Rev. 09/2023

TITLE 20

MISCELLANEOUS

CHAPTER

CHAPTER 1

ALARM SYSTEMS

SECTION

20-101. Installations in police department communications center. No burglar or fire alarms will be installed in the police department communications center for monitoring purposes. Those alarms already installed shall be removed no later than December 1, 1992. (Ord. #1992-28, Sept. 1992)

20-102. Definitions. For the purpose of this chapter, the following terms shall have the following meanings:

(1) "Activate" means to "set off" an alarm system indicating in any manner an incidence of burglary, robbery, panic, fire, water pressure or any other similar type situation.

(2) "Alarm system" means any mechanical or electrical/electronic or radio controlled device which is designed to be used for the detection of any fire or unauthorized entry into a building, structure or facility, or for alerting others of fire or of the commission of an unlawful act within a building, structure or facility, or both, or for indicating hold up, panic or water pressure alerting which emits a sound or transmits a signal or message when activated. Alarm systems include, but are not limited to, direct dial telephone devices, audible alarms and monitored alarms. Excluded from the definition of alarm systems are devices which are designed or used to register alarms that are audible or visible and emanate from any motor vehicle; auxiliary devices installed by telephone companies to protect telephone systems from damage or disruption of service and self-contained smoke detectors.

(3) "Automatic dialing device" means an alarm system which automatically sends over regular or cellular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect, but shall not include such telephone lines exclusively dedicated to an alarm central station which are permanently active and terminate within the communication center of the Hendersonville Police Department, which may be in use by the City of Hendersonville.

(4) "Commercial premise" means any structure or area which is not defined herein as residential premises.

(5) "False alarm" means the activation of an alarm system through mechanical failure, malfunction, improper installation, or the negligence or intentional misuse by the owner or lessee of an alarm system or his employees, servants or agents; or any other activation of the alarm system not caused by a fire or a forced entry or robbery or attempted robbery or the emergency situation the system is designated to detect; such terminology does not include alarms caused by acts of nature such as hurricanes, tornadoes, other severe weather conditions, or alarms caused by telephone line trouble, or other alarms caused by utility company personnel. A maximum of three (3) false burglar alarms; two (2) false robber/panic alarms; and three (3) false fire alarms, will be granted per alarm device within a fiscal permit year. All false subsequent activation will be considered chargeable violations.

(6) "Fire officer" means the fire chief of the Hendersonville fire department or his designated representatives.

(7) "Law enforcement officer" means the Chief of Police of the Hendersonville Police Department or his designated representatives.

(8) "Panic alarm" means the activation of an alarm system by a device manually operated by the user to summon help.

(9) "Person" means any natural person, firm, partnership, association, corporation, company or organization of any kind, to exclude a government or governmental subdivision or agency thereof.

(10) "Residential premises" means structure or combination of structures which serve as dwelling units including single family as well as multi-family units. (Ord. #1992-28, Sept. 1992)

20-103. Notification and permits required. Every person who shall own, operate or lease any alarm system as defined within the City of Hendersonville, whether existing or to be installed in the future, shall, prior to use of the alarm system, give notice to the Hendersonville police department, on forms provided, and obtain a permit. The information submitted on the forms shall include:

(1) The type, make and model of each alarm device and, if the alarm system is monitored, by whom.

(2) Whether installed in residential or commercial premises.

(3) The name, address, business and/or home telephone number of the owner or lessee of the alarm system.

(4) The names, addresses and telephone numbers of at least two (2) persons to be notified in the event of an alarm activation, including the name, address, telephone number and at least one local person to be responsible for the alarm system, who shall respond within 30 minutes.

(5) All newly constructed buildings provided with an alarm system shall have a key box meeting the key requirements of the fire department, with the exception of one and two family dwellings and locations approved by the fire official. The key box shall contain all the keys necessary to gain entry to property. If access to a property is controlled by gates or other restrictive devices, access locks or override devices shall be provided meeting the key requirements of the fire department. The key box shall be installed in a location approved by the fire official. (Ord. #1992-28, Sept. 1992, Ord. # 2003-43, October, 2003)

20-104. Duties of permit holders. (1) Each owner, operator or lessee shall be responsible for training employees, servants or agents in the proper operation of an alarm system.

(2) Each owner, operator or lessee of an alarm system shall insure that the correct address identification and emergency contact number are on file with the City of Hendersonville.

(3) The current alarm registration sticker provided each permittee shall be displayed so as to be easily visible from outside the building.

(4) Any audible alarm shall be equipped with an automatic shut off to function within twenty (20) minutes of the alarm sounding, excluding fire alarms. (Ord. #1992-28, Sept. 1992)

20-105. Violations. (1) It shall be a violation of this chapter to have a functional alarm system without having obtained a permit as required by § 20-103. First offenders of this subsection shall be given a written warning with no fine.

(2) Having an alarm activated without a permit shall constitute a violation of this chapter.

(3) It shall be a violation of this chapter when any Hendersonville Police Department or Fire Department officer responds to a false alarm after the allowable false alarms set out in § 20-102(5) have been exhausted.

(4) Any person who owns, operates or leases an alarm system, or his designated representative, who shall knowingly and purposefully fail to respond to his premises within 30 minutes after notification by fire or police personnel of alarm activation, whether false or not, shall be deemed to have violated this chapter.

(5) It shall be a violation of this chapter for an alarm company to make functional a newly installed alarm system if the owner, operator or lessee of the alarm system does not have a currently valid alarm permit.

(6) It shall be a violation of this chapter for an alarm company to set off a false alarm while installing, repairing or doing maintenance work on an alarm system, without prior notification to the Hendersonville Police Department. If the fire or police department is notified to cancel the call within three (3) minutes of the original call, it will not be considered a false alarm, unless the responding Hendersonville officer arrives on the scene before the original call is cancelled. Three cancellations will be granted within a fiscal permit year.

(7) Any non-compliance with the requirements of this chapter shall constitute a violation and each incidence of non-compliance shall constitute a separate violation, punishable as provided in §§ 20-107 and 20-110. (Ord. #1992-28, Sept. 1992, as amended by Ord. #1995-26, June 1995)

20-106. Automatic dialing devices. It shall be a violation of this chapter for any automatic dialing device to call into the police or fire department directly, either on regular business lines or on 911 emergency lines. (Ord. #1992-28, Sept. 1992)

20-107. Request for alarm permit; revocation/appeals. (1) After a third (3rd) false burglary alarm, a second (2nd) false robber/panic alarm or a third (3rd) false fire alarm, or other third (3rd) emergency situation not covered above, or upon failure of the permit holder to make a reasonable effort to comply with the requirements of this chapter, or show corrective action, the chief of police or fire chief or their representatives may file a request for revocation of the permit with the board of adjustment and appeals, where revocation shall occur unless the permit holder files an appeal in writing to the board of adjustment and appeals within fifteen (15) calendar days from the date the request for revocation is filed with the board. The law enforcement officer or fire officer shall notify the permit holder that a request for revocation has been filed with the board of adjustment and appeals and the date on which it is filed. An appeal by the permit holder shall be accompanied by an appeals fee of fifty dollars ($50). Appeals upheld by the board will result in a refund of the appeals fee.

