at a fixed location that enable wireless telecommunications between user equipment and a communications network. Examples include Transmission Equipment mounted on a rooftop, water tank, silo or other above ground structure other than a Tower. The term does not encompass a Tower as defined herein or any equipment associated with a Tower. "Base Station" includes, but is not limited to:

Equipment associated with wireless telecommunications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; radio transceivers, Antennas, coaxial or fiber optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks); any structure other than a Tower that, at the time the application is filed under this section, supports or houses equipment described in this definition that has been reviewed and approved under the applicable zoning or siting process, or under another regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

“Base Station” does not include any structure that, at the time the application is filed under this section, does not support or house wireless Transmission Equipment.

“Breakpoint Technology” means the engineering design of a monopole, or any applicable Support Structure, wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent (5%) more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the Breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

“Clear Zone” shall mean that portion of the Right-of-Way that is intended for pedestrian traffic along the sidewalk. The minimum width and location of the Clear Zone shall be determined by the paved area of any sidewalk within the Right-of-Way, however, in all instances it must be a minimum of forty-eight (48) inches of width and otherwise compliant with the Americans with Disabilities Act (ADA) for public sidewalk accessibility. In areas of congested pedestrian activity in the Form Based Code District, a wider minimum portion of the sidewalk may be required. The location of the Clear Zone shall be consistent for the entire block, and in most instances it shall be required to be located immediately adjacent to the facade of adjoining properties. The Clear Zone must at all times be free from any items, obstacles, or barriers so as to allow clear movement for pedestrians along the public Right-of-Way.

“Collocation” means the mounting or installation of Transmission Equipment on an Eligible

Support Structure for the purposes of transmitting and/or receiving radio frequency signals for communications purposes so that installation of a new Support Structure will not be required.

“Cellular on Wheels (COW)” means a temporary personal wireless service facility placed on property to provide short term, high volume telecommunications services to a specific location and which can be easily removed from the property.

“Distributed Antenna System (DAS)” means a system consisting of: (1) a number of remote communications nodes deployed throughout the desired coverage area, each including at least one Antenna for transmission and reception; (2) a high capacity signal transport medium (typically fiber optic cable) connecting each node to a central communications hub site; and (3) radio transceivers located at the hub site (rather than at each individual node as is the case for small cells) to process or control the communications signals transmitted and received through the Antennas.

“Eligible Facilities Request” means any request for modification of an existing Tower or Base Station involving Collocation of new Transmission Equipment; removal of Transmission Equipment; or replacement of Transmission Equipment that does not Substantially Change the physical dimensions of such Tower or Base Station.

“Eligible Support Structure” means any Tower or Base Station existing at the time the application is filed with the City.

“Personal Wireless Service Facility (PWSF)” means any staffed or unstaffed location for the transmission and/or reception of radio frequency signals or other personal wireless communications, including commercial mobile services, unlicensed wireless services, wireless broadband services, and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996 (Telecommunications Act), and usually consisting of an Antenna or group of Antennas, transmission cables, feed lines, equipment cabinets or shelters, and may include a Tower. Facilities may include new, replacement, or existing Towers, replacement Towers, collocation on existing Towers, Base Station attached concealed and non-concealed Antenna, dual purpose facilities, concealed Towers, and non-concealed Towers (monopoles, lattice and guyed), so long as those facilities are used in the provision of personal wireless services as that term is defined in the Telecommunications Act.

“Provider” shall mean any person, other than an Advanced Wireless Research Program Participant, who owns, leases, operates, installs, purchases capacity in or maintains any network or equipment within the City of Chattanooga for Communications Services containing communication cables, wires, lines, towers, wave guides, fiber, microwave, laser beams or conduit and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing, by audio, video or other forms of electronic signals to or from subscribers or locations within the City of Chattanooga, (hereinafter collectively referred to as “Provider’s System” or “System”) in, on, under or over the public Rights-of-Way of the City of Chattanooga, or its successors, assigns, or transferees.

“Rights-of-Way” means the surface and space on, above and below every street, alley, road, highway, lane or other public Right-of-Way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. Rights-of-Way shall not include public property owned or leased by City and not intended for Rights-of-Way use, including, but not limited to, parks or public works facilities. Rights-of-Way does not include federally granted railroad rights of way or easements granted to third parties (which may be reflected in a real property deed, subdivision plat, or other real property record) with respect to which the City holds no property interest.

