
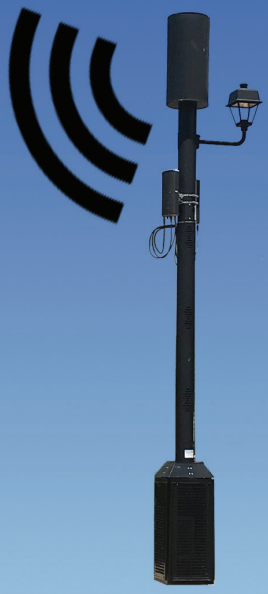

# Small Cells

## 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.

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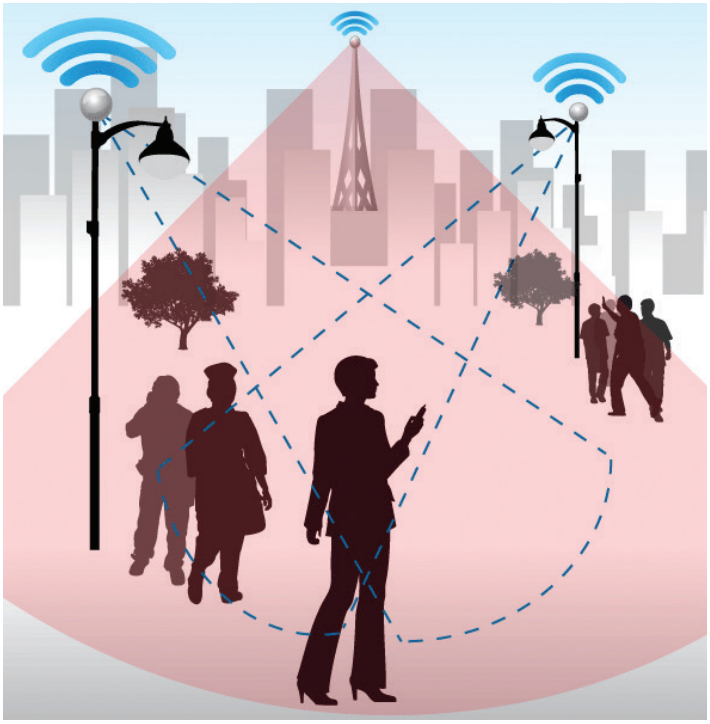
# Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

## 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.

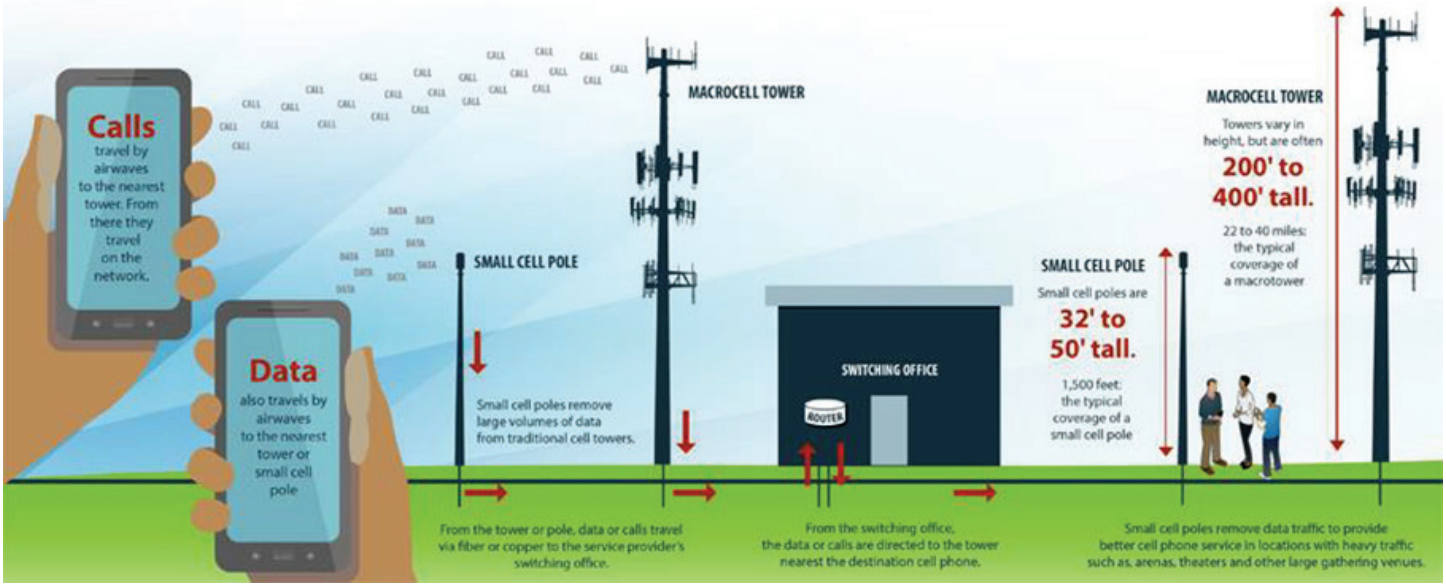
As a result of the proliferation of wireless-dependent devices, an exponential growth in the amount of data consumed by the average user and consumers' demand for immediate and unencumbered access to multiple platforms and functions simultaneously, the wireless industry finds itself approaching a capacity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

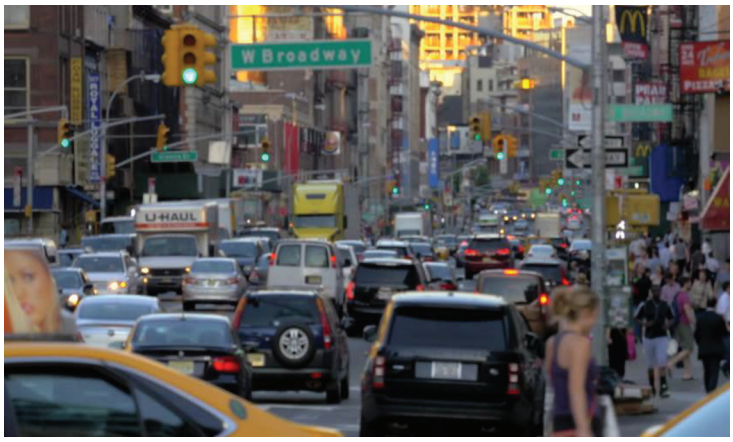


industry has decided that small cells are the immediate answer to its capacity problems.

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.



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




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

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

* **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 clocks 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.

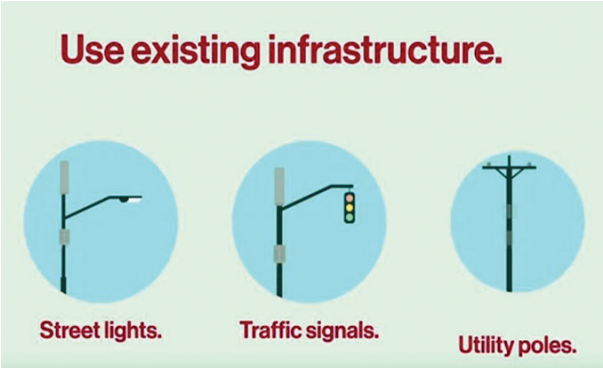
## When an application may be required

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 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.




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

## 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.

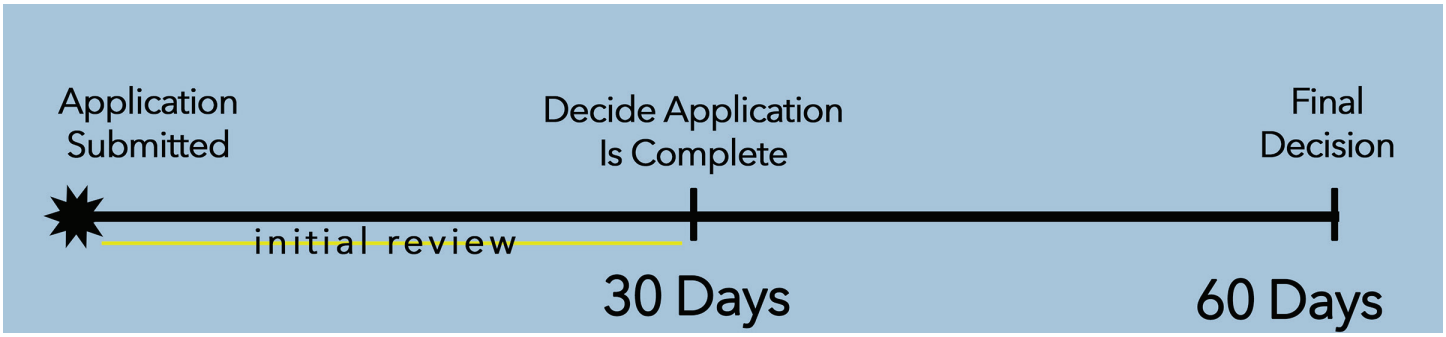
If a municipality denies a request to deploy a small cell, then the municipality must provide a written explanation of the denial to the provider. Upon receipt of such a denial, a provider may submit a revised application. In turn, a city must complete its review of a revised application. Such a review 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.

### Application Requirements

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

## Application Time Line

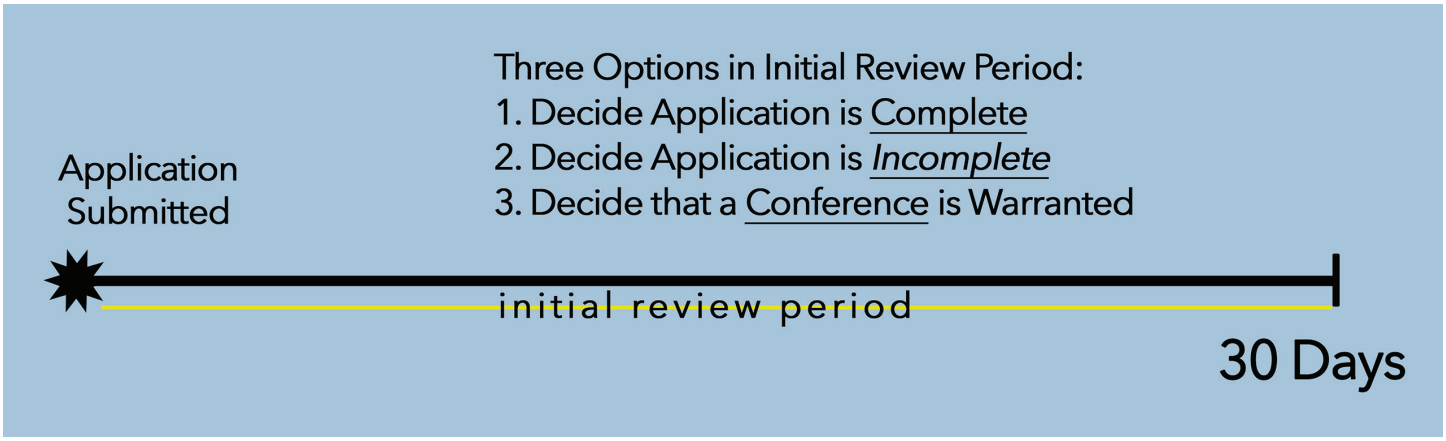



A municipality must complete its initial review of an application within 30 days of its receipt and determine whether it will approve or deny the application within 60 days of its receipt.

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.

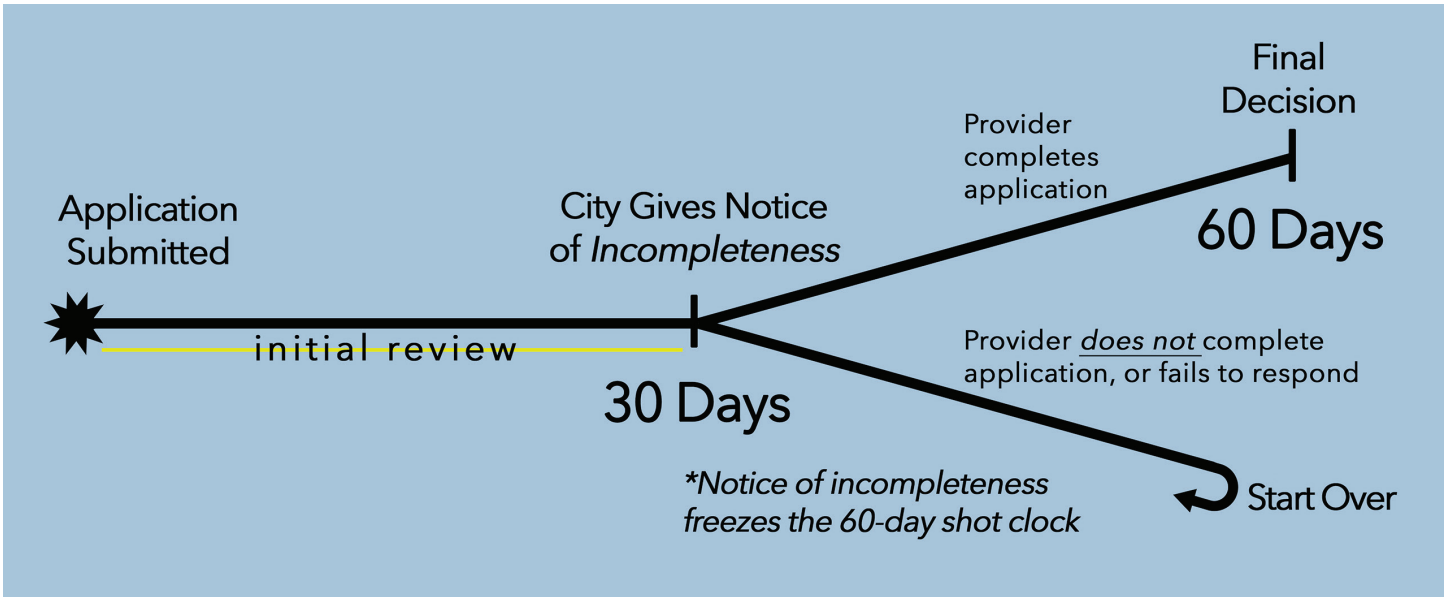
## Initial Review Period




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.