(2) The chief of police or his designated representative is hereby designated as custodian of board of adjustment and appeals records on alarm revocation hearings. (Ord. #1992-28, Sept. 1992)

20-108. Response to false alarm -- required reports of corrective action and disconnection. (1) The only alarms the Hendersonville police and fire departments will respond to are:

(a) Burglary (residential and business)
(b) Robbery/hold up (business only)
(c) Kidnapping (residential and business)
(d) Fire (residential and business)
(e) Medical (residential)
(f) Panic (residential only).

(2) Responsibility for a false alarm shall be borne by the owner, lessee, operator or user of the alarm system or his/her employee, servant or agent occupying and/or controlling the premises at the time of the occurrence of the false alarm.

(3) A response to an alarm shall result when any fire or police department officer is dispatched to or otherwise learns of the activation of any alarm system. If the user calls or the authorized agent calls the dispatcher back within three minutes of the original call, it will not be considered a false alarm, unless the responding Hendersonville officer has already arrived before the call to cancel has been made.

(4) After the allowable false alarms set out in § 20-102(5), each person who owns, operates, leases or controls any premise, commercial or residential, having an alarm system, shall be cited to Hendersonville City Court for any response to a false alarm. Within ten (10) calendar days of the date of citation, the person shall show proof to the police or fire department of the corrective action taken to remedy the situation. Failure to show corrective action will be grounds for revocation of the permit, however, no disconnection shall be ordered on any premises required by law to have an alarm system in operation. (Ord. #1992-28, Sept. 1992)

20-109. Enforcement. Hendersonville police and fire department officers are specifically authorized to enforce this chapter. Any Hendersonville police or fire officer may lawfully issue a citation to an owner, lessee, operator or user of a functional alarm system who has not obtained the permit required by § 20-103, or whose alarm system has given a false alarm in excess of the number allowed under § 20-102(5). (Ord. #1992-28, Sept. 1992)

20-110. Fines. Violation of this chapter shall result in fines no less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) per offense. (Ord. #1992-28, Sept. 1992, modified)

CHAPTER 2

RECYCLING CENTERS

SECTION

20-201. Types of centers. A "Recycling Drop-off Center" as herein regulated includes any location having one (1) or more portable units used for the temporary or permanent storage of materials to be recycled, and either buys or accepts materials from the general public to be sent or sold to a recycling facility and is located within the corporate limits of the City of Hendersonville.

Recycling Drop-Off Centers are divided into three (3) categories:

(1) TYPE I: Permanent Recycling Drop-Off Center: a center that has two (2) or more portable units and that remains in the same location more than twelve (12) hours per week.

(2) TYPE II: Temporary Recycling Drop-Off Center: a center that is in the same location less than twelve (12) hours per week and all of those hours being on the same day.

(3) TYPE III: Small Recycling Drop-off Center: a center with no more than one (1) portable unit for the storage of recyclable materials, whether the center is temporary or permanent. (Ord. #1991-66, Nov. 1991)

20-202. Regulations for centers. (1) TYPE I: (a) Must be entirely enclosed by either a fence or housed within a structure, or other means in such a manner that the portable units cannot be used by the public except during the hours of operation; and

(b) Must be manned by at least one person during all hours of operation.

(2) TYPE II: (a) Does not need to be enclosed by a fence or housed within a structure; and

(b) Must be manned from the time of the portable unit or units' arrival until departure.

(3) TYPE III: (a) Does not need to be enclosed by a fence or housed within a structure; and

(b) Does not need to be manned. (Ord. #1991-66, Nov. 1991)

20-203. Maintenance of centers. (1) TYPE I: (a) Must maintain their areas and remove all unrecylables that are left by the public at the end of the hours of operation; and

(b) All overflow recyclable materials of any units must be removed from visibility of the public at the end of the hours of operation.

(2) TYPE II: (a) Must maintain their areas and remove all un-recyclables that are left by the public at the departure of the bins; and

(b) All overflow recyclable materials of any units must be removed at the departure of the bins.

(3) TYPE III: (a) Must maintain their areas and remove all un-recyclables that are left by the public on a daily basis; and

(b) All overflow recyclable materials of any units must be removed on a daily basis. (Ord. #1991-66, Nov. 1991)

20-204. Violations. Repeated violations of these operating standards will be grounds for the closure of the Recycling Drop-Off Center. "Repeated violation" as used herein means two (2) or more violations within any thirty (30) days. A violation is established by a citation into city court, and a finding that this chapter has been violated. (Ord. #1991-66, Nov. 1991)

CHAPTER 3

TITLE II OF ADA DISCRIMINATION PROCEDURES

SECTION

20-301. Procedures for complaint of Title II of ADA discrimination. In order to maintain a grievance procedure for those individuals wishing to voice a concern regarding Title II of ADA disability discrimination in any of the city's programs, services and activities the following procedures shall be used:

(1) Any individual(s) wishing to file a complaint shall do so in writing to the City Administrator and the board secretary.

(2) If the City Administrator is unable to resolve the complaint satisfactorily, he shall then notify the chairman of the general committee.

(3) The chairman of the general committee shall place the complaint on the agenda at the next regular scheduled general committee meeting and shall report its finding to the board of mayor and aldermen at their next regularly scheduled meeting.

The decision of the board of mayor and aldermen shall be final and binding on all parties. (Ord. #2020-38, January 2021)

CHAPTER 4

MAYORAL ASSISTANT FOR EMERGENCY MANAGEMENT AND RISK MANAGEMENT, SAFETY AND ADA COORDINATOR

SECTION

20-401. Created. As provided in Tennessee Code Annotated, title 6, chapter 22 there is hereby created a mayoral assistant for Emergency Management and Risk Management, Safety and ADA Coordinator. (Ord. #1970-44, Jan. 1971, modified)

20-402. Director appointed; compensation. The mayoral assistant for Emergency Management and Risk Management, Safety and ADA Coordinator shall be headed by a director who shall be appointed by the mayor. Salary for the Emergency Management Officer shall be fixed by the board of mayor and aldermen. (Ord. #1970-44, Jan. 1971, modified)

CHAPTER 5

PARK AND RECREATION REGULATIONS

SECTION

20-501. Definitions. Unless otherwise expressly stated, whenever used in this chapter the following terms shall respectively mean and include each of the meanings set forth:

(1) "The board": The Hendersonville Board of Parks and Recreation.

(2) "Park": The term park or parks unless specifically limited, will be deemed to include all parks, parkways, playgrounds, athletic fields, tennis courts, golf courses, swimming pools, beaches, and other recreation areas and amenities serving thereto, under the control of the board and/or within the City of Hendersonville.

(3) "Permit": Any written authorization issued by or under the authority of the board for a specified park privilege permitting the performance of a specified act or acts in the park.

(4) "Owner": Any person owning, operating or having the use or control of a vehicle, animal or other property under a lease or otherwise.

(5) "Police officer": Any member of the Police Department of Hendersonville and Sumner County, Tennessee, and any other Hendersonville employee who is designated special police and appointed and sworn by the City Administrator and any law enforcement officer employed by the United States Government, the State of Tennessee or a sub-division thereof.

(6) "Bridle path": Any path or road maintained for persons riding on horseback.

(7) "Foot path": Any path, road, or trail maintained for pedestrians.