“Qualified Collocation Request” means any request for Collocation of a PWSF on a Tower or Base Station that creates a Substantial Change in the facility but is entitled to processing within 90 days under 47 U.S.C. §332(c)(7).

“Smart Pole” means any pole, which consists of a design pre-approved by the City, for the purpose of also serving as a Telecommunications Facility Support Structure.

“Small Cell Facility” means a wireless service facility that meets the following qualifications or is within a stealth design that is consistent with the design guidelines below:

1. Each Antenna shall be located inside an enclosure of no more than five (5) cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements shall fit within an enclosure of no more than five (5) cubic feet.
2. Primary equipment enclosures, no larger than seventeen (17) cubic feet in volume, may be mounted on an Eligible Support Structure or an Alternative Structure provided they are shrouded and concealed from view within the Right- of-Way. Primary equipment enclosures larger than seventeen (17) cubic feet in volume shall be located underground.
3. No equipment, other than an electric meter and disconnect switch, may be installed on a pole within the first fourteen (14) feet above the ground level.
4. Only the following associated equipment may be located outside of the primary equipment enclosure of any Small Cell Facility other than a Smart Pole design, and, if so located, will not be included in the calculation of equipment volume: electric meter, concealment material, underground enclosures, and grounding equipment. All other equipment shall be within the volumes specified or located in an underground vault.

“Small Cell Network” means a collection of interrelated Small Cell Facilities designed to deliver wireless service.

“Stealth Design” means any telecommunications Transmission Equipment that is integrated as an architectural feature of a Support Structure so that the purpose of the facility for providing wireless services is not readily apparent to a casual observer.

“Substantial Change” means a modification or Collocation of an Eligible Support Structure if it

meets any one or more of the following criteria:

1. A Telecommunications Facility Collocation on an existing structure within a Right- of-Way that increases the overall height of the structure, Antenna and/or Antenna array more than 10% or 10 feet, whichever is greater.
2. A Telecommunications Facility Collocation for Towers not in a Right-of-Way that protrudes from the structure more than 10% or 20 feet, whichever is greater, or the width of the structure at the elevation of the Collocation, and for Towers within a Right-of-Way, that protrudes from the structure more than 6 feet.
3. A Telecommunications Facility Collocation on an existing structure that fails to meet current building code requirements (including wind loading).
4. A Telecommunications Facility Collocation that adds more than four (4) additional equipment cabinets or one (1) additional equipment shelter.
5. A Telecommunications Facility Collocation that requires excavation outside of existing leased or owned parcel or existing easements.
6. A Telecommunications Facility Collocation that defeats any existing concealment elements of the structure.
7. A Telecommunications Facility Collocation that fails to comply with all conditions associated with the prior approval of the structure except for modification of parameters as permitted in this section.

“Support Structure” means anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground.

“Telecommunications Facility” means one or more Antenna, utility structures currently hosting either fiber, cable or wire, Tower, Base Station, mechanical and/or electronic equipment, conduit, cable, fiber, wire, and associated structures, enclosures, assemblages, devices and supporting elements that generate, transmit or produce a signal used for communication that is proposed by an entity other than the City Government, including but not limited to radio/tv/satellite and broadcast Towers, telephone service, including new microwave or cellular Towers, PWSF, DAS, small cell facilities and COW.

“Tower” means any Support Structure built for the primary purpose of supporting any Antennas and associated facilities for commercial, private, broadcast, microwave, public safety, licensed or unlicensed, and/or fixed or wireless services. A Tower may be concealed or non-concealed. Non-concealed Towers include:

Guyed - A style of Tower consisting of a single truss assembly composed of sections with

bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building.

Lattice - A self-supporting, tapered style of Tower that consists of vertical and horizontal supports with multiple legs and cross bracing, and metal crossed strips or bars to support Antennas.

Monopole - A style of freestanding Tower consisting of a single shaft usually composed of two (2) or more hollow sections that are in turn attached to a foundation. This type of Tower is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on a building's roof. All feed lines shall be installed within the shaft of the structure.