## 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.

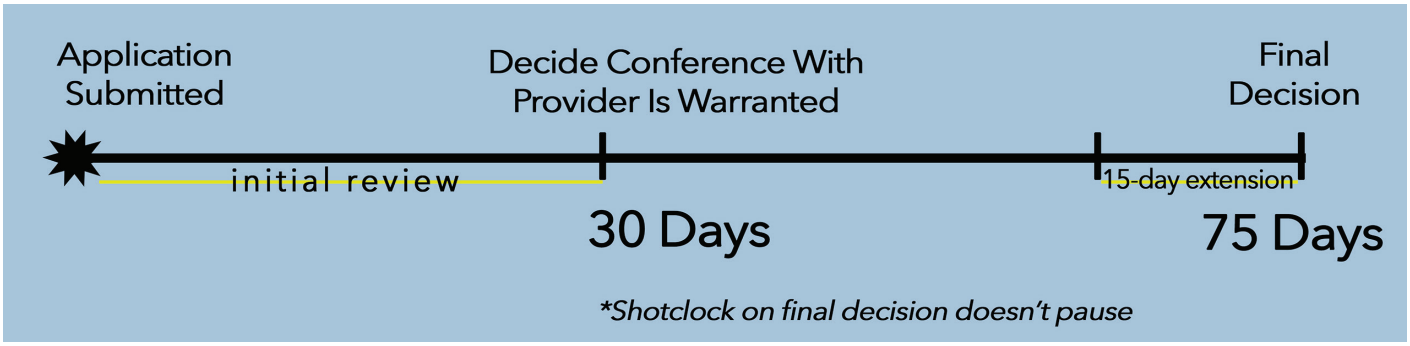
A city must also use this initial 30-day review period to review the application in order to determine whether a **conference with the provider** is warranted. Under the Act, a conference with the provider is warranted if a city determines that it has concerns about the safety of a proposed deployment. 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 colocation 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.

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

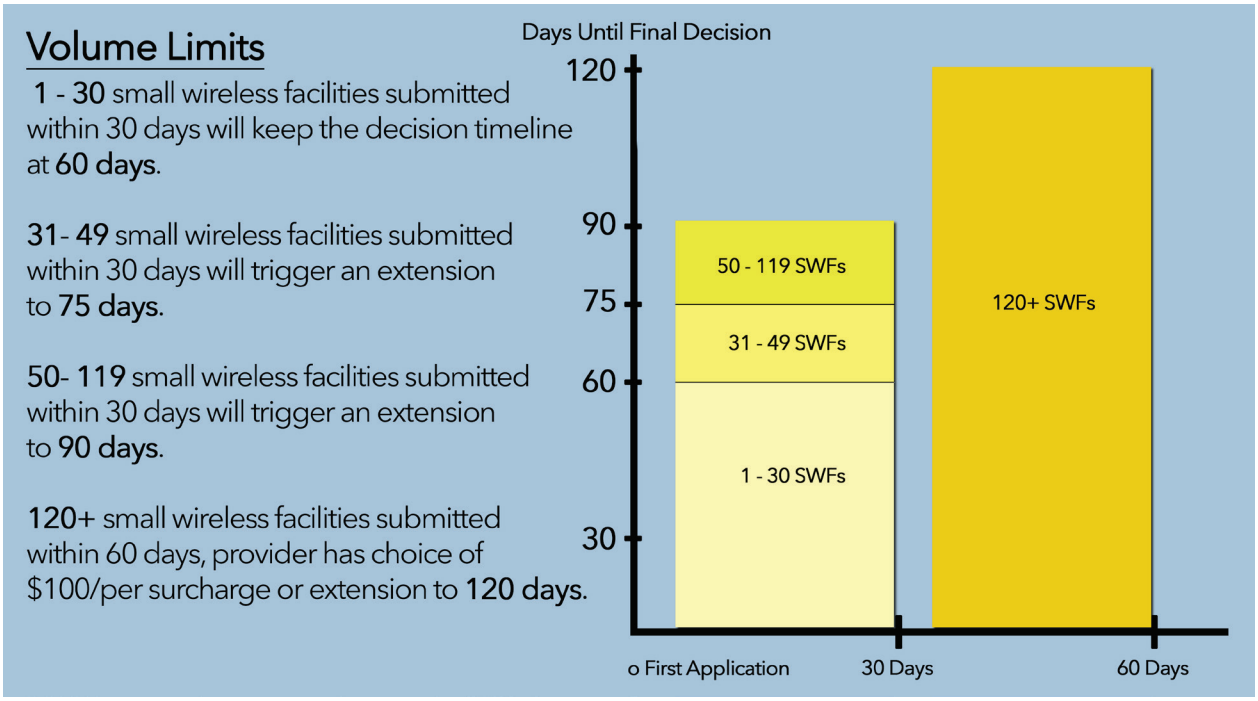
### Conference with Provider




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.

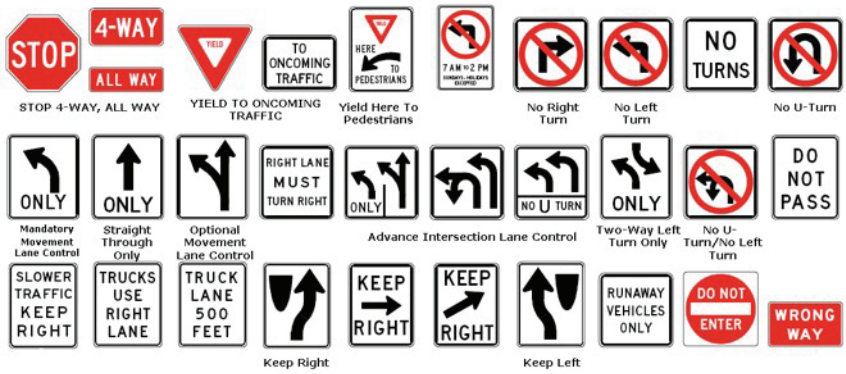
Additionally, the 60-day decision period may be extended if any provider submits applications for consideration that include more than 120 small cells to the same city within any 60-day period. In the event that the 120 small cell request limit is reached, then the city may notify the provider that it 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.



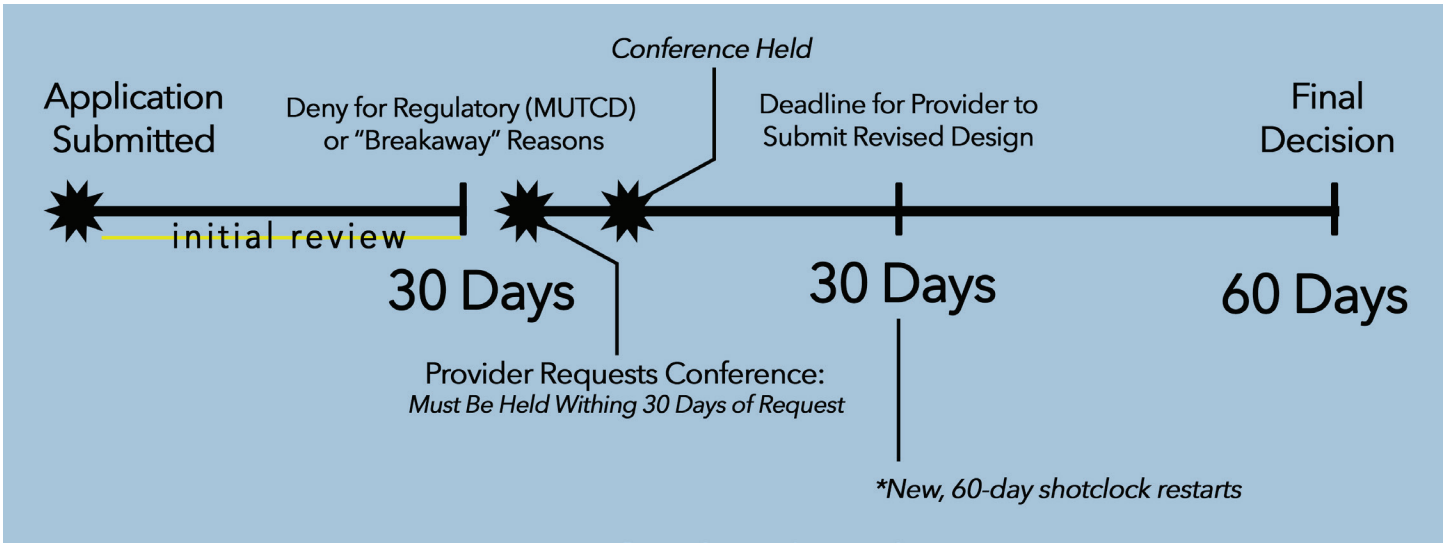

The new law includes volume limits that, if exceeded, also alter the 60-day decision time line.

## 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 click 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 click 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 request 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.

### Application Fees

- City may elect to assess fee
- One-time $200
- Each depolyment subject to fee
- Maxium 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

## 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 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

## 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.

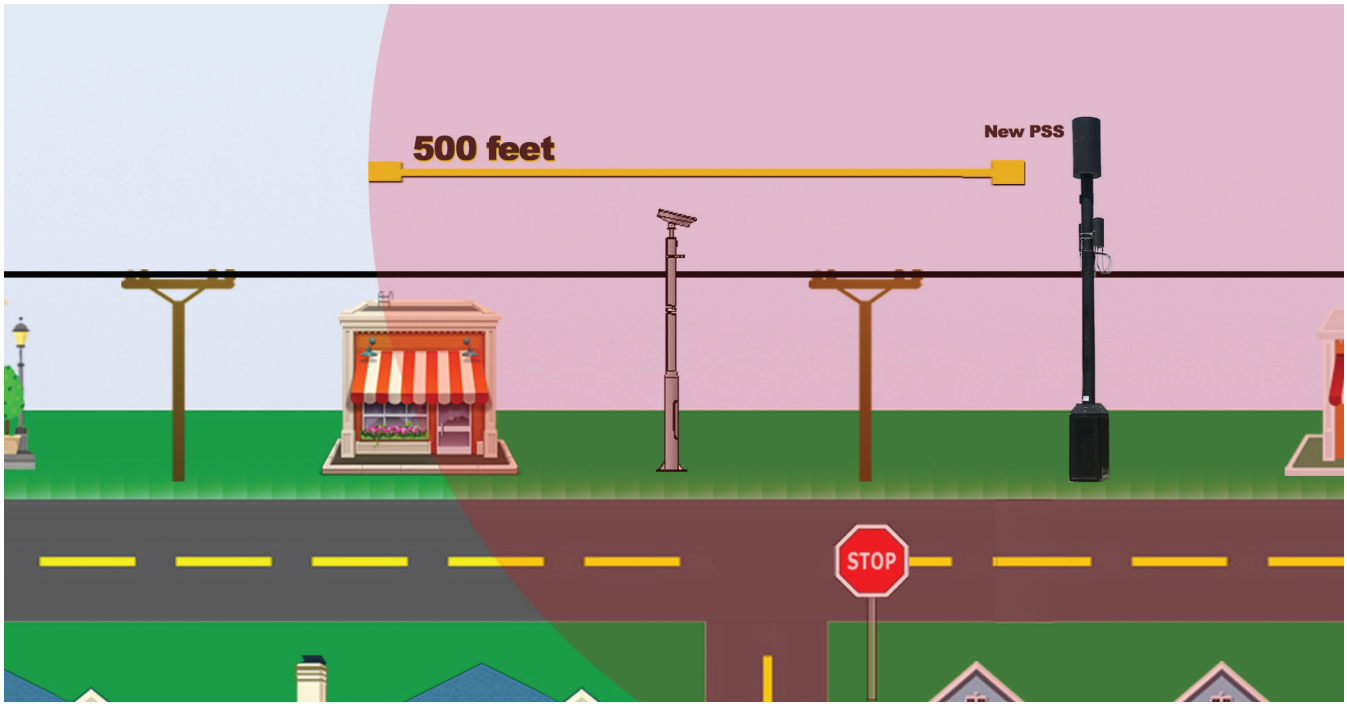
The Act provides that an aesthetic plan is an allowable exception to the general requirements of the new law. Therefore, in the event that any provision of the new small cells law is in conflict with a city's aesthetic plan, then the city's aesthetic plan prevails and providers must comply with its requirements.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

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.

**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 instillation 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.