(8) "Bicycle path": Any path, road, or trail maintained for persons riding on bicycles, but not motorized motorcycles.

(9) "Bathing areas": Any area maintained for the use of bathers including the water area and lands under water adjacent thereto under the jurisdiction board.

(10) "Playground area": Any area maintained or designated as a playground, and including all territory under the supervision and control of the
board adjacent to and within twelve (12) feet thereof.

(11) "Safety zone": Any space within any park so designated by appropriate signs.

(12) "Omnibus": Shall include any vehicle held and used for transportation of passengers for hire.

(13) "Unnecessary stopping": Bringing a vehicle to a complete stop on a parkway, or a road in a park other than a parking space, or other than in conformity with traffic regulations or other than because of any emergency. (Ord. #1978-38, Sept. 1978, modified, Ord. 2020-19, July 2020)

20-502. Construction and scope. (1) Construction. In the interpretation of this chapter affecting parks, its provisions shall be construed as follows:

(a) Any term in the singular shall include the plural;

(b) Any term in the masculine shall include the feminine and neuter;

(c) Any requirement or provisions of these rules and regulations relating to any act shall respectively extend to and include the causing, procuring, aiding, or abetting, directly or indirectly, of such act; or the permitting or allowing of any minor in the custody of any persons, doing any act prohibited by any provision thereof;

(d) No provisions hereof shall make unlawful any act necessarily performed by any officer or employee of the Department of Parks and Recreation in line of duty or work as such, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the board;

(e) Any act otherwise prohibited by this chapter, provided it is not otherwise prohibited by law, shall be lawful if performed under, by virtue of and strictly in compliance with the provisions of a permit and to the extent authorized thereby;

(f) This chapter is in addition to and supplements all municipal, state and federal laws and ordinances.

(2) Territorial scope. This chapter effecting parks shall be effective throughout, within and upon all areas under the supervision and control of the board, and/or other publicly owned recreation areas in the City of Hendersonville, and shall regulate the use thereof by all persons. (Ord. #1978-38, Sept. 1978)

20-503. Prohibited uses. (1) Property, drives, bridges and equipment. No person shall injure, deface, displace, remove, fill in, raise, destroy, or tamper with any property, facility, or equipment, real or personal owned or leased by the Hendersonville Government or under the supervision or control of the board.

(2) Trees, shrubs, flowers and grass. No person shall in any park destroy, cut, break, deface, mutilate, injure, disturb, sever from the ground or remove any growing thing. No person shall attach any posters, or directional signs to trees.

(3) Littering, rubbish, refuse and pollution. (a) Littering, rubbish, refuse. No-person shall take into, carry through, leave in, or throw, cast, lay, drop or discharge into or on any park any rubbish of any sort in any recreation area.

No person shall place household refuse and garbage in receptacles which are provided solely for litter resulting from normal park use.

(b) Pollution of waters. No person shall throw, or discharge into the waters in any park, any substance, which may result in the pollution of the waters.

(4) Advertising. No person shall distribute, display, transport, carry or construct any flag, banner, sign, emblem, model, device, pictorial representation, or other matter, within any park for advertising or political purposes, or cause noise to be made in any park for the purpose of advertising, unless such activity is expressly approved by the board of parks and recreation, subject to such conditions and restrictions as said board deems proper.

(5) Disorderly conduct. No person shall, in any park:

(a) Disobey the lawful and reasonable order of a police officer or park employee in the discharge of their duties or disobey or disregard the notices,

prohibitions, instructions or directions on any park sign, including rules and regulations posted on the grounds or buildings.

(b) Use threatening, abusive or insulting language.

(c) Do any obscene or indecent act.

(d) Throw, cast or propel stones or other missiles.

(e) Solicit alms, subscriptions or contributions for any purpose.

(f) Interfere with, encumber, obstruct or render dangerous any part of a park.

(g) Climb or lie upon any wall, fence, shelter, seat, statue, monument or other structure.

(h) Do any act tending to or amounting to a breach of peace.

(i) Enter or leave any park facility except at established entrance ways or exits, or at established times; or use or gain admittance to the facilities in any park for the use of which a charge is made without paying the charge or price fixed by the board.

(j) Engage in, instigate, or encourage a dispute or fight.

(k) Jump off of any bridge structure into water.

(l) Plan any games of chance, sell futures, or participate in the conduct of a lottery.

(m) Engage in any acts within the parks, on park equipment, park buildings, shelters, concession stands, playgrounds, restrooms, and any other areas that would be outside the scope of its intended use, or in dangerous manner. (Ord. 2020-8, May, 2020)

(6) Explosives, firearms, and weapons. No person shall bring into or have in his possession in any park any firearms slingshots, firecrackers, torpedoes, fireworks or other missile-propelling instruments or explosives, except city employees in the performance of their duties, or other individuals duly authorized by the city fire marshall.

(7) Aviation. No person shall voluntarily bring, land or cause to descend or alight within or upon any park, any airplane, flying machine, balloon, parachute or other apparatus for aviation, unless such activity is expressly approved by the board of parks and recreation, subject to such conditions and restrictions as said board deems proper.

(8) Camping. No person shall tent or camp or erect or maintain a tent, shelter or camp in any park, unless in a designated area.

(9) Permits. A permit to do any act shall authorize the act only insofar as it may be performed in strict accordance with the written terms and conditions thereof. Any violations of any law, ordinance, provisions of this code, or rule or regulation of the board or of any other Hendersonville Department by the holder or the agents or employees of the holder of any permit of any term or condition thereof, shall constitute grounds for revocation of the board or by its authorized representative, whose action therein shall be final. In case of revocation of any permit, all monies paid for or on account thereof shall, at the opinion of the board, be forfeited to and be retained by the government; and the holder of such permit, together with his agents and employees who violated such permit, shall be jointly and severally liable to the Government of Hendersonville for all damages and loss suffered by it in excess of money so forfeited.

(10) Exhibitions, parade, racing, etc. No person shall erect any structure, stand or platform, exhibit dramatic performance or show of any kind or nature; or parade, or hold any athletic contest; in any park except in accordance with the rules and regulations of the board.

(11) Rules and regulations. The board shall adopt, promulgate and enforce such rules and regulations consistent with the proper use and protection of the park property under its supervision and control, and consistent with this chapter.

(12) Meetings, etc. No person shall erect any structure, hold any meeting, perform any ceremony, make a speech, address or oration in any park except by permit issued by the board or its authorized representative. The board shall establish criteria for approval and denial of permits.

(13) Picnics and outings. The board is authorized to adopt, promulgate and enforce rules and regulations governing picnics or outings consistent with the proper use and protection of park property.

(14) Peddling, sales, photographs, etc. No person shall, in any park or to any person in any park, exhibit, sell or offer for sale, hire, lease or let out any object or merchandise, or service of commercial nature, except under a permit issued by the board.

(15) Protection of animals. No person shall within any park, attempt to chase, molest, kill, wound, or trap, any feral animal, reptile, bird, bird's nest or squirrel's nest or remove the young of any such animal or the eggs or young of any such reptile or bird.