“Transmission Equipment” means Equipment that facilitates transmission of communication service (whether commercial, private, broadcast, microwave, public, public safety, licensed or unlicensed, fixed or wireless), including but not limited to radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply.

(B) Collocation Requirements: Collocation or location on existing Alternative Structures is required where possible. Applicants for a new Telecommunications Facility must explore all Collocation opportunities and opportunities to locate their Antenna on existing Alternative Structures whenever possible. Any Applicant for a Telecommunications Facility shall utilize Eligible Support Structures first and then Alternative Structures. These Collocation Requirements shall apply in the Right-of-Way when the location of a Smart Pole has been approved by the City and is installed within the Right-of-Way according to City Design Guidelines.

(C) Exemptions and Administratively Approved Sites: Determinations as to exemptions and administrative approval shall be provided by the Land Development Office upon submission of a completed application. A Special Permit for Transmission Equipment shall not be required under the following circumstances:

- (i) Concealed Devices — Transmission Equipment which is concealed within a building or structure so that it is architecturally indiscernible may be permitted in all zoning districts subject to building permit procedures and standards, as may be amended. Architecturally indiscernible shall mean that the addition or feature containing the Antenna is architecturally harmonious in such aspects as material, height, bulk, scale and design with the building or structure to which it is to be a part.
- (ii) Additions To Existing Structures In Any Zoning District- An Antenna, a dish or transmitter may be placed inside or on an existing structure, including but not limited to steeples, silos, spires, utility water tanks or Towers, athletic field lighting poles, utility poles and similar structures

(but excluding single-family or duplex dwellings for any commercial use), subject to structural adequacy and provided the addition of the Antenna and any supporting structure shall not create a Substantial Change. The setback requirements for freestanding Towers shall not be applied to existing structures used to support or house the Antenna. Additional antennas may be placed on existing Towers without obtaining a Special Permit. The placement of Antennas in or on existing structures or Towers shall be subject to the screening landscape standards of this section if the addition of the Antenna or associated equipment causes any significant change to the ground level view of the existing structure as determined by the Building Official.

- (iii) Existing Towers — Antennas, dishes, or similar equipment or additional users which do not create a Substantial Change, may be added on existing Towers without obtaining a Special Permit, but shall be subject to all applicable zoning, set-back, design, and building code regulations.

(D) Special Permits Required: Except as exempted by regulations of a particular zone, Special Permits shall be required for all Towers as provided herein:

- (i) Subject to the issuance of a Special Permit by the Board of Appeals for Variances and Special Permits, commercial Towers may be permitted to locate on publicly owned property in all zoning divisions where special permits are required.
- (ii) Subject to the issuance of a Special Permit by the Board of Appeals for Variances and Special Permits, commercial Towers may only be permitted to locate on any property whether publicly or privately owned that is located in any zone where Towers are listed as a permitted use.
- (iii) The issuance of any Special Permit by the Board of Appeals for Variances and Special Permits is subject to all landscaping standards, co-location requirements and other requirements set forth in the Special Permit procedures.

(E) All Telecommunications Facilities located outside of the Rights-of-Way are subject to the following conditions and approval by the Land Development Office and/or Board of Appeals for Variances and Special Permits:

- (1) Special Permit Procedures: A completed application and the following information must be provided to the Land Development Office when applying for a Special Permit:
 - (a) A schematic site plan, including schematic landscape plan with an elevation view of the type of facility to be placed on the site.

The site plan shall depict where the Tower is to be located on the site and where additional co-located Transmission Equipment, shelters or vaults can be placed.