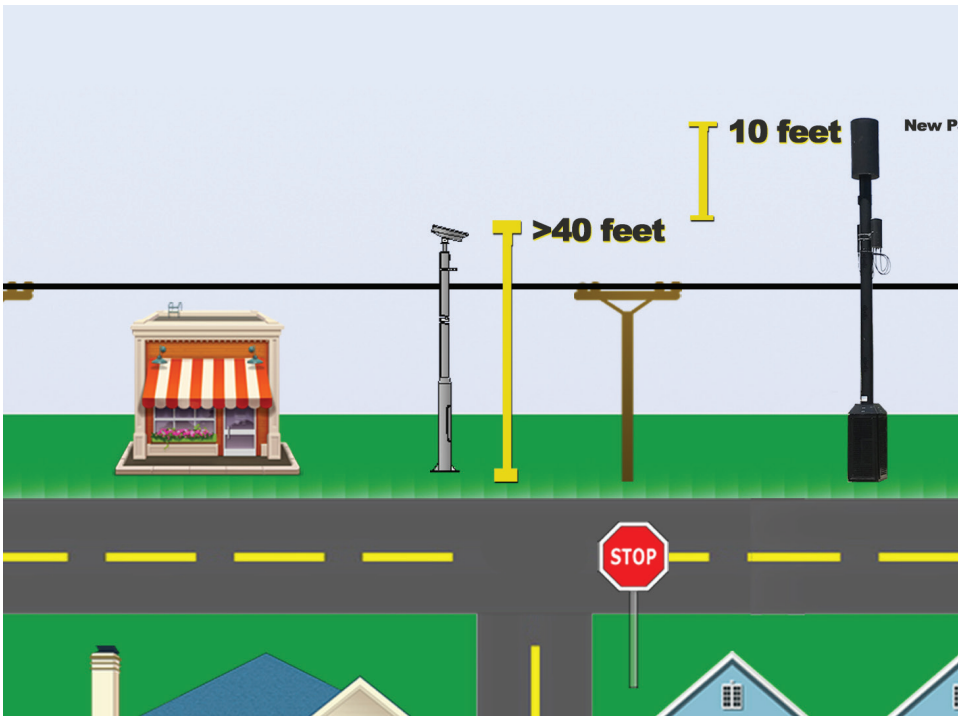
**Existing pole is greater than 40 ft.**


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)

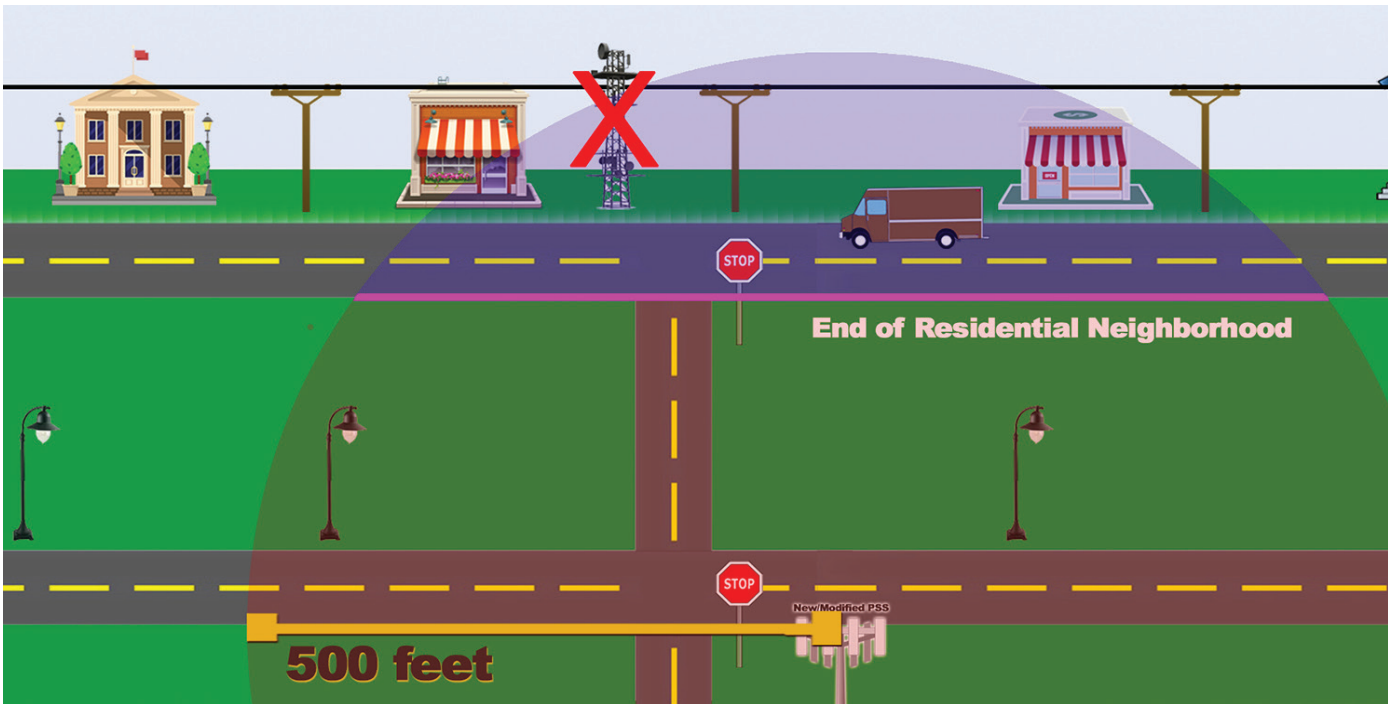
## Size of Small Cell

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.**



**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.**

### 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-

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' 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.

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

# Section 2

**Text of the Act**
**Public Chapter 819**

# State of Tennessee

**PUBLIC CHAPTER NO. 819**

HOUSE BILL NO. 2279

**By Representatives Lamberth, Sargent, Casada, Marsh, Holsclaw, Wirgau, Hawk, Hazlewood, Johnson, Calfee, Crawford, Timothy Hill, Towns, Hardaway, Gilmore, Powell, Beck, Tillis, Sparks, Jernigan, Carr, Jones, Byrd, Goins, Love, Mitchell, Powers, Zachary, Cameron Sexton, Miller, Eldridge, Coley, Matthew Hill, Ramsey, Williams, Favors, Reedy, Kumar, Dawn White, McCormick, Camper, Thompson, Kevin Brooks, Van Huss, Whitson, Cooper, Weaver, Carter, Matheny, Littleton, Howell, Gant, Lynn, Rudd, Terry, Stewart, Jerry Sexton, Hicks, Akbari, Parkinson, Sanderson, Forgety, Mark White**

Substituted for: Senate Bill No. 2504

**By Senators Ketron, Johnson, Gresham, Lundberg, Green, Yager, Niceley, Swann, Tate**

AN ACT to amend Tennessee Code Annotated, Title 13, relative to enacting the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018.

WHEREAS, Tennessee has benefitted from its long-standing policy of encouraging investment in technologically advanced infrastructure that delivers access to information and connectivity between citizens; and

WHEREAS, this policy has included, in Tennessee Code Annotated, Title 65, a broad and technology neutral grant of access to deploy infrastructure along the streets, highways, and public works of the cities, counties, and the state, which is not intended to be limited by this act; and

WHEREAS, such access has been granted subject to certain local powers but free from local taxation or other fees or charges in excess of cost recovery; and

WHEREAS, Tennessee's economy depends upon the ability of Tennesseans to utilize robust and mobile connectivity to transact business and pursue education; and

WHEREAS, robust and mobile connectivity affords Tennesseans opportunities to be engaged in the civic and political activities of local and state government; and

WHEREAS, Tennessee's law enforcement, first responders, and healthcare providers can use wireless and mobile applications to protect the public's safety and well-being; and

WHEREAS, Tennessee's ability to remain a leader in automotive production, research, and development will be enhanced by rapid deployment of the 5G wireless connectivity that will be critical for safe operation of autonomous vehicles and for numerous smart transportation systems; and

WHEREAS, all of these factors provide a compelling basis for the General Assembly to set aside obstacles and discriminatory policies that may slow deployment of new infrastructure and improvements to existing networks for the purpose of supporting emerging wireless technologies and ensuring that Tennessee networks can keep up with the growing data demands of Tennesseans; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 24, is amended by adding the following new part:

**13-24-401. Short title.**

This part shall be known and may be cited as the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018."

**13-24-402. Part definitions.**

As used in this part:

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

(2) "Applicant" means any person who submits an application pursuant to this part;

(3) "Application" means a request submitted by an applicant to an authority:

(A) For a permit to deploy or colocate small wireless facilities in the ROW; or

(B) To approve the installation or modification of a PSS associated with deployment or colocation of small wireless facilities in the ROW;

(4)

(A) "Authority" means:

(i) Within a municipal boundary, the municipality, regardless of whether such municipality is a metropolitan government;

(ii) Within a county and outside a municipal boundary, the county; or

(iii) Upon state-owned property, the state;

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

(5) "Authority-owned PSS" means a PSS owned by an authority but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government owned;

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

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

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

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

(10) "Fee" means a one-time, nonrecurring charge;

(11) "Historic district" means a property or area zoned as a historic district or zone pursuant to § 13-7-404;

(12) "Local authority" means an authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state;

(13) "Micro wireless facility" means a small wireless facility that:

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

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

(14) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(15) "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 in stalled solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;

(16) "Rate" means a recurring charge;

(17) "Residential neighborhood" means an area within a local authority's geographic boundary that is zoned or other wise designated by the local authority for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas;

(18) "Right-of-way" or "ROW" means the space, in, upon, above, along, across, and over all public streets, high ways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the authority, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purpos- and accepted as such public utility easement by the authority, but excluding lands other than streets that are owned by the authority;

(19)

(A) "Small wireless facility" means a wireless facility with:

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

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

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

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

(21)

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

(i) Equipment associated with wireless communications;

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

(B) "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is colocated;

(ii) Wireline backhaul facilities; or

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

(C) "Wireless facility" includes small wireless facilities;

(22) “Wireless provider” means a person who provides wireless service; and

(23) “Wireless services” means any service using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.

**13-24-403. Construction and applicability of part.**

(a) This part shall be construed to maximize investment in wireless connectivity across the state by creating a uniform and predictable framework that limits local obstacles to deployment of small wireless facilities in the ROW and to encourage, where feasible, shared use of public infrastructure and colocation in a manner that is the most technology neutral and nondiscriminatory.

(b) This part does not apply to:

(1) Deployment of infrastructure outside of the ROW; or

(2) Taller towers or monopoles traditionally used to provide wireless services that are governed by §§ 13-24-304 and 13-24-305.

**13-24-404. Local option and local preemption.**

(a) Nothing in this part requires any local authority to promulgate any limits, permitting requirements, zoning requirements, approval policies, or any process to obtain permission to deploy small wireless facilities. However, any local authority that promulgates limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities shall not impose limits, requirements, policies, or processes that are:

(1) More restrictive than requirements, policies, or processes set forth in this part;

(2) In excess of that which is granted by this part; or

(3) Otherwise in conflict with this part.

(b) Any local authority limits, requirements, policies, or processes that are more restrictive, in conflict with, or in excess of that which is granted by this part are void, regardless of the date on which the requirement, policy, or process was enacted or became law.

(c) For colocation of small wireless facilities in the ROW that is within the jurisdiction of a local authority that does not require an application and does not require work permits for deployment of infrastructure within the ROW, an applicant shall provide notice of the colocation by providing the materials set forth in § 13-24-409(g) to the office of the county mayor and the chief administrative officer of the county highway department, if the colocation is in the unincorporated area, or the city, if the colocation is in an incorporated area.

**13-24-405. Existing law unaffected.**

This part does not:

(1) Create regulatory jurisdiction for any subdivision of the state regarding communications services that does not exist under applicable law, regardless of the technology used to deliver the services;

(2) Restrict access granted by§ 65-21-201 or expand access authorized under§ 54-16-112;

(3) Authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost;

(4) Alter or exempt any entity from the franchising requirements for providing video services or cable services set forth in title 7, chapter 59;

(5) Apply to any segment of the statewide P25 interoperable communications system governed by § 4-3-2018;

(6) Alter the requirements or exempt any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any facility pursuant to title 54, chapter 5, part 8, or other similar generally applicable requirement imposed on entities who deploy infrastructure in ROW;

(7) Prohibit a local authority from the nondiscriminatory enforcement of breakaway sign post requirements and safety restrictions generally imposed for all structures within a ROW;

(8) Prohibit a local authority from the nondiscriminatory enforcement of vegetation control requirements that are imposed upon entities that deploy infrastructure in a ROW for the purpose of limiting the chances of damage or injury as a result of infrastructure that is obscured from view due to vegetation; or

(9) Prohibit a local authority from the nondiscriminatory enforcement of generally applicable local rules regarding removal of unsafe, abandoned, or inoperable obstructions in a ROW.

**13-24-406. Prohibited activities.**

An authority shall not:

(1) Enter into an exclusive arrangement with any person for use of a ROW for the construction, operation, market ing, or maintenance of small wireless facilities;

(2) Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other entities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in a ROW;

(3) Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in a ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in a ROW may be applied to prohibit an applicant's deployment of a new PSS in a ROW; or

(4) Except as provided in this part or otherwise specifically authorized by state law, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

**13-24-407. Uniform local authority fees for deployment of small wireless facilities; exceptions.**

(a) The following are the maximum fees and rates that may be charged to an applicant by a local authority for deployment of a small wireless facility:

(1) The maximum application fee is one hundred dollars ($100) each for the first five (5) small wireless facilities and fifty dollars ($50.00) each for additional small wireless facilities included in a single application. A local authority may also require an additional fee of two hundred dollars ($200) on the first application an applicant files following the effective date of this act to offset the local authority's initial costs of preparing to comply with this part. Beginning on January 1, 2020, and at each five-year interval thereafter, the maximum application fees established in this section must increase in an amount of ten percent (10%), rounded to the nearest dollar; and

(2) The maximum annual rate for colocation of a small wireless facility on a local authority-owned PSS is $100.

(b) In addition to the maximum fees and rates described in subsection (a), a local authority shall not require applicants:

(1) To pay fees or reimburse costs for the services or assistance provided to the authority by a consultant or third party retained by the authority relative to deployment of small wireless facilities; or

(2) To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own facilities. In no event shall replacement of a PSS constitute regular maintenance.

(c) This section does not prohibit an authority from requiring generally applicable work or traffic permits, or from collecting the same applicable fees for such permits, for deployment of a small wireless facility or new PSS as long as the work or traffic permits are issued and associated fees are charged on the same basis as other construction activity in a ROW.

(d) This section does not prohibit an authority from retaining any consultant or third party when the fees and costs for the consultant or third party are paid by the authority, using the authority's own funds, rather than requiring applicants to reimburse or pay for the consultants or third parties.

(e)

(1 ) Except for the application fees, permit fees, and colocation rates set out in this section, no local authority shall require additional rates or fees of any kind, including, but not limited to, rental fees, access fees, or site license fees for the initial deploy ment or the continuing presence of a small wireless facility.

(2 ) No local authority shall require approval, or any applications, fees, or rates, for:

(A) Routine maintenance of a small wireless facility, which maintenance does not require the installation of a new PSS or the replacement of a PSS;

(B) The replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility" in § 13-24-402; or

(C) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in§ 68-101-104.

(3 ) No local authority shall require execution of any access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

(4) A local authority shall not directly or indirectly require an applicant to perform services for the authority or provide goods to the authority such as in kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority in exchange for deployment of small wireless facilities. The prohibition in this subdivision (e)(4) does not preclude the approval of an application to collocate a small cell in which the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the authority.