(16) Fires, lighted cigars, etc. No person shall kindle, build, maintain, or use a fire except in fireplaces provided or in self-supporting barbecue grills or stoves in designated picnic areas or under special permit. Any fire shall be continuously under the care and direction of a competent person over eighteen years of age from the time it is kindled until it is extinguished. No person shall throw away or discard any lighted match, cigar or cigarette in any park or park-street.

(17) Boating. No boat or vessel shall be laid up, stored, repaired or placed, except at boat launchings, for any other purpose on park land except by permits.

(18) Games. No person shall in any park engage in any sport, game or competition in places specifically prohibited.

(19) Animals at large. No person owning or being custodian or having control of any animal shall cause or permit such animal to go at large in the park.

(20) Horses or beasts of burden. No person shall use, lead, ride, or drive a horse or other beast of burden in any park, except on designated bridle paths, or along routes customarily used for access to and from bridle paths, unless otherwise authorized by the board.

(21) Hours. No person shall remain in any park between the hours of 11:00 o'clock P.M. and one-half hour before sunrise without permission from the board or its authorized representative. The board may in its discretion, alter park closing times. The board may establish different closing times for different parks.

(22) Alcoholic beverages. It shall be unlawful for any person to possess or have under his control beer, ale, or other alcoholic beverages in any public park or recreation area, except as allowed by city ordinances regulating the sale of beer or ale.

(23) Traffic control. All persons shall at all times comply with direction of the police officers and park employees indicated by gesture or otherwise in using parks and shall further comply with directions on traffic signs along the routes in the parks.

(24) Speed limits. No person shall drive a vehicle within any park at a speed greater than is reasonable and prudent under the conditions then existing. Where no special hazard exists, the maximum speed limit in all parks shall be twenty miles per hour unless otherwise posted.

(25) Restrictions on vehicles. Vehicles including trailers, carrying merchandise, or samples of merchandise, or other commercial vehicles are prohibited from entering any park except to make deliveries to the park.

(26) Soliciting passengers. No person shall solicit passengers for any automobile, coach, taxi, omnibus or other vehicle in any park except in such areas as may be designated.

(27) Hitchhiking. No person shall in any park or park-street attempt to stop or stop by any visible or audible sign or signal, any vehicle for the purpose of soliciting a ride, except in case of emergency,

(28) Careful driving. No person shall in any park, operate or drive or propel, and no owner thereof shall cause or permit to be operated, driven or propelled any vehicle recklessly or negligently or at a speed or in such a manner as to endanger or injure persons or property.

(29) Restricted areas. No person shall in any park, drive or operate a vehicle off of paved roadways or in restricted areas.

(30) Driving instructions. Instructions in operating automobiles or motorcycles is prohibited in parks at all times.

(31) Obstructing traffic. No person shall cause or permit any vehicle to obstruct traffic in any park, or to stop such vehicle except at those places specifically designated or maintained for the purposes of stopping or parking, except in cases of emergency.

(32) Towing and projecting articles. No person shall cause or permit a vehicle to be towed by another vehicle in any park, except that in case of a breakdown, a disabled vehicle may be towed to the nearest exit. Licensed towing operators may enter such park in response to a call from an owner or operator of a disabled vehicle, or by the park's employees or a police officer.

(33) Working on vehicles. No person shall in any park, grease, lubricate, or make repairs to any vehicle except those of a minor nature and then only in cases of emergency. (Ord. #1978-38, Sept. 1978, as amended by Ord. #1988-89, Aug. 1988, Ord. #1989-59, Jan. 1990, and Ord. #1993-27, June 1993)

20-504. Parks sponsorships adopted. Sponsorships from for-profit entities for Parks Department programs, events, projects, and sites in order to enhance and sustain the parks and recreation system in such a manner that respects the non-commercial nature of public places are approved to be pursued.

20-505. Purpose. Guidelines and procedures are intended to guide the Parks Department staff in reaching agreements with sponsors and aid potential sponsors to understand the opportunities and constraints of a parks and recreation sponsorship.

20.506. Definitions. (1) Sponsorship: financial or in-kind support from any entity for a specific program, event, project, or site in exchange for tangible and intangible benefits to the sponsor. For the sponsor that can include but is not limited to:

(a) Marketing opportunities (product promotion and temporary advertising) on City property.

(b) Authorization by the department for the business to promote its investment with the department and association with department programs.

(c) Name association (name title) for an event, program, or project.

(2) Gifts: a freely given donation of goods, cash, or real property to the department, preferably with no exception of return (a "condition" to the gift). Gifts may be designed for a specific purpose or may be general in nature. Recognition for donors and donations is determined by the City.

(3) Advertising: signage created by the for-profit entity (usually placed in designated purchased space) to promote a product or business. Advertising generally is not allowed in designated parks, parkways, greenways, natural areas, recreation facilities, or outside other park buildings. The permanent placement of a corporate logo, brand, or product placement in a public park or facility is considered advertising and is not allowed unless part of an approved sponsorship agreement for an event, program, or project. Paid advertisements are allowed in the department's printed materials and publications.

(4) Temporary advertising: the display of corporate logos, branding, or advertising copy at a department event or on collateral materials associated with an event or program.

(5) Events**:** one-time activities for the public organized by the department and held on city property that generally last less than one week.

(6) Projects: one-time departmental efforts, often with a product as the end result.

(7) Programs**:** on-going, organized activities led by the department for the public and generally involve staff supervision.

(8) Sites**:** specific places, varying in scale from individual features or areas to entire parks or even to the entire system.

(9) Marketing Benefits**:** opportunities given to the for-profit sponsor to have their branding, their products, their name, and logo given temporary visibility on City property or materials. The details of those opportunities are specific to each sponsorship detailed in the agreement and must meet with City laws, departmental policies, and Parks Board approval.

20-507. Sponsorship categories. Sponsorships are appropriate for four broad types of department activities and places: (1) Event Sponsorship. Event sponsorship is the financial or in-kind support for a department organized event on City property. Sponsors may be recognized vis-à-vis anything relating to the event. Depending on the details of the agreement, the sponsor's name may be directly associated with the event (i.e. title sponsor) and the sponsor may have a variety of temporary advertising and marketing opportunities.

(2) Project Sponsorship – Project sponsorship is financial or in-kind support of a specific department project which is usually a one-time effort. Results often include a product being developed for the department and for the public (i.e. department facility map, master plan for a park, department promotional materials).

(3) Program Sponsorship – Program sponsorship is financial or in-kind support of a department led program for the public. Recognition of the sponsor may continue throughout or even after a program's duration. Depending on the details of the agreement, a sponsor's name can be associated directly with the program and other marketing opportunities that are available.

(4) Site Sponsorship – Site sponsorship is financial or in-kind operating support of a specific department place or feature (i.e. stadiums, specific areas in parks, playgrounds, seasonal displays). Marketing opportunities and recognition of the sponsorship are negotiated on a case-by-case basis as part of the agreement and approval process.

20-508. <u>Guidelines for accepting sponsorships.</u> The Hendersonville Parks Department welcomes sponsorships as an opportunity to enhance our services as long as the sponsorships are consistent with City policies and regulations; respect the physical beauty of public spaces and reaffirm the department's mission and core services. In considering any proposal for sponsorship of a department activity or place by a for-profit entity, the following questions should be considered individually and collectively:

(1) The for-profit's products, services, and marketing goals must be compatible with the department's mission, values, and policies.