- (b) Construction plans: Detailed construction plans or drawings prepared by a licensed engineer certifying that the Tower has sufficient structural integrity and equipment space to accommodate multiple users shall be required at the time of applying for a building permit.
- (c) Landscape plans: Landscape plans that comply with the landscaping requirements of this ordinance shall be required at the time of applying for a building permit.
- (d) Identification of the intended user(s) of the Tower.
- (e) A statement prepared by the applicant that considers other alternatives to the proposed site and the impact of the proposed Tower. A map of the coverage area identifying all existing Towers and other sites with suitable zoning and adequate land area to site a Tower shall be included. The applicant shall justify the selection of the proposed site over other available alternative sites within the identified coverage area weighing the relative impacts of the proposed site to other available sites with particular consideration of the impact of the Tower upon adjacent properties, historic areas, scenic vistas and residential neighborhoods.
- (f) Towers shall be sited so as to be as unimposing as practical. The applicant shall demonstrate that through location, construction, or camouflage, the proposed facility will have minimum visual impact upon the appearance of adjacent properties, views and vistas of historic areas, scenic assets, and the integrity of residential neighborhoods. False representations in an application shall be grounds for denial of a special exceptions permit. The Board of Appeals for Variances and Special Permits is specifically empowered to utilize its collective judgment in assessing and approving or denying the application based upon such information.
- (g) Documentation of the number of other users that can be accommodated within the design parameters of the Tower as proposed. If the Tower will not accommodate the required number of users, the applicant must demonstrate with compelling evidence why it is not economically, aesthetically, or

technologically feasible to construct the Tower with the required co-location capability. Applications failing to fulfill the co-location requirement are not eligible for administrative approval by the Building Official in the Land Development Office.

(h) A statement indicating the owner's commitment to allow feasible shared use of the Tower within its design capacity for co-location.

(i) Documentation of a valid leasehold or ownership interest in the underlying property.

(1) The applicant or the landowner shall provide proof of the establishment of a financially secure and legally enforceable method of removing a Tower when it ceases to be used for a period of twelve (12) months. This financial assurance can be provided through a sinking fund, a lien upon land which has a greater unencumbered appraised value than the cost of removal of the Tower, a removal bond, a letter of credit or any alternative financial arrangement which is approved by the Finance Officer as to financial adequacy and the City Attorney as to legal enforceability. If the applicant or landowner owns more than one (1) Tower, a blanket removal bond or alternative financial assurance may cover multiple sites.

(j) The applicant shall furnish the names and addresses of all property owners within three hundred (300) feet of the site as measured from the property lines of the site upon which the Tower is to be constructed to the nearest property line of any property within said distance.

(2) Landscape Requirements: Tower sites shall be subject to the following landscaping standards:

(a) The visual impact of a Tower on adjacent properties and streets shall be minimized to the extent practicable by utilizing existing topography, structures, and natural vegetation to screen the Tower. For all visual exposures not equivalently screened by existing structures or natural vegetation, all Tower sites shall be landscaped with a ten (10) foot deep landscape yard with evergreen trees spaced a maximum of ten (10) feet on-center or two (2) staggered rows of shrubs spaced a maximum of eight (8) feet apart. All plantings shall meet the installation and planting size requirements as specified below:

1. Intent: All landscaping materials shall be installed in a professional manner, and according to accepted planting procedures specified in the current edition of American Studies for Nursery Standard.
 2. Screening Trees: Screening trees are used to meet the tree planting requirements of this ordinance and shall be installed at a minimum height of eight (8) feet and have a minimum expected mature spread of eight (8) feet. Recommended species are American Holly, Foster Holly, Southern Magnolia, Eastern Red Cedar, Atlas Cedar, Deodar Cedar and Virginia Pine.
 3. Screening Shrubs: All screening shrubs shall be installed at a minimum size of three (3) gallons and have an expected maturity height of at least eight (8) feet and mature spread of at least five (5) feet. Recommended species include: Fragrant Olive, English Holly, Burford Holly, Nellie R. Stevens Holly, Wax Myrtle, Cherry Laurel, English Laurel and Leatherleaf Viburnum.
 4. Prohibited Plants: The following plants are prohibited from being used to meet these requirements due to problems with hardiness, maintenance, or nuisance: Kudzu Vine, Purple Loosestrife, Japanese Honeysuckle, Shrub Honeysuckle, Autumn Olive, Common Privet, Tree of Heaven, Lespedeza, Garlic Mustard, Paulownia, Multiflora Rose, Siberian Elm, Silver Poplar, Mimosa, Mulberry and Silver Maple.
 5. Maintenance: The property owner (or lessee if so provided in a written lease) shall be responsible for the maintenance of all provided landscaping. All landscaped areas must present a healthy, neat and orderly appearance and shall be kept free from refuse and weeds. Any dead or diseased plant material shall be replaced by the property owner (or lessee if provided in a written lease) with new plantings that meet the requirements of these regulations.
- (b) A break in the landscape not to exceed sixteen (16) feet in width shall be allowed for access for maintenance personnel and vehicles.