**13-24-408. Uniform local authority requirements for deployment and maintenance of small wireless facilities; exceptions.**

(a)

(1) No local authority shall restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities, or prohibit colocation on PSSs, except a local authority shall require that:

(A) A new PSS installed or an existing PSS replaced in the ROW not exceed the greater of:

(i) 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;

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

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

(B) Small wireless facilities deployed in the ROW after the effective date of this part shall not extend:

(i) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(ii) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(C) Nothing in this part applies to or restricts the ability of an electric distributor or its agent or designated party to change the height of a utility pole used for electric distribution, regardless of whether a small wireless facility iscolocated on the utility pole. This section does not authorize a wireless provider to install or replace a PSS above the height restrictions in subdivision (a)(1)(A).

(2) An applicant may construct, modify, and maintain a PSS or small wireless facility that exceeds the height limits set out in subdivision (a)(1) only if approved under the local authority's generally applicable zoning regulations that expressly allow for the taller structures or if approved pursuant to a zoning appeal.

(b) A local authority may require an applicant to comply with a local authority's nondiscriminatory requirements for placing all electric, cable, and communications facilities underground in a designated area of a ROW if the local authority:

(1) Has required all electric, communications, and cable facilities, other than authority-owned PSSs and attach ments, to be placed underground prior to the date on which the application is submitted;

(2) Does not prohibit the replacement of authority-owned PSSs in the designated area when the design for the new PSS meets the authority's design aesthetic plan for the area and all other applicable criteria provided for in this part; and

(3) Permits applicants to seek a waiver of the underground requirements for the placement of a new PSS to support small wireless facilities and the approval or nonapproval of the waivers are decided in a nondiscriminatory manner:

(c)

(1) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. §1.1307(a)(4) or any subsequently enacted similar regulations, a local authority may require reasonable, nondiscriminatory, and technology neutral design or concealment measures in a historic district if:

(A) The design or concealment measures do not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility, and the local authority permits alternative design or concealment measures that are reasonably similar; and

(B) The design or concealment measures are not considered a part of the small wireless facility for pur poses of the size conditions contained in the definition of "small wireless facility" in § 13-24-402.

(2) Nothing in this section limits a local authority's enforcement of historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 codified in 54 U.S.C. § 300101 et seq., and the regulations adopted and amended from time to time to implement those laws.

(d) No local authority shall require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network. No local authority shall limit the placement of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are colocated. The prohibitions in this subsection (d) do not preclude a local authority from providing general guidance regarding preferred designs or from requesting consideration of design alter natives in accordance with the process set forth in § 13-24-409(b).

(e) A local authority may prohibit colocation on local authority-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades. To qualify for the exception set out in this subsection (e), an authority must publish a list of the PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to an application. A local authority may grant a waiver to allow colocation on a PSS designated under this subsection (e) if an applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements of this part.

(f) An applicant may replace an existing local authority-owned PSS when colocating a small wireless facility. 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.

(g) When replacing a local authority-owned PSS, the replacement PSS becomes the property of the local authority and maintenance and repair obligations are as follows:

(1) For local authority-owned PSSs used for lighting, a local authority may require the applicant to provide lighting on the replacement PSS. Both the PSS and the lighting shall become the property of the local authority only upon completion of the local authority's inspection of the new PSS to ensure it is in working condition and that any lighting is equivalent to the quality and standards of the lighting on the PSS prior to replacement. After satisfactory inspection, the local authority's ownership shall include responsibility for electricity and ordinary maintenance, but the local authority shall not be responsible for electric power, maintenance or repair of the small wireless facility collocated on the local authority-owned PSS; and

(2) When the applicant's design for replacing a local authority-owned PSS substantially alters the PSS, then the applicant shall indicate in its application whether the applicant will manage maintenance and repairs in case of damage or whether the applicant agrees that, if the PSS is damaged and requires repair, then the local authority may replace the PSS without regard to the alterations and require the applicant to perform any work necessary to remove or dispose of the small wireless facility. If the applicant assumes the responsibility for repair, then the applicant is entitled

to a right of subrogation with regard to local authority insurance coverage or any recovery obtained from third parties liable for the damage.

(h) A local authority may conduct periodic training sessions or seminars for the purpose of sharing local information relevant to deployment of small wireless facilities and best practices. Applicants must make a good faith effort to participate in the opportunities.

**13-24-409. Uniform application procedures for local authorities.**

(a) A local authority may require an applicant to seek permission by application to colocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain one (1) or more work permits, as long as the work permits are of general applicability and do not apply exclusively to wireless facilities.

(b) If a local authority requires an applicant to seek permission pursuant to subsection (a), the authority must comply with the following:

(1) A local authority shall allow an applicant to include up to twenty (20) small wireless facilities within a single application;

(2) A local authority shall, within thirty (30) days of rece1v1ng an application, determine whether an application is complete and notify the applicant. If an application is incomplete, a local authority must specifically identify the missing information in writing when the applicant is notified;

(3)

(A) Within thirty (30) days of rece1v1ng an application, a local authority may notify an applicant of the need for a conference with the applicant to assist the local authority in understanding or evaluating the applicant's design with regard to one (1) or more small wireless facilities contained in its application.

(B) For an application containing multiple small wireless facilities, the local authority shall specify the specific small wireless facilities for which conference is needed, and the sixty-day period for reviewing the application must be extended to seventy-five (75) days as provided in subdivision (b)(7).

(C)The local authority is responsible for scheduling the conference and shall permit the applicant to attend telephonically. The seventy-five-day period is not tolled while the conference is scheduled unless the applicant agrees to an additional extension of the review period.

(D) Issues that may be addressed by the conference include, but are not limited to:

(i) Safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;

(ii) Potential of conflict with another applicant's application for the same or a nearby location;

(iii) Impact of planned construction or other public works projects at or near the location identified by the application; and

(iv) Alternative design options that may enable colocation on an existing PSS instead of deployment of a new PSS or opportunities and potential benefits of alternative design that would incorporate other features or elements of benefit to the local authority. However, the existence of alternatives does not constitute a basis for denial of an application that otherwise satisfies all generally applicable standards for construction in the ROW and the requirements established by this part;

(4) A local authority shall process all applications on a nondiscriminatory basis;

(5) Except when extension of the review period is allowed by this section, a local authority shall approve or deny all small wireless facilities within an application within sixty (60) days of receipt of the application. For those applications seeking permission to deploy or colocate multiple small wireless facilities, the local authority shall deny permission only as to those small wireless facilities for which the application does not demonstrate compliance with all generally applicable ROW standards imposed on entities entitled to place infrastructure in the ROW and the requirements established by this part. A local authority shall not deny permission solely on the basis that the small wireless facility was contained in the same application as other small wireless facilities that are not approved;

(6) Any application or any portion of an application that is not approved or denied within sixty (60) days is deemed approved, unless the sixty-day period has been extended consistent with this section. If the period has been extended, then the date on which approval will be deemed to occur is also extended to the same date of the applicable extension;

(7) Except as otherwise provided in this subdivision (7), a local authority shall not extend the sixty-day period to provide for additional or supplemental review by additional departments or designees. The sixty (60) day review period may be tolled or extended only as follows:

(A) The sixty-day period is tolled if a local authority sends notice to the applicant that the application is incomplete within thirty (30) days after the initial application is filed, but this tolling ceases once additional or supplemental information is provided to the local authority. If supplemental information is not received within thirty (30) days of the date on which notice of incompleteness is sent by the authority, then the application may be denied and a new application required;

(B) The local authority and the applicant may mutually agree to toll the sixty-day period;

(C) The sixty-day review period is extended to seventy-five (75) days upon timely notice by the authority of the need for a conference as provided in subdivision (b)(3), but the seventy-five-day period must not be further extended for applications under subdivision (b)(7)(D) or (E);

(D) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than thirty (30), but fewer than fifty (50), small wireless facilities within any thirty-day period, then the local authority may upon notice to the applicant extend the sixty-day period for reviewing the applications to seventy-five (75) days, but the seventy-five-day period shall not be further extended for a conference as provided in subdivision (b)(7)(C);

(E) If an applicant submits applications to the same local authority seeking permission to deploy or colocate fifty (50) or more small wireless facilities within any thirty-day period, then the local authority may, upon notice to the applicant, extend the period for reviewing the applications to ninety (90) days, but the ninety-day period must not be further extended for a conference as provided in subdivision (b)(7)(C);

(F) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than one hundred twenty (120) small wireless facilities within any sixty-day period, then the local authority may issue notice to the applicant that the authority requires the applicant to select from the following two (2) options for high-volume applicants:

(i) Pay a surcharge to maintain the same review time period that would be otherwise applicable. The surcharge is in addition to the ordinary application fee provided in § 13-24-407. The surcharge is one hundred dollars ($100) for each small wireless facility that the applicant elects to have reviewed using the otherwise applicable review period and the applicant shall submit its list identifying the specific small wireless facilities it elects to have reviewed in the ordinarily applicable period with its surcharge payment within five (5) days of receiving the local authority's notice that applications have been received, triggering the election of either a surcharge or extension of the review time period described in (b)(7), (C), (D), or (E); or

(ii) If no identifying list is provided or if payment of a surcharge is not made within the applicable time period, or, for those small wireless facilities not timely identified and for which no surcharge is timely paid, the ordinarily applicable review period shall be extended to one hundred-twenty (120) days;

(G) If an applicant submits an application in which the proposed design will affect in any manner a regulatory sign, as defined by the Manual on Uniform Traffic Control Devices, or any sign subject to a requirement for break away supports, then the local authority may reject the application. If an application is rejected on that basis, however, the local authority shall permit the applicant to seek reconsideration of its design. If the applicant requests reconsideration, then the local authority shall provide the opportunity for the applicant to schedule a conference to discuss the local authority's specific concerns within thirty (30) days of the reconsideration request. The applicant must submit a revised design or otherwise respond to the local authority's concerns within thirty (30) days of the conference, and upon receipt of the revised design or response, the local authority shall approve or deny the application within sixty (60) days, and the local authority has complete discretion to approve or deny the application in a nondiscriminatory manner;

(8) If a local authority denies an application, it shall provide written explanation of this denial at the same time the local authority issues the denial.

(c) A local authority shall not deny an application unless the applicant has failed to satisfy this part or has failed to submit a design that complies with the generally applicable requirements that the local authority imposes on a nondiscriminatory basis upon entities deploying or constructing infrastructure in a ROW.

(d) Contemporaneous with an approval of an application in which the design includes replacement or construction of a new or replacement PSS, a local authority may notify the applicant of the further requirement that the applicant shall provide a professional engineer's certification that the installation of the new or replacement PSS has been com-

pleted consistent with the approved design as well as all generally applicable safety and engineering standards.

(e) After denial of an application, if an applicant provides a revised application that cures deficiencies identified by the lo-cal authority within thirty (30) days of the denial, then no additional application fee shall be required. A local authority shall approve or deny the revised application within thirty (30) days from the time the revised application is submitted to the authority. Any subsequent review of an application by a local government must be limited to the deficiencies cited in the denial or deficiencies that relate to changes in the revised application and that were not contained in the original application;

(f) A local authority shall not, either expressly or de facto, discontinue its application process or prohibit deployment under the terms of this part prior to adoption of any application process; and

(g) A local authority shall not require applicants to provide any information not listed in this subsection (g). A local authority may require the following information to be provided in an application:

(1) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the local authority 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 require ments, including the requirements of the Manual on Uniform Traffic Control Devices;

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

(3) 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;

(4) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;

(5) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(6) 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) An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the local authority 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 local authority may require that the applicant complete a new application and pay an application fee.

(i) If a local authority receives multiple applications seeking to deploy or colocate small wireless facilities at the same location in an incompatible manner, then the local authority may deny the later filed application.

(j) A local authority may require the applicant to designate a safety contact for any colocation design that includes attachment of any facility or structure to a bridge or overpass. 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.

(k)The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this part does not authorize the provision of any communications service or the installation, placement, maintenance or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in a right of way.

**13-24-410. Provisions applicable solely to the state as an authority.**

Notwithstanding any other provision in this part to the contrary, the deployment of small wireless facilities in state ROW is subject to the provisions of this section, as follows:

(1) In those instances in which an applicant seeks to deploy a small wireless facility or new PSS within a state ROW under the control of the department of transportation or to colocate on state-owned PSSs that are subject to oversight by the department of transportation, an application must be made to the department of transportation;

(2)

(A) The department of transportation may charge an applicant an application fee of one hundred dollars ($100) for each application to deploy small wireless facilities in a state ROW up to a maximum of five (5) small wireless facilities. The department may charge an additional fee in the amount of fifty dollars ($50) for each additional small wireless facility included in a single application. Beginning on January 1, 2020, and at each five-year interval thereafter, the application fees established in this subdivision (2)(A) shall increase by the amount of ten percent (10%);

(B) The department of transportation shall not require a permit or charge an application fee for routine maintenance or replacement of a small wireless facility in a state ROW unless the maintenance or replacement requires the installation of a new PSS or the replacement of a PSS or the maintenance or replacement activity will require disturbance of the highway pavement or shoulders;

(C) The department of transportation may impose inspection costs in the same manner such costs are imposed with respect to other entities that deploy infrastructure in a state ROW; and

(D) The department of transportation may require the applicant to provide a surety bond in the same manner as a surety bond is required with respect to other entities that deploy infrastructure in a state ROW;

(3) The application shall conform to the department of transportation's generally applicable rules or policies applicable to those entities that the department of transportation permits to deploy infrastructure in a state ROW;

(4) The department of transportation shall endeavor, when feasible in its discretion, to comply with the timetable for review of applications by local authorities set out in § 13-24-409, but the department of transportation shall have discretion to extend the time for review and shall provide notice to the applicant of additional time needed. No application to the department of transportation shall be deemed approved until the application is affirmatively acted upon;

(5) Until the department of transportation promulgates rules for the deployment of small wireless facilities as set forth in subdivision (8), the department of transportation shall accept applications to deploy small wireless facilities in a state ROW and shall consider each application on a case-by-case basis and shall, in its complete discretion, grant or deny such applications;

(6) Nothing in this part precludes the department of transportation from exercising any regulatory power or conducting any action necessary to comply with 23 USC§ 131 and§ 54-21-116 relating to the regulation of billboards or to satisfy any requirements of federal funding established by state and federal law.