(2) The products and services of the for-profit entity must be compatible with the policies and laws of the city.

(3) The proposed sponsorship enhances current priorities, programs, and core services of the department.

(4) The conditions of the sponsorship (especially in terms of marketing benefits and temporary advertising) must not compromise the design standards and/or visual integrity of our parks and recreation facilities or the experience of the users.

(5) The sponsorship must not commit the department to additional operating and maintenance responsibilities and costs.

(6) The tangible and in-tangible benefits must be balanced for both the sponsor and the department.

(7) The sponsorship must not create a conflict of interest for the department or the city.

(8) The for-profit's past record on community involvement with city projects and agencies will be considered.

(9) Products and businesses generally ineligible for sponsorships include: for-profits whose primary products or services are substantially derived from the sale of alcohol, drugs, tobacco, gambling, firearms, or sexually explicit materials.

20-509. Marketing benefits and recognition guidelines. (1) All sponsorship marketing materials, including but not limited to banners, signs, brochures, cards, signs, posters, and newsletters, labels on products such as t-shirts, must be approved by the department

(2) Specific outdoor park facilities (i.e. fenced ball fields, skate parks, stadiums, bleacher covers) and indoor recreation centers will have established areas for temporary advertising and sponsorship recognition. Visual impact will be considered.

(3) An unlimited number of corporate sponsorship recognition and logos printed on "walk-away" products (i.e. t-shirts, water bottles) is acceptable. Visual impact will be considered.

(4) The Hendersonville Parks Department must approve the use of the City's and Parks Department logo by the sponsor in any publications. All logo use must be associated with the specific program or sponsorship.

20-510. Procedures. (1) Sponsorships are arranged primarily through two processes: (a) self-initiated by the potential sponsor or

(b) initiated by the department through a formal or informal Request for Sponsors process.

(2) Interested sponsors are encouraged to contact the department at any time to discuss a potential sponsorship or can submit a proposal at any time.

(3) Once potential sponsors are identified the following process shall occur: (a) Meeting with Department Staff.

(b) A sponsorship agreement should be drafted to include: levels of sponsorship, benefits to the department, full list of details to the agreement as it pertains to the guidelines in the sponsorship policies.

(c) Submittal to the Parks Director for approval.

(d) Submittal to the Parks Board for approval.

(4) At times, the department will issue requests for sponsorship through various media, such as direct mail, email, social media, or publications. If there are one or more for-profit businesses interested in the same sponsorship program every effort will be made by the department to accommodate multiple sponsors, however this is not guaranteed, and the Parks Director will have the ultimate authority which businesses would be chosen in this case.

(5) Sponsorship agreements should include the following at a minimum: (a) Clear statement of how the department is going to benefit and how the department will be improving services through this relationship and how the sponsorship supports the mission and vision of the department.

(b) The financial value, benefits associated, costs of the partnership, including any exclusivity or hierarchy of benefits.

(c) Type and time limit for each sponsorship.

(d) Clear statement of the department's and the sponsor's responsibilities and roles.

(e) Specific plan for marketing and branding opportunities, display, type, location, size, design, content, and duration.

(f) Term and termination provisions.

20-511. <u>Other issues.</u> (1) All signage costs will be covered by sponsor fees and any signs damaged or worn by weather will be replaced by the sponsor.

(2) All sponsor fees collected will be placed into a revenue account, approved by our Board of Mayor & Alderman. These monies can then be spent out of this account on the sponsored program or facilities for upkeep, upgrades, equipment purchase for upkeep, etc. It is the Hendersonville Parks and Recreation's goal to spend the sponsor monies collected on each facility, for that facility. *(i.e*., All sponsor money collected for soccer, will be spent on soccer upgrades)

(3) The Board of Mayor and Aldermen have ultimately authority on all issues. (Ord. 2019-26, August 2019)

Previous Chapter 6 (Municipal Airport Authority) and Chapter 7 (Arts Council) were removed per Ord # 2023-17.

Rev. 7/2020

CHAPTER 6

DISPOSAL OF SURPLUS PROPERTY

SECTION

20-801. Disposal of real property. Real property shall be declared surplus and disposed of by ordinance of the Board of Mayor and Aldermen of the City of Hendersonville. Such ordinance shall designate the manner in which the property is to be disposed. (Ord. #1984-27, Oct. 1984)

20-802. Declaration of personal property as "surplus." (1) On a periodic basis, as directed by the City Administrator, each department of the city shall conduct a review of its equipment and inventories and determine those items considered surplus.

(2) In classifying surplus property for disposal, the following criteria shall be considered:

(a) The character, utility and functionality of the property.

(b) The economies of disposal in light of all relevant circumstances attendant the proposed disposal, including the condition and climate of the potential market and present estimated market value of the property, transportation costs, and other cost factors associated with disposal; and,

(c) Sound fiscal and budgetary policy and practices.

(3) Upon completion of such review, each department head shall then submit to the City Administrator a list of surplus items. (Ord. #1984-27, Oct. 1984, modified, Ord. 2020-19, July 2020)

20-803. Inter-departmental transfer of surplus property. (1) The City Administrator shall make all surplus personal property available to all departments and agencies of the city. Departmental requests for any surplus property shall be approved by the City Administrator.

(2) Any transfer of surplus property between departments shall be affected with the following stipulations:

(a) Accounting and inventory records shall reflect the transfer of the asset at the time of transfer.

(b) Insurance, maintenance and/or repairs of the property shall continue to be paid out of the budget appropriation of the transferring department until the end of the year. (Ord. #1984-27, Oct. 1984, modified, Ord. 2020-19, July 2020)

20-804. Methods of disposal of surplus property. (1) The City Administrator is herein authorized to dispose in accordance with the provisions of § 20-804(2) of any surplus personal properties not requested and approved for use by any department or agency of the city.

(2) All surplus personal property shall be disposed of according to one of the following methods:

(a) At a public auction, publicly advertised and held.

(b) Sale under sealed bids, publicly advertised, opened and recorded.

(c) Negotiated contract for sale, at arms length, but only in those instances in which the availability of property is recurring or repetitive in character, such as marketable waste products, for disposal of the property as it is generated in the most (economically) feasible, fiscally sound and administratively practicable method.

(d) Trade-in where such is permitted due to the nature of the property.

(e) Sale by internet auction shall be posted on the internet. Such notice shall specify and reasonably describe the property to be disposed of, the date, time, manner and conditions of disposal, all as previously approved by the committee that governs the department submitting the surplus property.

(3) The City Administrator may set a minimum price accepted for any item sold at auction or by sealed bid. (Ord. #1984-27, Oct. 1984, modified, Ord. 2001-28, Sept. 2001, Ord. 2020-19, July 2020)

20-805. Advertisement and notice. (1) Public auctions and sales under sealed bid, shall be publicly advertised and publicly held. Notice of intended disposal by public auction or sale under sealed bid shall be entered in at least one (1) newspaper of general circulation in the city. Such notice shall specify and reasonably describe the property to be disposed of, the date, time, place, manners, and conditions of disposal. The publication of notice shall precede the date of the sale by at least four (4) days. (Ord. #1984-27, Oct. 1984)

20-806. Records. (1) All disposals of surplus property shall be adequately documented.