- (c) New or existing vegetation, earth berms, existing topographic features, walls, screening fences, buildings and other features other than prescribed above may be used to meet the requirements of these regulations if the Director of Codes Administration finds that they achieve reasonably equivalent screening as specified in subsection (a) herein.
 - (d) In Commercial and Industrial Districts a sight-obscuring fence at least eight (8) feet in height and a minimum of seventy-five percent (75%) opaque may be substituted for screening trees or screening shrubs as specified in subsection (a) herein by special exception from the Board of Appeals for Variances and Special Permits when the applicant can demonstrate that it is impractical to provide living screening material.
 - (e) No screening shall be required if the base of the Tower site is not visible from adjoining property or is not otherwise visible from a dedicated Right-of-Way.
 - (f) Site landscaping is not required for Antennas which are being co- located on existing Towers, or which are being placed on other buildings or structures where the Antenna is allowed as an accessory use.
 - (g) No screening shall be required when this screening is explicitly prohibited by Federal Communications Commission regulations or is otherwise restricted by site limitations. The Board of Appeals for Variances and Special Permits shall review and approve any deviations from the standards specified herein.
- (3) Collocation requirements: New Towers of a height of more than one hundred (100) feet and less than two hundred (200) feet must be designed and built to accommodate three (3) or more personal communication system carrier applications and must be made available upon reasonable terms for Collocation to at least three (3) additional single Antenna applications such as paging, 911, two-way, and emergency management communications. Additionally, the site must be sufficiently large enough to accommodate at least three (3) telecommunication equipment shelters, cabinets or additions to existing structures. New Towers of a height of two hundred (200) feet or more must be designed and built to accommodate at least three (3) personal communication system applications and at least three (3) additional single Antenna applications plus at least one (1) additional personal communication system application and at least one (1) additional single

Antenna application for each additional fifty (50) feet of height, to a maximum of six (6) personal service communication system carriers and six (6) single Antenna applications, to be made available upon reasonable terms for Collocation.

- (4) Other requirements:
- (a) Design standards: The proposed site plan and Tower design plans shall meet or exceed all applicable standards, as may be amended, including without limitation those of the Federal Communications Commission (FCC), American National Standards Institute (ANSI), and Institute of Electrical and Electronics Engineers (IEEE) Standards for power density levels and structural integrity, American Concrete Institute (ACI), American Standards Testing and Materials Institute (ASTM), the National Electrical Code, National Electrical Safety Code, and the American Steel Institute. The proposed site shall also be designed and built in compliance with Section 106 of the National Historic Preservation Act of 1996.
 - (b) Maintenance: The property owner (or lessee if provided in a written lease) shall be responsible for the maintenance of all provided landscaping. All landscaped areas must present a healthy, neat and orderly appearance and shall be kept free from refuse and weeds. Any dead or diseased plant material shall be replaced by the property owner with new plantings that meet the requirements of these regulations.
 - (c) Removal of Abandoned Antennas and Towers: Any Tower permitted under article VIII, section 38-568 (16) (E) or (F) that is not operated as a personal communication system carrier application for a continuous period of twelve (12) months shall be considered abandoned and the owner of such Antenna or Tower shall remove same within ninety (90) days of receipt of notice from the Building Inspector. Failure to do so shall be deemed to be a violation of these regulations and shall be subject to the penalty provisions of article XIV. The owner of the Antenna or Tower may appeal the decision of the Building Official to the Board of Appeals for Variances and Special Permits, but at such hearing shall be required to show just cause why the Antenna or Tower should not be considered abandoned and subject to removal.
 - (d) Towers shall be setback from all property lines on which the Tower is located by the distance equal to the height of the

lowest engineered failure point on the proposed structure or the height of the Tower. Provided, however, the minimum setback for any Tower is fifty (50) feet.