(7) To ensure that this part does not impose new costs significant enough to outweigh the benefits of small wireless facilities, the department of transportation shall not be required to reimburse the costs of relocation of small wireless facilities from a state ROW, notwithstanding any decision the department of transportation may make to exercise its discretionary authority under § 54-5-804 to reimburse other owners of utility facilities for relocation costs arising from a highway construction project;

(8) The department of transportation shall promulgate rules or establish agency policies applicable to deployment of small wireless facilities within state ROW and the colocation of small wireless facilities on state-owned PSS in state ROW, including, but not limited to, the establishment of an annual rate for the colocation of a small wireless facility on state-owned PSS in a state ROW. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

(9) Nothing in this act restricts the department of transportation from the management of a state ROW or a state-owned PSS in a state ROW as otherwise established by law.

**13-24-411. Authority powers preserved.**

Consistent with the limitations in this part, an authority may require applicants to:

(1) Follow generally applicable and nondiscriminatory requirements for entities that deploy infrastructure or perform construction in a ROW:

(A) Requiring structures and facilities placed within a ROW to be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;

(B) Requiring compliance with Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards adopted by the authority to achieve compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), including Public Rights-of-Way Accessibility Guidelines (PROWAG) if adopted by the authority;

(C) Requiring compliance with measures necessary for public safety; and

(D) Prohibiting obstruction of the legal use of a ROW by utilities;

(2) Follow an aesthetic plan established by the authority for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure in a ROW, except that an authority shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and an authority shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan. Not withstanding this subdivision (2), in residential neighborhoods, an authority may impose generally applicable standards hat limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(A) Not contiguous with paved roads or alleys on which vehicles are permitted;

(B) Located along the rear of residential lots; and

(C) Subject to a generally applicable restriction that no electric distribution or telephone utility poles are permitted to be deployed;

(3) In residential neighborhoods, deploy new PSS in a ROW to be located within twenty-five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and may require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller;

(4) Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public road ways or to other utility facilities placed in a ROW based on generally applicable and nondiscriminatory requirements im posed by the authority; and

(5) Require maintenance or relocation of infrastructure deployed in the ROW; timely removal of infrastructure no longer utilized; and insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the authority applies such requirements generally to entities entitled to deploy infrastructure in ROW based on generally applicable and nondiscriminatory requirements imposed by the authority.

**13-24-412. Private right of action.**

Any party aggrieved by the failure of an authority to act in accordance with this part may seek remedy in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility, unless the claim seeks a remedy against the state, in which case the claim must be brought in the chancery court of Davidson County. The court may order an appropriate remedy to address any action inconsistent with this part.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3.

(a)The Tennessee Advisory Commission on Intergovernmental Relations shall study and prepare a report on the impact of this act, including:

(1) The impact on deployment of broadband;

(2) The fiscal impact on authorities resulting from the administrative process required by this act;

(3) Best practices from the perspective of applicants and authorities;

(4) Best practices in other states and identify opportunities to advance the quality of transportation in this state by utilizing technological applications, sometimes referred to as "smart transportation applications," that are supported by small wireless facilities; and

(5) Recommendations for changes to this act based on the study's findings.

(b) The report must be delivered to the chairs of the house business and utilities committee of the house of representatives and commerce and labor committee of the senate by January 1, 2021.

SECTION 4.

(a) All applications to deploy or colocate small wireless facilities that are pending on the date this act becomes law shall be granted or denied consistent with the substantive requirements of this act within either ninety (90) days of the effective date of this act or ninety (90) days from the date such applications were originally submitted, whichever is later.

(b) For all applications submitted after the effective date of this act but before July 1, 2018, the applicable review periods shall not begin to run until July 1, 2018. Beginning on July 1, 2018 and thereafter, the review periods established herein shall be calculated consistent with the actual date such applications are filed.

SECTION 5. Except for the review periods established in Section 1 in § 13-24-409, all other provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

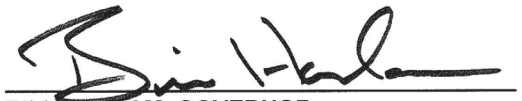
**HOUSE BILL NO. 2279**

**PASSED: April 12, 2018**

**BETH HARWELL, SPEAKER**
**HOUSE OF REPRESENTATIVES**

**RANDY MCNALLY**
**SPEAKER OF THE SENATE**

**APPROVED this 24th day of April 2018**



**BILL HASLAM, GOVERNOR**

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

# Section 3

**Section-by-Section Summary of Public Chapter 819**

**13-24-402 Key Definitions**

**Aesthetic Plan** - Any written resolution, regulation, policy, site plan or approved plat that is publically available and establishes generally applicable aesthetic requirements within the boundaries of a municipality or metropolitan government or a designated area within the boundaries of a municipality or metropolitan government. An aesthetic plan may include language that limits its applicability to construction or deployment that occurs after adoption of the aesthetic plan. Limiting the applicability to construction or deployment that occurs after adoption of the aesthetic plan is not discriminatory as long as all construction and deployment occurring after adoption is subject to the plan.

**Applicant -** Any person who submits and application for deployment or colocation of small wireless facilities.

**Authority** - The municipality or metropolitan government within a municipal boundary. The definition does not include a government-owned electric, gas, water or wastewater utility that is a part of or affiliated with a municipality or metropolitan government. The decision of a utility related to a request to attach to or modify the plant, facilities or equipment owned by the utility is not governed by this legislation.

**Authority-owned PSS** - a PSS owned by a municipality or metropolitan government but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is owned by investors, a cooperative or a governmental entity.

**Colocate, colocation, and collocating** - mean to install, mount, maintain, modify, operate or replace a small wireless facility on, adjacent to, or related to a PSS.

**Micro wireless facility** - a small cell that does not exceed 24 inches in length and 15 inches in width and 12 inches in height with an exterior antenna, if there is one, which does not exceed 11 inches in length.

**Potential support structure for a small wireless facility or PSS -** a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage or any similar function, including poles installed solely for the colocation of small cells. "New PSS" means a PSS that does not exist at the time application is made and includes, but is not limited to, a PSS that will replace an existing pole. An applicant must file and application, have it approved and satisfy all the requirements of this part being authorized to collocate on, modify, or replace a PSS.

**Residential neighborhood** - an area with a municipality or metropolitan government's boundaries that is zoned or designated by the municipality or metropolitan government as an area primarily used for single-family residences and not multiple commercial properties. Ten area must have speed limits and traffic controls consistent with residential areas.

**Right-of-way or ROW** - The space in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of a municipality or metropolitan government, and any unrestricted utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such by the municipality or metropolitan government. Only applies to streets.

**Small wireless facility**- a wireless facility with an antenna that can fit within an enclosure of no more than 6 cubic feet in volume and other wireless equipment that is cumulatively no more than 28 cubic feet in volume, whether ground-mounted or pole-mounted. "Other wireless equipment" does not include electric meters, concealment elements, telecommunication demarcation boxes, grounding equipment, power transfer switches, cut-off switches, or a vertical cable run for the connection of power and other services.

**13-24-403 Construction and applicability of part**

The language in this legislation does not apply to deployment of infrastructure outside of the ROW or cellphone towers or monopoles governed by T.C.A. §§ 13-24-304 and 13-24-305.

**13-24-404 Local Option and Local Preemption**

Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments **shall not** impose limits, requirements, policies, or processes that are:

(1) More restrictive than requirements, policies, or processes set forth in the legislation;
(2) In excess of what is granted in the legislation; or
(3) Otherwise in conflict with the legislation.

Any limits, requirements, policies or processes put in place by municipalities and metropolitan governments that are more restrictive, conflict with, or in excess of what is granted by the legislation are void, regardless of the date enacted or the date the requirement, policy, or process became law.

When a municipality or metropolitan government does not require an application or work permits for deployment of infrastructure within the ROW, an applicant **must provide** notice of the colocation to the chief administrative officer of the city. The notice must include:

1. A preliminary site plan with a diagram or engineering drawing showing the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government 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;
2. The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;
3. 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;
4. The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;
5. The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
6. 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.

**13-24-405 Existing Law Unaffected**

1. Municipalities and metropolitan governments **are not** permitted to create regulatory jurisdiction over communication services that does not exist under current law; and
2. Municipalities and metropolitan governments are not permitted to restrict access to ROWs granted by T.C.A. § 65-21-201 (related to telephone lines) or expand access authorized pursuant to T.C.A. § 54-16-112 (related to underground fiber optic cable);
3. Municipalities and metropolitan governments **are not** permitted to create a local tax in the form of ROW taxes, rates or fees that exceed the cost-based fees authorized under existing law;
4. This legislation **does not alter or exempt** any entity from the franchising requirement for providing video services or cable services set out in T.C.A., Title 7, Chapter 59.
5. This legislation **does not alter the requirements or exempt** any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any other facility pursuant to T.C.A., Title 54, Chapter 5, Part 8 (utility relocation due to highway construction, expansion or improvement) or other similar generally applicable requirements imposed on entities who deploy infrastructure in the ROW.
6. Municipalities and metropolitan governments **are permitted** to enforce non-discriminatory breakaway sign post requirement and safety regulations generally imposed for all structures within a ROW;
7. Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory vegetation control requirements upon entities that deploy infrastructure in the ROW. Must be for the purpose of limiting the chance of any damage or injury that might result from infrastructure being obscured by vegetation; and
8. Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory generally applicable local rules related to removal of unsafe, abandoned, or inoperable obstructions in the ROW.

**13-24-406 Prohibited activities**

Municipalities and metropolitan governments **are not** permitted to:

1. Enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells;
2. Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other utilities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in the ROW;
3. Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in the ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in the ROW may be applied to prohibit an applicant's deployment of a new PSS in the ROW; and
4. Except as otherwise provided in state law or through this legislation, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

**13-24-407 Uniform local authority fees for deployment of small wireless facilities; exceptions**

Municipalities and metropolitan governments **are permitted** to assess an applicant:

1. A maximum application fee of $100 each for the first 5 small wireless facilities and $50 each for additional small wireless facilities in a single application.
2. An additional fee of $200 for the first application an applicant files following the effective date of this act.
3. Beginning January 1, 2020 and every 5 year interval after that, a maximum application fee that that is 10% more than what was previously permitted.
4. The maximum annual rate for colocation of a small wireless facility on a municipal or metropolitan government-owned PSS is $100;
5. The same fees that other entities performing construction in ROW are assessed for generally applicable work and traffic permits.

Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To pay fees or reimbursement costs for services and assistance related to the deployment of small wireless facilities, provided by consultants or third parties to the municipality or metropolitan government. Consultants and third parties may be retained, but the fees and costs for the consultants must be paid by the using the funds of the municipality or metropolitan government;
2. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
3. To pay any rental fees, access fees or site license fees for the initial deployment and continuing presence of a small wireless facility, aside from the application fees, permit fees and colocation rates set in this section;
4. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
5. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
6. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104;
7. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW; or
8. To perform services directly or indirectly for the municipality or metropolitan government or provide in-kind donations, such as reserving fiber, conduit, or pole space for the municipality or metropolitan government in exchange for deployment of small wireless facilities. However, a municipality or metropolitan government **is permitted** to approve an application to colocate where the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the municipality or metropolitan government.

Municipalities and metropolitan governments **are permitted** to require applicants to obtain generally applicable work or traffic permits and pay the same applicable fees for

these permits, for deployment of a small wireless facility or new PSS, as long as the permits and fees are required of other providers undertaking construction in the ROW.

**13-24-408 Uniform local authority requirements for the deployment and maintenance of small wireless facilities; exceptions.**

Municipalities and metropolitan governments **are not permitted *to***:

1. Restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities or prohibit colocation on PSSs, **except that municipalities and metropolitan governments shall require:**

   (A) A new PSS installed or an existing PSS replaced in the ROW not to exceed the greater of:

   (a) 10 ft in height above the tallest PSS in place as of the effective date of this part, that is located within 500 ft. of the new PSS in the ROW;

   (b) The tallest existing PSS that is located within 500 ft. of the new PSS and is also located in the same residential area;

   (c) 50 ft above ground level; or

   (d) 40 ft. above ground level in residential neighborhoods.

   (B) Municipalities and metropolitan governments ***may also require*** that a small wireless facility deployed in the ROW after the effective date of this part shall not extend:

   (a) More than 10 ft. above an existing PSS in place as of the effective date of this part; or

   (b) On a new PSS, 10 ft. above the height permitted for a new PSS under this section.

Municipalities and metropolitan governments **are permitted** to require an applicant to comply with undergrounding requirements in the ROW when:

1. The municipality or metropolitan government has required all electric, communications, and cable facilities, other than municipal or metropolitan government-owned PSSs and attachments to be placed underground prior to the date upon which the application is submitted;
2. The municipality or metropolitan government does not prohibit the replacement of municipal or metropolitan government -owned PSSs in the designated area when the design for the new PSS meets the governmental entity's design aesthetic plan and all other applicable criteria in this part; and
3. The applicant can seek a waiver of the undergrounding requirements for the placement of a new PSS to support small wireless facilities and the approval or lack thereof is nondiscriminatory.

With few limitations, municipalities and metropolitan governments **are permitted** to require reasonable, nondiscriminatory and technology neutral design and concealment measures in historic districts if:

1. The design or concealment measure does not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility and the municipality or metropolitan government permits alternative design and concealment measures that are reasonably similar; and
2. The design or concealment measures are not considered part of the small wireless facility for purposes of meeting the size requirements in the definition of "small wireless facility."

Municipalities and metropolitan governments **are still authorized** to enforce historic preservation zoning regulations and several federal provisions related to historic zoning.

Municipalities and metropolitan governments **are not permitted** to require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network.

Municipalities and metropolitan governments **are not permitted** to limit the placement of small wireless facilities by imposing minimum separation requirements for small wireless facilities or the structures on which the facilities are collocated.