(2) Such records shall be maintained permanently by the finance director. (Ord. #1984-27, Oct. 1984, Ord. 2002-26, July, 2002)

CHAPTER 7

PLAN REVIEW AND BUILDING PERMIT FEES

SECTION

20-901. Public buildings. Public utility buildings and governmental buildings (whether city, county, state or federal) are hereby exempted from plan review and building permit fees imposed by the City of Hendersonville, Tennessee.

20-902. Buildings constructed by not-for-profit entities. Buildings of not-for profit entities not included herein, including private or parochial elementary or secondary schools may be exempted from such fees by resolution passed by the governing body of the City of Hendersonville, Tennessee, subject to such conditions as may be imposed by the governing body. (Ord. 2001-12, March 2001)

20-903. Churches exempt from payment of fees for building permits. (1) All churches situated within the corporate boundaries of the City of Hendersonville and within the Hendersonville Regional Planning Commission's jurisdiction, are herby exempted from the payment of any fees for the obtaining of building permits for the construction, remodeling, alterations, additions to any church, buildings, including the parsonages. However, property held for investment purposes, are not so exempt, however, any building structures, additions, remodeling, and the like, that are to be used directly with church approved functions and activities, shall in any event, be exempt from the payment of such building permits fees.

(2) The appropriate officers, agents and principals of the City of Hendersonville are hereby authorized to issue building permits subject to the provisions of this chapter, however, in the event there is any question concerning the qualifications of any applicant obtaining the exemption as provided herein, in that event, that question should be submitted to the board of mayor and aldermen of the City of Hendersonville, for their review and approval, which approval or disapproval, can be given by the board of mayor and aldermen of the City of Hendersonville by resolution or motion.

(3) Anyone applying for this exemption, shall make application in writing, by the officers of such churches or organizations, authorized to make same, stating and setting forth the following information:

(a) The nature, expense, the purpose of the building project to be undertaken, the estimated cost of same.

(b) Whether or not their building plans have been approved by the Hendersonville Regional Planning Commission.

(c) The period of time the said building, structure or appurtenances, additions is contemplated to be used for the purposes stated.

(d) The full legal name of the church or the organization, the date of its organization, the names and addresses of its trustees, and/or board of directors and chief executive officer, including the name and address of their Pastor, Minister, Priest, etc. (Ord. #1973-14, May 1973, Ord. 2002-38, October, 2002)

Rev. 1/2005

CHAPTER 8

PERMIT BOND

SECTION

20-1001. Registration and bond required when. It shall be the duty of every person who shall make contracts for the construction, erection, alteration, repair, removal or demolition of any building or structure or part thereof; or repair or replacement of any damage to a building or structure caused by insects or natural disasters; or to erect or construct any sign, billboard or similar structure, or to construct any public or private swimming pool; or to do or perform any work for which a permit is required (and every such person, making such contracts or subletting the same or any part thereof) to register with the department of codes administration or other appropriate departments and to post a permit bond in the amount set forth
herein.

20-1002. Bond Amount. (1) 1002.1. For building permits under twenty-five thousand dollars, the bond amount shall be ten thousand ($10,000.00) dollars.

(2) 1002.2. For all building permits of twenty-five thousand dollars and larger the bond amount shall be fifty thousand ($50,000.00) dollars.

(3) 1002.3 For all gas/mechanical, plumbing and excavation permits the bond amount shall be forty-thousand ($40,000.00) dollars.

20-1003. Bond details. The bond required by this section shall be a permit bond conditioned to conform to the requirements of this chapter and all applicable laws, ordinances, rules, and regulations of the City of Hendersonville relating to work which is performed by the principal pursuant to a permit issued under this bond, or for work performed by the principal for which a permit should have been obtained prior to commencement of such activity; and to indemnify the City of Hendersonville and property owners against any and all loss suffered by them by reason of the failure of such contractor to comply with such laws, ordinances, rules and regulations. Such bond shall be continuous and may not be canceled without at least ten days' prior notice in writing, to the director of codes administration. The liability of the surety shall continue to attach to work performed pursuant to any permit issued prior to the termination date of the bond

even if the non-complying act should occur after the termination date of the bond. The liability of the surety for any and all claims, suits or action under this bond shall not exceed the bond penalty. Regardless of the number of years this bond may remain in force, the liability of the surety shall not be cumulative and the aggregate liability of the surety for any and all claims, suits or actions under this bond shall not exceed the face amount. The bond shall be issued by a U.S. Treasury-listed corporate surety or a Tennessee domestic insurance company on forms provided by the department of codes administration.

20-1003. Obtain business license. It shall be the duty of every person, firm or corporation desiring to register with the department of codes administration under this section to secure the required contractor's business license from the City of Hendersonville.

20-1004. Multiple trades. Contractors with multiple trades may provide one fifty thousand ($50,000.00) dollar bond to meet the requirements of the above.

20-1005. Bond form. The bond shall be referenced by a standard form legal agreement, approved by the City Attorney. (Ord. # 2004-20, June, 2004)

CHAPTER 9

CLARIFYING DESIGN STANDARD REQUIREMENTS

SECTION

20-1101. Conflicts. Whenever there is a conflict between engineering/construction design standards of the zoning ordinance and other regulations, the higher standard shall be used for construction design. If an engineering/construction issue is not addressed in the City's regulations, then the issue shall be referred to the Public Works Director for a determination and any design conflicts will be handled administratively. (Ord. # 2006-28, June 2006)

CHAPTER 10

FIRE PREVENTION/SUPPRESSION COMPLIANCE FEE

SECTION

20-1201. Approval required. Fire Department approval is required to build any building in the City that is more than three (3) stories in height.

20-1202. Fire Prevention/Suppression Compliance Fee established. Fire Prevention/Suppression Compliance fees for services provided by the Fire Department to be collected shall be as follows:

(1) For one-story buildings, the fee shall be $0.10 per square foot of area, with the square footage to be calculated on the building's exterior dimensions.

(2) For two-story buildings, the fee shall be $0.10 per square foot of area for the first floor of the building, and $0.20 per square foot of area for the second story of the building, with the square footage to be calculated on the building's exterior dimensions on each floor.

(3) For three-story buildings, the fee shall by $0.10 per square foot of area for the first floor of the building, $0.20 per square foot of area for the second story of the building, and $0.30 per square foot of area for the third story of the building, with the square footage to be calculated on the building's exterior dimensions on each floor.

(4) For buildings taller than three (3) stories, the fee shall be $0.10 per square foot of area for the first floor of the building, $0.20 per square foot of area for the second story of the building, $0.30 per square foot of area for the third story of the building, and $0.40 per square foot of area per floor for all other floors of the building, with the square footage to be calculated on the building's exterior dimensions on each floor.

(5) Notwithstanding the other provisions of this ordinance, the square footage of each building subject to the provisions of this ordinance up to five thousand (5,000) square feet shall be assessed a fire prevention and suppression enforcement compliance fee of exactly two hundred fifty dollars ($250.00). For all square footage in excess of five thousand (5,000) square feet, the provisions of this ordinance shall apply.