- (e) For purposes of these regulations, the engineered failure point is that location(s) on the Tower that is designed to fail when overstressed beyond the structural parameters of the Tower design. This failure point will cause the overstressed portion of the structure to fall in upon itself in such a way as to reduce the remaining stress on the structure to such a level that result in no further failures of the Tower structure. The lowest engineered failure point is described such that if the Tower should collapse, the tallest remaining vertical section of the structure shall be equal to the setback from the abutting property lines. If the proposed Tower is designed with failure points that allow for the collapse of the structure upon its self, a letter stamped by a licensed Professional Structural Engineer evidencing the design and fall zone parameters of the proposed Tower shall satisfy the requirements determining the minimum fall zone setback distance.
 - (f) No portion of the Tower structure shall be designed or constructed so that the height of the Tower allows it to fall across the property line of the abutting property. The Tower must comply with building codes and other federal, state, and local regulations.
 - (g) A sign furnished by the Chief Building Official shall be prominently posted by the applicant on the site of the proposed Tower for at least fifteen (15) consecutive days prior to the meeting of the Board to give notice to the public of the application and the Board meeting date.
- (F) All Telecommunications Facilities located within the Rights-of-Way are subject to the following conditions and approval by the Land Development Office and the Chattanooga Department of Transportation:
- (1) All requests for a Telecommunications Facility which will be located within the right-of-way shall submit a completed application, which shall contain:
 - (a) The applicant's name, address, telephone number, and email address;
 - (b) The names, addresses, telephone numbers, and email addresses

of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.

- (c) A general description of the proposed work and the purposes and intent of the Telecommunications Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
 - (d) A complete set of construction drawings including site plan, profile drawings, photos of the intended location from a minimum of three directions, photo simulations (depicting the Antenna, the equipment and one depicting the entire Support Structure), a structural analysis or letter, and a copy of Tennessee Department of Transportation (TDOT) permit, if applicable, to the City Transportation Office.
 - (e) All applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City.
 - (f) Unless otherwise provided by law, all applications for permits pursuant to this Chapter shall be accompanied by a fee, which shall be established in the fiscal year budget ordinance every year, for each Telecommunications Facility.
- (2) Providers may elect to enter into an agreement, with and upon the City's approval, to participate in the City's Smart Pole Program.
- (a) The Smart Pole shall be subject to the volumetrics as established in the definition of a Small Cell Facility as defined herein in Section 16 (A).
 - (b) The Provider shall submit an application as set forth in Section F (1).
 - (c) As to the replacement of poles, the City shall review said application and render approval as to the location in five (5) business days.
 - (d) As to the replacement of poles, the City shall process the application for the requisite permits required, and all permits shall be issued within thirty (30) days.

- (e) After installation by the Provider, the ownership and maintenance of the newly-installed Smart Pole shall remain with the City.
- (3) Review of Applications for a Telecommunications Facility within a Right-of-Way for any structure other than the Smart Pole Program set forth above in (F)(2).
 - (a) The City shall review the application for a Telecommunications Facility permit within a right-of-way in light of its conformity with applicable regulations of this Chapter.
 - (b) The City shall advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based. All final decisions shall be rendered within the time frame established by applicable federal law.
 - (c) The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee.
- (4) All Support Structures and above-ground Transmission Equipment are prohibited within the sidewalk, but may be located within a grass strip/green zone or frontage zone, generally defined as that area 24 inches from the face of the curb. The Clear Zone must at all times be free from any Telecommunications Facilities so as to allow clear movement for pedestrians along the Right-of-Way and compliance with the Americans with Disabilities Act. No Provider shall block or restrict the Clear Zone or block ingress/egress to any property, including but not limited to any driveway, crosswalk, bus stop or in any manner that conflicts with the Americans with Disabilities Act.
- (5) The Director of the Land Development Office, or his designee, shall be empowered to waive a utility structure relocation required by subsection 38-568 (16) (F) (3) immediately above, if in the opinion of staff, such utility structure relocation would prove to be a greater impediment to pedestrian traffic.
- (6) No new Telecommunications Facility Support Structure may be erected in the Right-of-Way within 300 feet of an existing Alternative Support Structure or Eligible Support Structure. The term “new Telecommunications Facility Support Structure” as used in this subsection shall not include a relocation and/or replacement of a utility

structure, or installation pursuant to City Design Guidelines of a Smart Pole within the Right-of-Way at a location approved by the City.