Municipalities and metropolitan governments **are permitted** to provide general guidance regarding preferred designs and may request consideration of design alternatives in accordance with the conference process set out in 13-24-409(b).

Municipalities and metropolitan governments **are permitted** to prohibit colocation on governmental entity-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events. In order to qualify for this exception, a municipality or metropolitan government must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to application. A governmental entity may grant a waiver to allow colocation on these PPS, if the applicant demon-

strates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements.

Municipalities and metropolitan governments **are required** to take ownership of replacement PSS. Maintenance and repair obligations for the replacement PSS are as follows:

For municipality or metropolitan government-owned PSS that was used for lighting, the municipality or metropolitan government **can require** the lighting to be included on the replacement PSS and then both the PSS and the lighting become property of the governmental entity, after an inspection is completed of the new PSS to ensure that it is in working condition and any lighting is equivalent to the quality and standards of lighting on the PSS prior to replacement. The municipality or metropolitan government becomes responsible for the electricity and ordinary maintenance of the PSS after a satisfactory inspection, but is not responsible for providing electricity to or the maintenance or repair of the small wireless facility collocated on the governmental entity's PSS.

Municipalities and metropolitan governments ***may*** conduct periodic training sessions or seminars relevant to the deployment of small wireless facilities and best practices. Requires applicants to make a good faith effort to participate in sessions.

**13-24-409 Uniform application procedures for local authorities.**

Municipalities and metropolitan governments **are permitted** to require applicants to seek permission, through an application, to collocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain 1 or more generally applicable work permit. The applications are to be processed on a nondiscriminatory basis.

When a municipality or metropolitan government requires an application to be submitted, the governmental entity **must:**

1. Allow the applicant to include up to 20 small wireless facilities in a single application;
2. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government ***must*** tell the applicant specifically what is missing in writing at the time the applicant is notified.
3. Notify the applicant within 30 days of receiving an application if there is a need to have a conference related to the design of one or more small wireless facilities in an application. Issues that may be addressed by the conference include:
   (1) safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety- related alterations to the design;
   (2) potential of conflict with another applicant's application for the same or a nearby location;
   (3) impact of planned construction or other public works projects at or near the location identified by the application;
   (4) alternative design options that may enable colocation on existing PSS instead of deployment of new PSS or opportunities and potential benefits of alternatives design that would incorporate other features or elements of benefit to the municipality or metropolitan government. The fact that alternatives exist does not constitute the basis for denial of an application that otherwise satisfies all requirements of this legislation and generally applicable standards for construction in the ROW.
4. If there are multiple small wireless facilities within an application, specify which ones about which they need to conference. The time frame for review of these applications shall be extended from 60 days to 75 days. The municipality or metropolitan government **must** schedule the conference and allow the applicant to attend via telephone. The 75 day period is not tolled while for the conference, unless the applicant agrees to an extension. However, there shall not be an additional extension past the 75 days if the applicant also submits applications for deployment or colocation of more than 30 small wireless facilities within 30 days with the same municipality or metropolitan government. The time frame for review is capped at 75, unless the parties each agree to an extension.
5. Approve or deny all applications for deployment or colocation of small wireless facilities within 60 days, unless an extension is authorized under this part. A municipality or metropolitan government is only permitted to deny an application when the application fails to demonstrate compliance with all generally applicable requirements that the governmental entity imposes on all entities entitled to deploy infrastructure in the ROW and the requirements set out in this legislation.
6. The municipality or metropolitan government **is not permitted** to deny an entire application because some of the small wireless facilities contained therein do not meet the requirements. If the application or a portion of it is not approved or denied within 60 days,

it is deemed approved, unless it has been extended pursuant to the language in this section.

7. The 60 day review period **can only be extended or tolled** when:

   (a) The municipality or metropolitan government sends notice to an applicant that the application is incomplete, within 30 days of the initial filing; however, the tolling ceases once the additional information is provided to the municipality or metropolitan government. The governmental entity is permitted to deny an application and require a new supplication to be filed, if the missing information is not provided within 30 days of the date that the notice was provided.

   (b) The parties agree to toll the 60 days;

   (c) A conference is requested and the time frame is extended to 75 days as mentioned above;

   (d) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 30 and fewer than 50 small wireless facilities within any 30 day period. The review period is extended to 75 days, but cannot be further extended for a conference.

   (e) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate 50 or more small wireless facilities within any 30 day period. The review period is extended to 90 days, but cannot be further extend ed for a conference.

   (f) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 120 small wireless facilities within any 60 day period. When this happens, the governmental entity is permitted to send notice to the applicant that the applicant can either pay a surcharge of $100 per small wireless facility to the entity within 5 days of receiving the notice to have specifically identified small wireless facilities reviewed within the applicable time frame. If no small wireless facilities are specifically identified or the surcharge is not paid within the 5 day period, the municipality or metropolitan government has 120 days to review these applications.

If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government ***may deny*** the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

If a municipality or metropolitan government denies an application, a written explanation of a denial **must be provided** at the same time that the application is denied.

At the time an application is approved and the design includes the replacement or construction of a new PSS, a municipality or metropolitan government **may require** the applicant to provide a professional engineer's certification that the installation of the new PSS is consistent with the approved design as well as all generally applicable safety and engineering standards.

An applicant **may provide** a revised application after a denial. If the revised application cures the deficiencies identified in the denied application and the revised application is filed within 30 days of the denial, the applicant **cannot be assessed** an additional application fee. The revised application is to be approved or denied within 30 days of being submitted. The municipality or metropolitan government is required to limit the review the revised application to the deficiencies cited in the denial or deficiencies related to changes on the revised application that were not contained in the original application.

A municipality or metropolitan government is not permitted to discontinue its application process or prohibit deployment under the terms of this part until an application process is put in place.

A municipality or metropolitan government may only require an applicant to provide the following information in an application:

(a) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government 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;

(b) The location of the site, including the latitude and longitudinal coordinates of the specific location of the site;

(c) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval fromthe third party;

(d) The applicant's identifying information and the

identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of emergency related to the small wireless facility;

(e) The applicant's certification of compliance with surety bond, insurance or indemnification requirements, rules requiring maintenance of infrastructure deployed in ROW, requiring relocation or timely removal of infrastructure in ROW no longer utilized, and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the municipality or metropolitan government imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(f) 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. Requires the standards relevant to engineering to be certified by a licensed professional engineer.

If an applicant does not complete deployment within 9 months of an application being approved, the municipality or metropolitan government **may require** the applicant to complete a new application and pay an additional application fee, unless the parties agree to an extension or the deployment is delayed because of a lack of commercial power or communications transport facilities to the site. When a municipality or metropolitan government receives multiple applications for deployment or colocation of small wireless facilities at the same location in an incompatible manner, the governmental entity **may deny** the later filed application.

A municipality or metropolitan government **may designate** a safety contact for any colocation design that includes attachment of any facility or structure to a bridge or overpass. After the applicant's construction is complete, the applicant shall provide to such 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, the applicant is required to provide notice of the evidence to the safety contact.

**13-24-410 Provisions applicable solely to the state as an authority** *(OMITTED)*

**13-24-411 Authority powers preserved.**

Municipalities and metropolitan governments **may require** an applicant to:

1. Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;
2. Comply with ADAAG standards adopted to achieve compliance with the ADA, including PROWAG, if adopted, any other measures necessary for public safety;
3. Prohibit obstruction of the legal use of the ROW by utilities;
4. Follow an aesthetic plan established by the municipality or metropolitan government for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure a ROW, except that a municipality or metropolitan government shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and a governmental entity shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan.
5. Limit deployment or colocation of small wireless facilities in public utility easements when the easements are:
   (a) Not contiguous with paved roads or alleys on which vehicles are permitted;
   (b) Located along the rear of residential lots; and
   (c) In an area where no electric distribution or telephone utility poles are permitted to be deployed
6. In a residential neighborhood, deploy new PSS in a ROW to be located within twenty five feet (25') from the property boundaries separating residential

lots larger than three-quarters of an acre in size and require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller.

7. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
8. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

**13-24-412 Private right of action.**

Any party aggrieved by the failure of an authority to act in accordance with this part may seek relief in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility. The court may order appropriate relief to address a violation of this legislation.

**Effective Date**

Except for T.C.A. § 13-24-409 that contains the review periods, all other provisions of the legislation were effective April 24, 2018.

All applications to deploy or collocate that **were pending** on the effective date of the legislation (April 24, 2018) must be approved or denied in a manner that is consistent with the substantive requirements of the legislation, within either 90 days of the effective date of the legislation or 90 days from the date the application was originally submitted, whichever is later.

For all applications **submitted after** the effective date of the legislation (April 24, 2018) but **before July 1, 2018,** the applicable review periods begin to run on July 1, 2018.

For all applications submitted **on or after July 1, 2018**, the review periods will begin to run on the date the application was filed.

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

# Section 4

**Quick Reference Guide**

*(Alphabetical Order)*

## Aesthetics Plan

*Definitions:* Aesthetic Plan - Any written resolution, regulation, policy, site plan or approved plat that is publically available and establishes generally applicable aesthetic requirements within the boundaries of a municipality or metropolitan government or a designated area within the boundaries of a municipality or metropolitan government. An aesthetic plan may include language that limits its applicability to construction or deployment that occurs after adoption of the aesthetic plan. Limiting the applicability to construction or deployment that occurs after adoption of the aesthetic plan is not discriminatory as long as all construction and deployment occurring after adoption is subject to the plan.

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **may require** an applicant to:

1. Follow an aesthetic plan established by the municipality or metropolitan government for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure a ROW, except that a municipality or metropolitan government shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and a governmental entity shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan.

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **are not permitted** to require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network.

### Application Requirements

T.C.A. § 13-24-407- Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
2. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
3. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
4. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104;
5. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW; or

*T.C.A. § 13-24-407*- When a municipality or metropolitan government requires an application to be submitted, the governmental entity must:

1. Allow the applicant to include up to 20 small wireless facilities in a single application;
2. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government **must** tell the applicant specifically what is missing in writing at the time the applicant is notified.

*T.C.A. § 13-24-409*- If a municipality or metropolitan government denies an application, a written explanation of a denial must be provided at the same time that the application is denied.

*T.C.A. § 13-24-409*- At the time an application is approved and the design includes the replacement or construction of a new PSS, a municipality or metropolitan government may require the applicant to provide a professional engineer's certification that the installation of the new PSS is consistent with the approved design as well as all generally applicable safety and engineering standards.

*T.C.A. § 13-24-409*- An applicant may provide a revised application after a denial. If the revised application cures the deficiencies identified in the denied application and the revised application is filed within 30 days of the denial, the applicant cannot be assessed an additional application fee. The revised application is to be approved or denied within 30 days of being submitted. The municipality or metropolitan government is required to limit the review the revised application to the deficiencies cited in the denial or deficiencies related to changes on the revised application that

were not contained in the original application.

*T.C.A. § 13-24-409*- A municipality or metropolitan government **is not permitted** to discontinue its application process or prohibit deployment under the terms of this part until an application process is put in place.

*T.C.A. § 13-24-409*- A municipality or metropolitan government may only require an applicant to provide the following information in an application:

(a) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government 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;
(b) The location of the site, including the latitude and longitudinal coordinates of the specific location of the site;
(c) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval from the third party;
(d) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of emergency related to the small wireless facility;
(e) The applicant's certification of compliance with surety bond, insurance or indemnification requirements, rules requiring maintenance of infrastructure deployed in ROW, requiring relocation or timely removal of infrastructure in ROW no longer utilized, and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the municipality or metropolitan government imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
(f) 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. Requires the standards relevant to engineering to be certified by a licensed professional engineer.

**Concealment**

*T.C.A. § 13-24-408*- With few limitations, municipalities and metropolitan governments are **permitted** to require reasonable, nondiscriminatory and technology neutral design and concealment measures in historic districts if:

1. The design or concealment measure does not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility and the municipality or metropolitan government permits alternative design and concealment measures that are reasonably similar; and
2. The design or concealment measures are not considered part of the small wireless facility for purposes of meeting the size requirements in the definition of "small wireless facility."

*T.C.A. § 13-24-408*- Municipalities and metropolitan governments **are still authorized** to enforce historic preservation zoning regulations and several federal provisions related to historic zoning.

*T.C.A. § 13-24-408*- Municipalities and metropolitan governments **are permitted** to provide general guidance regarding preferred designs and may request consideration of design alternatives in accordance with the conference process set out in 13-24-409(b).

**Distance Requirement**

*T.C.A. § 13-24-408* - Municipalities and metropolitan governments **are not permitted** to limit the placement of small wireless facilities by imposing minimum separation requirements for small wireless facilities or the structures on which the facilities are collocated.

**Effective Date**

Except for T.C.A. § 13-24-409 that contains the review periods, all other provisions of the legislation were effective April 24, 2018.

All applications to deploy or collocate that **were pending** on the effective date of the legislation (April 24, 2018) must be approved or denied in a manner that is consistent with the substantive requirements of the legislation, within either 90 days of the effective date of the legislation or 90

days from the date the application was originally submitted, whichever is later.

For all applications **submitted after** the effective date of the legislation (April 24, 2018) **but before July 1, 2018,** the applicable review periods begin to run on July 1, 2018.

For all applications submitted **on or after July 1, 2018**, the review periods will begin to run on the date the application was filed.

**Exclusive Agreements**

*T.C.A. § 13-24-406*- Municipalities and metropolitan governments **are not** permitted to enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells.

**General Limitations**

*T.C.A. § 13-24-404*- Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments **shall not** impose limits, requirements, policies, or processes that are:

1. More restrictive than requirements, policies, or processes set forth in the legislation;
2. In excess of what is granted in the legislation; or
3. Otherwise in conflict with the legislation.