(6) For existing building remodels, building permits shall be assessed permit fees based on each project's building permit valuation. Building permit

valuation shall be based on the Building Valuation Data (BVD) Table used by the Codes Department to calculate building permit fees. For each $1,000.00 or fraction thereof, of total building permit valuation a fee of $5.00 shall be assessed, with a minimum total permit fee of $250.00

20-1203. Discretion. The Fire Marshall shall have at his discretion the ability to adjust fees and charges when unusual and unforeseen circumstances dictate.

20-1204. Exemption. This ordinance shall not apply to one-family or two-family residential buildings, churches and schools. (Ordinance 2008-29, July 2009, Ord. 2016-15, Sept., 2016)

CHAPTER 11

STANDARDS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

SECTION

20-1301. Purpose and Scope. (1) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities in the public rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City's rights-of-way and to the City as a whole.

(2) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to: prevent interference with the use of streets, sidewalks, alleys, parkways and other public way and places; prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; prevent interference with the facilities and operations of facilities lawfully located in public rights-of-way or public property; protect against environmental damage, including damage to trees; preserve the character of the neighborhoods in which facilities are installed; and facilitate rapid deployment of Small Wireless Facilities to provide the benefits of advanced wireless services.

(3) Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

20-1302. Definitions, (1)"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Annual Lease Fee" means the fee due to the City for the fee for the installation of a Small Wireless Facility on City property regardless of whether the property

is owned, leased, or within the public right-of-way. Each installation/spot is a separate Annual Lease Fee.

(3) "Applicable Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this Chapter.

(4) "Applicant" means any person who submits an Application and is a Wireless Provider.

(5) "Application" means a request submitted by an Applicant (a) for an Agreement to erect and/or install Small Wireless Facilities within the City of Hendersonville right-of-way;

(b) for a Permit to collocate Small Wireless Facilities;

(c) to approve the installation or modification of a Utility Pole or Wireless Support Structure, subject to the requirements of this Chapter.

(6) "City" means City of Hendersonville, Tennessee.

(7) “City-Owned/Leased Pole" means (a) a Utility Pole owned/leased by the City in the Rights-of-Way, . including a Utility Pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage; and

(b) a pole or similar structure owned/leased by the City in the Rights-of-Way that supports only Wireless Facilities.

(8) “Collocate" means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole.

(9) "Collocation" has a corresponding meaning.

(10) “Day” means calendar day.

(11) "Fee" means a one-time charge.

(12) "Permittee" means an Applicant who is party to an Agreement or has been granted a Permit.

(13) “Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

(14) "Rate" means a recurring charge.

(15) “Right(s)-of-Way or "ROW" means the space in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the City, and any unrestricted public utility easements established, dedicated, platted, improved or devoted for utility purposes but excluding lands other than streets that are owned by the City. The phrase "in the public right(s)of-way" means "in, on, over, along, above and/or under the public right(s)-of-way."

(16) "Right-of-Way Use Agreement" or "Agreement" means an agreement between the City and the Wireless Service Provider issued pursuant to this Title.

(17) "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (a) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and

(a) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services and Utility Poles.

(18) "Right-of-Way Use Permit" or "Permit" means an excavation/road bore permit for excavation of a street for the construction or installation of fiber optic cable, conduit, and associated equipment in the Right-of-Way.

(19) "Utility Pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including City-owned/leased poles. Such term shall not include structures supporting only Wireless Facilities.

(20) "Wireless Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (a) equipment associated with wireless communications; and

(b) radio transceivers, Antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.

(21) "Wireless Infrastructure Provider" means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures, but that is not a Wireless Services Provider.

(22) "Wireless Provider" means a wireless infrastructure provider or a Wireless Services Provider.

(23) "Wireless Services" means any services, whether at a fixed location or mobile, provided using Wireless Facilities.

(24) "Wireless Services Provider" means a person who provides Wireless Services.

(25) "Wireless Support Structure" means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a utility pole.

20-1303. <u>Permitted Use; Application and Fees</u>. (1) Permitted. Use. Collocation of a Small Wireless Facility or installation of a new, replacement, or modified Utility Pole or Wireless Support Structure for the collocation of a Small Wireless Facility shall be a permitted use, subject to the restrictions in this Title.

(2) Agreement and Permit Required. No person shall place a Small Wireless Facility in the Rights-of-Way, without first filing a Right-of-Way Use Agreement Application and a Right-of-Way Use Permit after the Agreement has been executed, except as otherwise provided in this Chapter.

(3) Agreement and Permit Applications. All Applications for Right-of-Way Use Agreements and Perm its filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(4) Application Requirements. The Application shall be made by the Wireless Provider or its duly authorized representative and shall contain the following:

(a) The Applicant's name, address, telephone number, and e-mail address;

(b) The names, addresses, telephone numbers, and e-mail addresses of all consultants, contractors and subcontractors, if any, acting on behalf of the Applicant with respect to the filing of the Application or who may be involved in doing any work on behalf of the Applicant;

(c) A general description of the proposed work and the purposes and intent of the Small Wireless Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed; and

(d) A statement that all Wireless Facilities shall comply with all applicable codes.

(5) Information Updates. Any amendment to information contained in a Permit Application shall be submitted in writing to the City within thirty (30) days after the change necessitating the amendment.

(6) Application Fees. Unless otherwise provided by law, all Agreement and Permit Applications for Small Wireless Facility pursuant to this Chapter shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the City related to processing the application and inspection, in the amount specified in Ordinance 2018-3.

20-1304. <u>Right-of-Way Use Agreement.</u> (1) A Right-of-Way Use Agreement is required prior to the issuance of a Right-of-Way Use Permit under this Chapter,

(2) A Right-of-Way Use Agreement shall be no longer than five (5) years, but may be extended upon agreement of the City.

(3) The Mayor shall have the authority to execute the Right-of Way Use Agreements.

(4) A Right-of-Way Use Agreement shall provide for the Annual Lease Fee, which shall be due January 1st of each year of the Agreement. The initial Annual Lease payment shall be due upon execution of the Agreement and there are no provisions for pro-rating the initial payment.

(5) Insurance. Each Permittee shall, at all times during the entire term of the Right-of-Way Use Agreement, maintain and require each contractor and subcontractor to maintain insurance with a reputable insurance company authorized to do business in the State of Tennessee and which has an A.M. Best rating (or equivalent) no less than "A" indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of Permittee's Wireless Facilities in the Rights-of-Way. The amounts of such coverage shall be not less than the following:

(a) Worker's compensation and employer's liability insurance. Tennessee statutory requirements.

(b) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits as specified in Appendix A — Comprehensive Fees and Penalties but in no case less than one million dollars ($1,000,000) per occurrence, combined single limit and two million dollars ($2,000,000) in the aggregate.

(c) Commercial Automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this Article Xll for limits as specified in Ordinance 2018-3 but in no case less than one million dollars ($1,000,000) per occurrence combined single limit each accident.

(d) Commercial excess or umbrella liability. Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

(6) The City shall be designated as an additional insured under each of the insurance policies required by this section except worker's compensation and employer's liability insurance. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this section. Permittee shall provide the City with at least thirty (30) days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of premium of the policy coverages.

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

(8) Indemnification. Each Permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of Permittee's Wireless System or Wireless Facilities in the Rights-of-Way. Each Permittee shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the Permittee's construction, installation, operation, maintenance or removal of Permittee's Wireless System or Wireless Facilities in the Rights-of-Way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other reasonable costs of indemnification.