- (7) New Telecommunications Facilities or relocated Telecommunications Facilities shall place underground all Transmission Equipment, except for the electric meter and cut-off switch, that does not conform to shrouding and/or other City Design Guidelines. To the extent Transmission Equipment cannot be placed underground, a business justification, excluding cost, must be provided and approved by the Board of Appeals for Variances and Special Permits.
- (8) New Telecommunications Facility Support Structures in non-residential zones may not be erected to a height greater than the height of the tallest surrounding utility pole or streetlight. If no utility pole or streetlight is present in non-residential zones, the maximum overall height shall not exceed 39 feet, including Antennas, lightning rods or other extensions. All new proposed Support Structures, other than a Smart Pole, within the Right-of-Way shall be designed for a minimum of two PWSF Providers.
- (9) In proposed residential subdivisions which will not have above-ground utilities, the location of a Telecommunications Facility Support Structure will be considered by the Regional Planning Agency and approved by the Planning Commission when a final plat for any subdivision is approved. In existing residential subdivisions which do not have above-ground utilities, the Provider will be required to incorporate Stealth Design in accordance with the Design Guidelines for any above-ground Support Structures subject to the approval of the Board of Appeals for Variances and Special Permits. The maximum overall height of New Telecommunications Facility Support Structures in residential subdivisions, including Antennas, lightning rods or other extensions, shall be established by the Board of Appeals for Variances and Special Permits.
- (10) All new proposed Support Structures within the Right-of-Way shall be designed for a minimum of two PWSF Providers.
- (11) A permit for a Cellular on Wheels (COW) shall also require a special events permit or a park permit from the City in connection with an event if required pursuant to City Code 24-104 or 26-23 and shall be

limited to the duration of the event, including set-up and break-down of the equipment, not to exceed fourteen (14) days, but when circumstances reasonably warrant, the permit may be renewed in the discretion of the Transportation Department.

- (12) Telecommunications Facilities shall be constructed consistent with the design requirements of the Land Development Office and the Transportation Department, and, where applicable, the Historic Zoning Commission. The Design Guidelines will provide greater detail, description and examples of acceptable Telecommunications Facilities which may be located within the Right-of-Way, including visual descriptions. The requirements to comply with Design Guidelines in this section by all Providers shall be in addition to those required by Section 32-231 of the City Code.
 - (13) All requests for any new Telecommunication Support Structures which shall be located within the Right-of-Way shall require a special permit granted by the Board of Appeals for Variances and Special Permits if required by the City Code due to adjacent residential or special zones.
 - (14) A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.
- (G) Recommendations and other actions which may be requested from other departments of City government.
- (1) Prior to the consideration of a variance for or issuance of a special permit for a Telecommunications Facility, the following departments of the City may submit recommendations or approvals to the Board of Appeals for Variances and Special Permits that describe compliance with all applicable Design Guidelines or other regulations:
 - (a) The Historic Zoning Commission shall provide a certificate of appropriateness permit within any historic district and/or any public Rights-of-Way abutting a historic district.
 - (b) The Regional Planning Commission shall provide a recommendation for property within the Form Based Code area, a planned unit development, any urban design overlay, institutional overlay, specific plan, contextual overlay, or neighborhood landmark district.

- (c) City Information Technology Services shall prepare and timely provide a recommendation on any permits, with regard to the issue of interference with City infrastructure. In the event the complexity of the analysis requires technical expertise and the Provider is not able to first timely provide such technical expertise and assistance to the satisfaction of the City, the reasonable direct costs of such review, in an amount not to exceed \$5,000.00, shall be reimbursed by the applicant. In the event the Provider chooses not to cooperate in analyzing and/or resolving the interference issue, then no permits shall be issued.
- (2) Following the installation of a Telecommunications Facility, and upon a determination that any City infrastructure is experiencing interference, the City Information Technology Services will contact Providers in proximity with regard to the issue of interference with City infrastructure. In the event the complexity of the analysis requires technical expertise and the Provider is not able to first timely provide such technical expertise and assistance to the satisfaction of the City, the reasonable direct costs of such review, in an amount not to exceed \$5,000.00, shall be reimbursed by the Provider causing the interference. In the event the Provider chooses not to cooperate in analyzing the interference issue, then the Provider shall be notified to disconnect power to the suspected offending Telecommunications Facility.
- (H) Annual Review. The Administration will work with the City Attorney to provide comments for an annual review of the requirements of this Ordinance which will be presented to the City Council for consideration of any changes to standards and review processes. The first annual review shall be within one (1) year of the effective date of this Ordinance.