**Fees and Rates**

*T.C.A. § 13-24-407*- Municipalities and metropolitan governments **are permitted** to assess an applicant:

1. A maximum application fee of $100 each for the first 5 small wireless facilities and $50 each for additional small wireless facilities in a single application.
2. An additional fee of $200 for the first application an applicant files following the effective date of this act.
3. Beginning January 1, 2020 and every 5 year interval after that, a maximum application fee that that is 10% more than what was previously permitted.
4. (4) The maximum annual rate for colocation of a small wireless facility on a municipal or metropolitan government-owned PSS is $100;
5. The same fees that other entities performing construction in ROW are assessed for generally applicable work and traffic permits.

*T.C.A. § 13-24-407*- Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To pay fees or reimbursement costs for services and assistance related to the deployment of small wireless facilities, provided by consultants or third parties to the municipality or metropolitan government. Consultants and third parties may be retained, but the fees and costs for the consultants must be paid by the using the funds of the municipality or metropolitan government;
2. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
3. To pay any rental fees, access fees or site license fees for the initial deployment and continuing presence of a small wireless facility, aside from the application fees, permit fees and colocation rates set in this section;
4. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
5. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
6. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104; or
7. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

**General Limitations**

*T.C.A. § 13-24-404*- Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments **shall not** impose limits, requirements, policies, or processes that are:

1. More restrictive than requirements, policies, or processes set forth in the legislation;
2. In excess of what is granted in the legislation; or
3. Otherwise in conflict with the legislation.

**In-kind Donations**
*T.C.A. § 13-24-407*- Municipalities and metropolitan governments **<u>are not permitted</u>** to require an applicant to perform services directly or indirectly for the municipality or metropolitan government or provide in-kind donations, such as reserving fiber, conduit, or pole space for the municipality or metropolitan government in exchange for deployment of small wireless facilities.

**Legal Action**
*T.C.A. § 13-24-412*- Any party aggrieved by the failure of an authority to act in accordance with this part may seek relief in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility. The court may order appropriate relief to address a violation of this legislation.

**Mast Arm**
*T.C.A. § 13-24-408*- Municipalities and metropolitan governments **<u>are permitted</u>** to prohibit colocation on governmental entity-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events. In order to qualify for this exception, a municipality or metropolitan government must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to application. A governmental entity may grant a waiver to allow colocation on these PPS, if the applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements.

**Multiple Applications for the Same Location**
*T.C.A. § 13-24-409*- When a municipality or metropolitan government receives multiple applications for deployment or colocation of small wireless facilities at the same location in an incompatible manner, the governmental entity ***may deny*** the later filed application.

**Notice**
*T.C.A. § 13-24-404* - When a municipality or metropolitan government does not require an application or work permits for deployment of infrastructure within the ROW, an applicant must provide notice of the colocation to the chief administrative officer of the city. The notice must include:

1. A preliminary site plan with a diagram or engineering drawing showing the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government 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;
2. The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;
3. 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;
4. The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;
5. The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
6. 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.

**Ownership, Maintenance, and Repair**
*T.C.A. § 13-24-408*- Municipalities and metropolitan governments **<u>are required</u>** to take ownership of replacement PSS. Maintenance and repair obligations for the replacement PSS are as follows:

*T.C.A. § 13-24-408*- For municipality or metropolitan government-owned PSS that was used for lighting, the municipality or metropolitan government **<u>can require</u>** the light-

ing to be included on the replacement PSS and then both the PSS and the lighting become property of the governmental entity, after an inspection is completed of the new PSS to ensure that it is in working condition and any lighting is equivalent to the quality and standards of lighting on the PSS prior to replacement. The municipality or metropolitan government becomes responsible for the electricity and ordinary maintenance of the PSS after a satisfactory inspection, but is not responsible for providing electricity to or the maintenance or repair of the small wireless facility collocated on the governmental entity's PSS.

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **may require** an applicant to:

1. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
2. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

**Pole Height**

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are not permitted** to:

1. Restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities or prohibit colocation on PSSs, **except that municipalities and metropolitan governments shall require**:
   (A) A new PSS installed or an existing PSS replaced in the ROW not to exceed the greater of:
      (a) 10 ft in height above the tallest PSS in place as of the effective date of this part, that is located within 500 ft. of the new PSS in the ROW;
      (b) The tallest existing PSS that is located within 500 ft. of the new PSS and is also located in the same residential area;
      (c) 50 ft above ground level; or
      (d) 40 ft. above ground level in residential neighborhoods.

   (B) Municipalities and metropolitan governments may also require that a small wireless facility deployed in the ROW after the effective date of this part shall not extend:
      (a) More than 10 ft. above an existing PSS in place as of the effective date of this part; or
      (b) On a new PSS, 10 ft. above the height permitted for a new PSS under this sec tion.

**Public Utility Easement**

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **may require** an applicant to limit deployment or colocation of small wireless facilities in public utility easements when the easements are:
   (a) Not contiguous with paved roads or alleys on which vehicles are permitted;
   (b) Located along the rear of residential lots; and
   (c) In an area where no electric distribution or telephone utility poles are permit ted to be deployed.

**ROW**

*Definition:* ***Right-of-way or ROW*** - The space in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of a municipality or metropolitan government, and any unrestricted utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such by the municipality or metropolitan government. Only applies to streets.

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are not** permitted to restrict access to ROWs granted by T.C.A. § 65-21-201 (related to telephone lines) or expand access authorized pursuant to T.C.A. § 54-16-112 (related to underground fiber optic cable);

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are not** permitted to create a local tax in the form of ROW taxes, rates or fees that exceed the cost-based fees authorized under existing law;

T.C.A. § 13-24-405- This legislation **does not alter or exempt** any entity from the franchising requirement for providing video services or cable services set out in T.C.A., Title 7, Chapter 59.

*T.C.A. § 13-24-405*- This legislation **does not alter the requirements or exempt** any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any other facility pursuant to T.C.A., Title 54, Chapter 5, Part 8 (utility relocation due to highway construction, expansion or improvement) or other similar generally applicable requirements imposed on entities who deploy infrastructure in the ROW.

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory vegetation control requirements upon entities that deploy infrastructure in the ROW. Must be for the purpose of limiting the chance of any damage or injury that might result from infrastructure being obscured by vegetation; and

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory generally applicable local rules related to removal of unsafe, abandoned, or inoperable obstructions in the ROW.

*T.C.A. § 13-24-406*- Municipalities and metropolitan governments **are not** permitted to:

1. Enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells;
2. Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other utilities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in the ROW;
3. Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in the ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in the ROW may be applied to prohibit an applicant's deployment of a new PSS in the ROW; and
4. Except as otherwise provided in state law or through this legislation, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **may require** an applicant to:

1. Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;
2. Comply with ADAAG standards adopted to achieve compliance with the ADA, including PROWAG, if adopted, any other measures necessary for public safety;
3. Prohibit obstruction of the legal use of the ROW by utilities;

*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **may require** an applicant to deploy new PSS in a residential neighborhood, in a ROW to be located within twenty five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller.

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **may require** an applicant to:

3. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
4. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **may require** an applicant to limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(d) Not contiguous with paved roads or alleys on which vehicles are permitted;

(e) Located along the rear of residential lots; and

(f) In an area where no electric distribution or telephone utility poles are permitted to be deployed.

**Shot Clock**

*T.C.A. § 13-24-409* - When a municipality or metropolitan government requires an application to be submitted, the governmental entity must:

3. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government **must** tell the applicant specifically what is missing in writing at the time the applicant is notified.
4. Notify the applicant within 30 days of receiving an application if there is a need to have a conference related to the design of one or more small wireless facilities in an application. Issues that may be addressed by the conference include:
   (1) safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;
   (2) potential of conflict with another applicant's application for the same or a nearby location;
   (3) impact of planned construction or other public works projects at or near the location identified by the application;
   (4) alternative design options that may enable colocation on existing PSS instead of deployment of new PSS or opportunities and potential benefits of alternatives design that would incorporate other features or elements of benefit to the municipality or metropolitan government. The fact that alternatives exist does not constitute the basis for denial of an application that otherwise satisfies all requirements of this legislation and generally applicable standards for construction in the ROW.
5. If there are multiple small wireless facilities within an application, specify which ones about which they need to conference. The time frame for review of these applications shall be extended from 60 days to 75 days. The municipality or metropolitan government **must** schedule the conference and allow the applicant to attend via telephone. The 75 day period is not tolled while for the conference, unless the applicant agrees to an extension. However, there shall not be an additional extension past the 75 days if the applicant also submits applications for deployment or colocation of more than 30 small wireless facilities within 30 days with the same municipality or metropolitan government. The time frame for review is capped at 75, unless the parties each agree to an extension.
6. Approve or deny all applications for deployment or colocation of small wireless facilities within 60 days, unless an extension is authorized under this part. A municipality or metropolitan government is only permitted to deny an application when the application fails to demonstrate compliance with all generally applicable requirements that the governmental entity imposes on all entities entitled to deploy infrastructure in the ROW and the requirements set out in this legislation.
7. The municipality or metropolitan government **is not permitted** to deny an entire application because some of the small wireless facilities contained therein do not meet the requirements. If the application or a portion of it is not approved or denied within 60 days, it is deemed approved, unless it has been extended pursuant to the language in this section.
8. The 60 day review period can only be extended or tolled when:
   (a) The municipality or metropolitan government sends notice to an applicant that the application is incomplete, within 30 days of the initial filing; however, the tolling ceases once the additional information is provided to the municipality or metropolitan government. The governmental entity **is permitted** to deny an application and require a new supplication to be filed, if the missing information is not provided within 30 days of the date that the notice was provided.
   (b) The parties agree to toll the 60 days;
   (c) A conference is requested and the time frame is extended to 75 days as mentioned above;
   (d) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 30 and fewer than 50 small wireless facilities within any 30 day period. The review period is extended to 75 days, but cannot be further extended for a conference.
   (e) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate 50 or more small wireless facilities within any 30 day period. The review period is extended to 90 days, but cannot be further extended for a conference.
   (f) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 120 small wireless facilities within any 60 day period. When this happens, the governmental entity is permitted to send notice to the applicant that the applicant can either pay a sur-

charge of $100 per small wireless facility to the entity within 5 days of receiving the notice to have specifically identified small wireless facilities reviewed within the applicable time frame. If no small wireless facilities are specifically identified or the surcharge is not paid within the 5 day period, the municipality or metropolitan government has 120 days to review these applications.

*T.C.A. § 13-24-409* - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government may deny the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

**Signs**

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are permitted** to enforce non-discriminatory breakaway sign post requirement and safety regulations generally imposed for all structures within a ROW.

*T.C.A. § 13-24-409* - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government may deny the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

**Timeframe for Deployment**

***T.C.A. § 13-24-409***- If an applicant does not complete deployment within 9 months of an application being approved, the municipality or metropolitan government **may require** the applicant to complete a new application and pay an additional application fee, unless the parties agree to an extension or the deployment is delayed because of a lack of commercial power or communications transport facilities to the site.

**Undergrounding**

*T.C.A. § 13-24-408* - Municipalities and metropolitan governments **are permitted** to require an applicant to comply with undergrounding requirements in the ROW when:

1. The municipality or metropolitan government has required all electric, communications, and cable facilities, other than municipal or metropolitan government-owned PSSs and attachments to be placed underground prior to the date upon which the application is submitted;
2. The municipality or metropolitan government does not prohibit the replacement of municipal or metropolitan government -owned PSSs in the designated area when the design for the new PSS meets the governmental entity's design aesthetic plan and all other applicable criteria in this part; and
3. The applicant can seek a waiver of the undergrounding requirements for the placement of a new PSS to support small wireless facilities and the approval or lack thereof is nondiscriminatory.

**Work Permits**

*T.C.A. § 13-24-407* - Municipalities and metropolitan governments **are permitted** to require applicants to obtain generally applicable work or traffic permits and pay the same applicable fees for these permits, for deployment of a small wireless facility or new PSS, as long as the permits and fees are required of other providers undertaking construction in the ROW.

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

# Section 5

**"May" or "May Not" Quick Reference Guide**

**Aesthetics Plan**
**May:**
***T.C.A. § 13-24-411*** - Municipalities and metropolitan governments **may require** an applicant to:

1. Follow an aesthetic plan established by the municipality or metropolitan government for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure a ROW, except that a municipality or metropolitan government shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and a governmental entity shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan.

**May Not:**
*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **are not permitted** to require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network.

**Application Requirements**
**May or Must:**
*T.C.A. § 13-24-407* - When a municipality or metropolitan government requires an application to be submitted, the governmental entity **must:**

1. Allow the applicant to include up to 20 small wireless facilities in a single application;
2. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government must tell the applicant specifically what is missing in writing at the time the applicant is notified.

*T.C.A. § 13-24-409* - If a municipality or metropolitan government denies an application, a written explanation of a denial **must** be provided at the same time that the application is denied.

*T.C.A. § 13-24-409* - At the time an application is approved and the design includes the replacement or construction of a new PSS, a municipality or metropolitan government **may require** the applicant to provide a professional engineer's certification that the installation of the new PSS is consistent with the approved design as well as all generally applicable safety and engineering standards.

*T.C.A. § 13-24-409* - A municipality or metropolitan government **may only** require an applicant to provide the following information in an application:

(a) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government 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;
(b) The location of the site, including the latitude and longitudinal coordinates of the specific location of the site;
(c) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval from the third party;
(d) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of emergency related to the small wireless facility;
(e) The applicant's certification of compliance with surety bond, insurance or indemnification requirements, rules requiring maintenance of infrastructure deployed in ROW, requiring relocation or timely removal of infrastructure in ROW no longer utilized, and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the municipality or metropolitan government imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
(f) 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. Requires the standards relevant to engineering to be certified by a licensed professional engineer.

**May Not:**

*T.C.A. § 13-24-407*- Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
2. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
3. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
4. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104;
5. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW; or

*T.C.A. § 13-24-409* - An applicant may provide a revised application after a denial. If the revised application cures the deficiencies identified in the denied application and the revised application is filed within 30 days of the denial, the applicant **cannot be** assessed an additional application fee. The revised application is to be approved or denied within 30 days of being submitted. The municipality or metropolitan government is required to limit the review the revised application to the deficiencies cited in the denial or deficiencies related to changes on the revised application that were not contained in the original application.

*T.C.A. § 13-24-409* - A municipality or metropolitan government **is not permitted** to discontinue its application process or prohibit deployment under the terms of this part until an application process is put in place.

**Concealment**

**May:**

*T.C.A. § 13-24-408* - With few limitations, municipalities and metropolitan governments **are permitted** to require reasonable, nondiscriminatory and technology neutral design and concealment measures in historic districts if:

1. The design or concealment measure does not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility and the municipality or metropolitan government permits alternative design and concealment measures that are reasonably similar; and
2. The design or concealment measures are not considered part of the small wireless facility for purposes of meeting the size requirements in the definition of "small wireless facility."

*T.C.A. § 13-24-408* - Municipalities and metropolitan governments **are still authorized** to enforce historic preservation zoning regulations and several federal provisions related to historic zoning.

*T.C.A. § 13-24-408* - Municipalities and metropolitan governments **are permitted** to provide general guidance regarding preferred designs and may request consideration of design alternatives in accordance with the conference process set out in 13-24-409(b).

**Distance Requirement**

**May Not:**

*T.C.A. § 13-24-408* - Municipalities and metropolitan governments are not permitted to limit the placement of small wireless facilities by imposing minimum separation requirements for small wireless facilities or the structures on which the facilities are collocated.

**Exclusive Agreements**

**May Not:**

*T.C.A. § 13-24-406* - Municipalities and metropolitan governments are not permitted to enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells.

**Fees and Rates**

**May:**

*T.C.A. § 13-24-407* - Municipalities and metropolitan governments **are permitted** to assess an applicant:

1. A maximum application fee of $100 each for the first 5 small wireless facilities and $50 each for additional small wireless facilities in a single application.
2. An additional fee of $200 for the first application an applicant files following the effective date of this act.
3. Beginning January 1, 2020 and every 5 year interval after that, a maximum application fee that that is 10% more than what was previously permitted.
4. The maximum annual rate for colocation of a small wireless facility on a municipal or metropolitan govern-

ment-owned PSS is $100;
5. The same fees that other entities performing construction in ROW are assessed for generally applicable work and traffic permits.

**May Not:**
*T.C.A. § 13-24-407* - Municipalities and metropolitan governments **are not permitted** to require applicants:
1. To pay fees or reimbursement costs for services and assistance related to the deployment of small wireless facilities, provided by consultants or third parties to the municipality or metropolitan government. Consultants and third parties may be retained, but the fees and costs for the consultants must be paid by the using the funds of the municipality or metropolitan government;
2. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
3. To pay any rental fees, access fees or site license fees for the initial deployment and continuing presence of a small wireless facility, aside from the application fees, permit fees and colocation rates set in this section;
4. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
5. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
6. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104; or
7. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

**General Limitations**
**May/ May Not**:
*T.C.A. § 13-24-404* - Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments shall not impose limits, requirements, policies, or processes that are:
1. More restrictive than requirements, policies, or processes set forth in the legislation;
2. In excess of what is granted in the legislation; or
3. Otherwise in conflict with the legislation.

**In-kind Donations**
**May Not:**
*T.C.A. § 13-24-407* - A municipality or metropolitan government **is not permitted** to require an applicant to perform services directly or indirectly for the municipality or metropolitan government or provide in-kind donations, such as reserving fiber, conduit, or pole space for the municipality or metropolitan government in exchange for deployment of small wireless facilities.

**May:**
*T.C.A. § 13-24-407*- A municipality or metropolitan government **is permitted** to approve an application to colocate where the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the municipality or metropolitan government.

**Mast Arm**
**May:**
T.C.A. § 13-24-408- Municipalities and metropolitan governments **are permitted** to prohibit colocation on governmental entity-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events. In order to qualify for this exception, a municipality or metropolitan government must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to application. A governmental entity may grant a waiver to allow colocation on these PPS, if the applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements.

**Multiple Applications for the Same Location**
**May:**
*T.C.A. § 13-24-409* - When a municipality or metropolitan government receives multiple applications for deployment or colocation of small wireless facilities at the same location in an incompatible manner, the governmental entity **may deny** the later filed application.

**Notice**
**Must:**

*T.C.A. § 13-24-404* - When a municipality or metropolitan government does not require an application or work permits for deployment of infrastructure within the ROW, an applicant **must provide** notice of the colocation to the chief administrative officer of the city. The notice must include:

1. A preliminary site plan with a diagram or engineering drawing showing the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government 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;
2. The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;
3. 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;
4. The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;
5. The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
6. 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.

**Ownership, Maintenance, and Repair**
**Must:**

T.C.A. § 13-24-408- Municipalities and metropolitan governments ***are required*** to take ownership of replacement PSS. Maintenance and repair obligations for the replacement PSS are as follows:

**May:**

*T.C.A. § 13-24-408* - For municipality or metropolitan government-owned PSS that was used for lighting, the municipality or metropolitan government **may require** the lighting to be included on the replacement PSS and then both the PSS and the lighting become property of the governmental entity, after an inspection is completed of the new PSS to ensure that it is in working condition and any lighting is equivalent to the quality and standards of lighting on the PSS prior to replacement. The municipality or metropolitan government becomes responsible for the electricity and ordinary maintenance of the PSS after a satisfactory inspection, but is not responsible for providing electricity to or the maintenance or repair of the small wireless facility collocated on the governmental entity's PSS.

*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **may require** an applicant to:

1. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
2. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

**Pole Height**
**May Not and Must:**

*T.C.A. § 13-24-408* - Municipalities and metropolitan governments **are not permitted** to:

1. Restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities or prohibit colocation on PSSs, **except that municipalities and metropolitan governments shall require:**
   (A) A new PSS installed or an existing PSS replaced in the ROW not to exceed the greater of:

(a) 10 ft in height above the tallest PSS in place as of the effective date of this part, that is located within 500 ft. of the new PSS in the ROW;

(b) The tallest existing PSS that is located within 500 ft. of the new PSS and is also located in the same residential area;

(c) 50 ft above ground level; or

(d) 40 ft. above ground level in residential neighborhoods.

(B) Municipalities and metropolitan governments may also require that a small wireless facility de ployed in the ROW after the effective date of this part shall not extend:

(a) More than 10 ft. above an existing PSS in place as of the effective date of this part; or

(b) On a new PSS, 10 ft. above the height permitted for a new PSS under this section.

**Public Utility Easement**
**May:**

*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **may require** an applicant to limit deployment or co-location of small wireless facilities in public utility easements when the easements are:

(a) Not contiguous with paved roads or alleys on which vehicles are permitted;

(b) Located along the rear of residential lots; and

(c) In an area where no electric distribution or telephone utility poles are permitted to be deployed.

**ROW**
**May:**

*T.C.A. § 13-24-405* - This legislation **does not alter or exempt** any entity from the franchising requirement for providing video services or cable services set out in T.C.A., Title 7, Chapter 59.

*T.C.A. § 13-24-405* - This legislation **does not alter the requirements or exempt** any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any other facility pursuant to T.C.A., Title 54, Chapter 5, Part 8 (utility relocation due to highway construction, expansion or improvement) or other similar generally applicable requirements imposed on entities who deploy infrastructure in the ROW.

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory vegetation control requirements upon entities that deploy infrastructure in the ROW. Must be for the purpose of limiting the chance of any damage or injury that might result from infrastructure being obscured by vegetation; and

*T.C.A. § 13-24-405*- Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory generally applicable local rules related to removal of unsafe, abandoned, or inoperable obstructions in the ROW.

T.C.A. § 13-24-411 -Municipalities and metropolitan governments ***may require*** an applicant to:

1. Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;
2. Comply with ADAAG standards adopted to achieve compliance with the ADA, including PROWAG, if adopted, any other measures necessary for public safety;
3. (3) Prohibit obstruction of the legal use of the ROW by utilities;

*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **may require** an applicant to deploy new PSS in a residential neighborhood, in a ROW to be located within twenty five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller.

*T.C.A. § 13-24-411*- Municipalities and metropolitan governments **may require** an applicant to:

3. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
4. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or met-

ropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

*T.C.A. § 13-24-411* - Municipalities and metropolitan governments **may require** an applicant to limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(d) Not contiguous with paved roads or alleys on which vehicles are permitted;
(e) Located along the rear of residential lots; and
(f) In an area where no electric distribution or telephone utility poles are permit ted to be deployed.

**May Not:**

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are not** permitted to restrict access to ROWs granted by T.C.A. § 65-21-201 (related to telephone lines) or expand access authorized pursuant to T.C.A. § 54-16-112 (related to underground fiber optic cable);

*T.C.A. § 13-24-405* - Municipalities and metropolitan governments **are not** permitted to create a local tax in the form of ROW taxes, rates or fees that exceed the cost-based fees authorized under existing law;

*T.C.A. § 13-24-406* - Municipalities and metropolitan governments **are not** permitted to:

1. Enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells;
2. Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other utilities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in the ROW;
3. Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in the ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in the ROW may be applied to prohibit an applicant's deployment of a new PSS in the ROW; and
4. Except as otherwise provided in state law or through this legislation, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

**Shot Clock**

**Must:**

*T.C.A. § 13-24-409* - When a municipality or metropolitan government requires an application to be submitted, the governmental entity **must:**

3. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government must tell the applicant specifically what is missing in writing at the time the applicant is notified.
4. Notify the applicant within 30 days of receiving an application if there is a need to have a conference related to the design of one or more small wireless facilities in an application. Issues that may be addressed by the conference include:
   (1) safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;
   (2) potential of conflict with another applicant's application for the same or a nearby location;
   (3) impact of planned construction or other public works projects at or near the location identified by the application;
   (4) alternative design options that may enable colocation on existing PSS instead of deployment of new PSS or opportunities and potential benefits of alternatives design that would incorporate oth er features or elements of benefit to the municipality or metropolitan government. The fact that alternatives exist does not constitute the basis for denial of an application that otherwise satisfies all requirements of this legislation and generally appli cable standards for construction in the ROW.
5. If there are multiple small wireless facilities within an application, specify which ones about which they need to conference. The time frame for review of these applications shall be extended from 60 days to 75 days. The municipality or metropolitan government **must** schedule the conference and allow the applicant to attend via telephone. The 75 day period is not tolled while for the conference, unless the applicant agrees to an extension. However, there shall not be an additional extension past the 75 days if the applicant also submits applications for deployment or colocation of more than 30 small wire-

less facilities within 30 days with the same municipality or metropolitan government. The time frame for review is capped at 75, unless the parties each agree to an extension.

6. Approve or deny all applications for deployment or colocation of small wireless facilities within 60 days, unless an extension is authorized under this part. A municipality or metropolitan government is only permitted to deny an application when the application fails to demonstrate compliance with all generally applicable requirements that the governmental entity imposes on all entities entitled to deploy infrastructure in the ROW and the requirements set out in this legislation.
7. The 60 day review period **may only** be extended or tolled when:
   (a) The municipality or metropolitan government sennotice to an applicant that the application is in complete, within 30 days of the initial filing; however, the tolling ceases once the additional information is provided to the municipality or metropolitan government. The governmental entity **is permitted** to deny an application and require a new supplication to be filed, if the missing information is not provided within 30 days of the date that the notice was provided.
   (b) The parties agree to toll the 60 days;
   (c) A conference is requested and the time frame is extended to 75 days as mentioned above;
   (d) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 30 and fewer than 50 small wireless facilities within any 30 day period. The review period is extended to 75 days, but cannot be further extended for a conference.
   (e) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate 50 or more small wireless facilities within any 30 day period. The review period is extended to 90 days, but cannot be further extended for a conference.
   (f) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 120 small wireless facilities within any 60 day period. When this happens, the governmental entity is permitted to send notice to the applicant that the applicant can either pay a surcharge of $100 per small wireless facility to the entity within 5 days of receiving the notice to have specifically identified small wireless facilities reviewed within the applicable time frame. If no small wireless facilities are specifically identified or the surcharge is not paid within the 5 day period, the municipality or metropolitan government has 120 days to review these applications.

*T.C.A. § 13-24-409* - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government **may deny** the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

**May Not**:

*T.C.A. § 13-24-409* - The municipality or metropolitan government **is not permitted** to deny an entire application because some of the small wireless facilities contained therein do not meet the requirements. If the application or a portion of it is not approved or denied within 60 days, it is deemed approved, unless it has been extended pursuant to the language in this section.

**Signs**

**May:**

*T.C.A. § 13-24-405*- Municipalities and metropolitan governments **are permitted** to enforce non-discriminatory breakaway sign post requirement and safety regulations generally imposed for all structures within a ROW.

*T.C.A. § 13-24-409* - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government **may deny** the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

**Timeframe for Deployment**
**May:**
*T.C.A. § 13-24-409*- If an applicant does not complete deployment within 9 months of an application being approved, the municipality or metropolitan government **may require** the applicant to complete a new application and pay an additional application fee, unless the parties agree to an extension or the deployment is delayed because of a lack of commercial power or communications transport facilities to the site.

**Undergrounding**
**May:**
*T.C.A. § 13-24-408* - Municipalities and metropolitan governments **are permitted** to require an applicant to comply with undergrounding requirements in the ROW when:

1. The municipality or metropolitan government has required all electric, communications, and cable facilities, other than municipal or metropolitan government-owned PSSs and attachments to be placed underground prior to the date upon which the application is submitted;
2. The municipality or metropolitan government does not prohibit the replacement of municipal or metropolitan government -owned PSSs in the designated area when the design for the new PSS meets the governmental entity's design aesthetic plan and all other applicable criteria in this part; and
3. The applicant can seek a waiver of the undergrounding requirements for the placement of a new PSS to support small wireless facilities and the approval or lack thereof is nondiscriminatory.

**Work Permits**
**May:**
*T.C.A. § 13-24-407*- Municipalities and metropolitan governments are permitted to require applicants to obtain generally applicable work or traffic permits and pay the same applicable fees for these permits, for deployment of a small wireless facility or new PSS, as long as the permits and fees are required of other providers undertaking construction in the ROW.