SECTION 2. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 38, Article V, All applicable Divisions of the Zoning Regulations, Section numbers (as

follows), Delete references to “communication towers” and substitute in lieu thereof “all Telecommunications Facilities” within the special exceptions by the board of appeals:

Section 42 (4)	R-1 Residential Zone
Section 63 (3)	RT-1 Residential Townhouse Zone
Section 83 (3)	R-T/Z Residential Townhouse/Zero Lot Line Zone
Section 92 (4)	R-2 Residential Zone
Section 102 (3)	R-3MD Moderate Density Zone
Section 112 (5)	R-3 Residential Zone
Section 122 (13)	R-4 Special Zone
Section 124 (7)	R-4 Special Zone
Section 162 (3)	R-5 Residential Zone
Section 172 (5)	O-1 Office Zone
Section 184 (8)	C-2 Convenience Commercial Zone
Section 189	C-2 Convenience Commercial Zone
Section 204 (8)	UGC Urban General Commercial Zone
Section 208 (e)	UGC Urban General Commercial Zone
Section 223	C-3 Central Business Zone
Section 245 (3)	C-4 Planned Commerce Center Zone
Section 252	C-4 Planned Commerce Center Zone
Section 264 (2)	C-5 Neighborhood Commercial Zone
Section 268	C-5 Neighborhood Commercial Zone
Section 302 (4)	M-1 Manufacturing Zone
Section 304	M-1 Manufacturing Zone
Section 321 (1e)	M-2 Light Industrial Zone
Section 322 (8)	M-2 Light Industrial Zone
Section 341 (2)	M-4 Outdoor Industrial Use Zone
Section 453 (11)	A-1 Urban Agricultural Zone
Section 455	A-1 Urban Agricultural Zone

SECTION 3. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 38, Article V, Division 15 of the Zoning Regulations, Section number 38-223(3), Delete reference to “Monopole communication towers” and substitute in lieu thereof “Tower or Support Structures as defined in Article VIII” within the special exceptions by the board of appeals.

SECTION 4. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 38, Article II, Definitions, Section 38-2 of the Zoning Regulations, delete in its entirety the following definitions:

- Antenna
- Carrier application
- Communications tower
- Communications tower height
- Lattice communication tower
- Monopole communication tower

SECTION 5. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 38, Article XVI, Downtown Chattanooga Form-Based Code, All applicable Divisions of the Downtown Chattanooga Form-Based Code, Section numbers (as follows), Delete references to “wireless communications” and substitute in lieu thereof “all Telecommunications Facilities:

- | | |
|-----------------------------|---------------|
| Section 38-706 Allowed Uses | Downtown Core |
| Section 38-712 Allowed Uses | River |
| Section 38-725 Allowed Uses | Urban |
| Section 38-736 Allowed Uses | Urban Edge |

SECTION 6. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 38, Article XVI, Downtown Chattanooga Form-Based Code, Division 8, USE PROVISIONS of the Downtown Chattanooga Form-Based Code, Section 38-738 Use Categories (2) Public/Institutional Uses D. Wireless Communications, Delete in its entirety and in lieu of replace with the following:


D. All Telecommunications Facilities

Means one or more Antenna, Tower, Base Station, mechanical and/or electronic equipment, conduit, cable, fiber, wire, and associated structures, enclosures, assemblages, devices and supporting elements that generate, transmit or produce a signal used for communication that is proposed by an entity other than the City Government, including but not limited to radio/tv/satellite and broadcast Towers,


telephone service, including new microwave or cellular Towers, PWSF, DAS, small cell facilities and COW.

SECTION 7. BE IT FURTHER ORDAINED, That this Ordinance shall take effect ninety (90) days from and after its passage.

Passed on second and final reading: July 18, 2017



CHAIRPERSON
APPROVED: DISAPPROVED:



MAYOR