(9) A Permittee desiring to renew a Right-of-Way Use Permit prior to the expiration of the Agreement and/or Permit shall file an Application with the City for renewal of its authorization, which shall include the information and documents required for an initial Application and other material information reasonably required by the Director of Streets, or his or her designee.

(10) The City shall make a determination accepting or denying the renewal Application in writing to the Permittee.

(11) A valid Right-of-Way Use Agreement is required to obtain a Permit for the installation of Small Cell Wire Facilities, Poles, and associated equipment.

(12) The City shall timely process any renewal Application provided that (a) Permittee is not then in material default under any provision of the Right-of-Way Agreement or the Right-of-Way Use Permit, or in material non-compliance with this Chapter, and

(b) has otherwise satisfactorily performed all of its obligations under the Right-of-Way Agreement, the Right-of-Way Use Permit, and this Chapter during the expiring term. In the event the City elects not to renew, it shall provide a written basis for such non-renewal. Determinations to grant or deny a renewal application shall be made on a nondiscriminatory and competitively neutral basis. The City shall not unreasonably delay, condition, withhold or deny the issuance of a renewal Permit.

(13) As-built maps. As the City controls and maintains the Right-of-Way for the benefit of its citizens, it is the responsibility of the City to ensure that such public Right-of-Way meet the highest possible public safety standards. Upon request by the City and within thirty (30) days of such a request, a Permittee shall submit to the Public Works Department (or shall have otherwise maintained on file with the Department) as-built maps and engineering specifications depicting and certifying the location of all its existing Small Wireless Facilities within the Right-of-Way, provided in standard electronic or paper format in a manner established by the City Engineer, or his or her designee. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Open Records Act (Tenn. Code Ann. 510-7-101, *et seq*.) to the maximum extent of the law. After submittal of the as-built maps as required under this section, each Permittee having Small Wireless Facilities in the City Right-of-Way shall update such maps as required under this chapter upon written request by the City.

(14) Right to inspect. With reasonable cause the City shall have the right to inspect all of the Small Wireless Facilities, including aerial facilities and underground facilities, to ensure general health and safety with respect to such facilities and to determine compliance with the terms of this Chapter and other applicable laws and regulations. Any Permittee shall be required to cooperate with all such inspections and to provide reasonable and relevant information requested by the City as part of the inspection.

(15) Transitional provisions.

(a) Persons already authorized to use the Right-of-Way. Any Wireless Provider or entity h o l d i n g a permit or other authorization from the City to own, construct, install, operate, and/or maintain Wireless Facilities in the Right-of-Way to provide services may continue to conduct those activities expressly authorized until the earlier of the following: i) the conclusion of the present term of its existing authorization, or ii) 180 days after the effective date of this Chapter. Notwithstanding the foregoing, any such Person shall apply for a superseding Right-of-Way Use Permit and Right-of-Way Use Agreement pursuant to this Chapter within 90 days after the effective date of the Chapter and shall be subject to the terms and conditions of this Chapter. Upon such Application, such Person shall be allowed to continue to own, operate and/or maintain is Wireless Facilities in the Right-of-Way until such Right-of-Way Use Agreement becomes effective.

(b) Operating without Right-of-Way Use Authorization. Any Person that owns or operates any Wi re less Facilities currently located in the Right-of-Way, the construction, operation, or maintenance of which is not currently authorized but is required to be authorized under this Chapter, shall have ninety (90) days from the effective date of this Chapter to apply for a Right-of-Way Use Agreement. Any Person timely filing such an Application shall not be subject to penalties for failure to hold a Right-of-Way Use Agreement or Right-of-Way Use Permit, provided that said Application remains pending. Nothing herein shall relieve any Person of any liability for its failure to obtain a Right-of-Way Use Agreement, Right-of-Way Use Permit, or other authorization required under other provisions of this Chapter or City ordinances or regulations, and nothing herein shall prevent the City from requiring removal of any Wireless Facilities installed in violation of this Chapter or City ordinances or regulations.

20-1305. <u>Permit Applications.</u> (1) No person which has been issued a Right-of-Way Use Agreement by the City may construct, install and/or operate Wireless Facilities that occupy the Right-of-Way without first obtaining a Right-of-Way Use Permit from the City. Any Right-of-Way Permit shall be reviewed, issued and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the City may from time to time establish for effective management of the Right-of-Way, and otherwise shall conform to the requirements of this Chapter and applicable law.

(2) The City shall review the Application in light of its conformity with applicable regulations of this Chapter, and shall issue a Permit on nondiscriminatory terms and conditions subject to the following requirements:

(a) The Applicant must have entered into a Right-of-Way Use Agreement with the City; and

(b) The City must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial without paying an additional Application Fee. Unless, approval is required by the Hendersonville Regional Planning Commission, the City shall approve or deny the revised Application within thirty (30) days of receipt of the amended Application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.

(3) An Applicant seeking to construct, modify or replace a network of Small Wireless Facilities may after execution of an Agreement, file a consolidated Permit Application and receive a single Permit for the installation of multiple Small Wireless Facilities as approved in their Agreement. The City, at their discretion may issue a single permit for each location to facilitate the timely installation, inspection, and documenting of installed facilities. The City's denial of any site or sites within a single Permit Application shall not affect the validity of other sites submitted in the same Application and the City shall grant Permit(s) for all sites approved in the Agreement to facilitate the timely installation, inspection, and documenting of installed facilities.

20-1306. Facilities in the ROW; Maximum Height; Other Requirements. (1) Unless otherwise determined by City staff, to blend into the built environment, all Small Wireless Facilities new or modified Utility Poles, Wireless Support Structures for the Collocation of Small new or modified Utility Poles, Wireless Support Structures for the Collocation of Small Wireless Facilities, and associated equipment shall be similar in size, mass, and color to similar facilities and equipment in the immediate area subject to following requirements:

(2) Collocation is required, when possible Should the Wireless Provider not be able to collocate, the Wireless Provider shall provide justification in the application.

(3) Any collocation or new installation that occurs within 500 feet of an existing single-family residential uses shall require approval of the Hendersonville Regional Planning Commission.

(4) Utility Poles - Maximum Height, Diameter, Design, Color. Newly erected Utility Poles shall be similar and match the height design, and color of existing Utility Poles in the immediate area but in no case, shall new or modified Utility Pole or Wireless Support Structure installed in the Rights-of-Way exceed the greater of:

(a) Six (6) feet above the tallest existing Utility Pole in the Rights-of-Way in place as of the effective date of this Chapter located within 500 feet of the new pole; or

(b) Forty (40) feet above ground level.

(c) Wood poles are not allowed.

(d) When unable to match the design and color of existing Utility Poles in the immediate area new poles shall be designed using stealth or camouflaging techniques, to make the installation as least intrusive as possible including stealth poles that are black or dark green in color, powder-coated, that do not exceed 16 inches in diameter. The City reserves the right to require a street light on the Utility Pole.

(5) The approval of the Hendersonville Regional Planning Commission shall be required for the installation of new Utility Poles.

(6) New Small Wireless Facilities, Antennas, and associated equipment shall be similar in size, mass, and color to similar facilities and equipment in the immediate area of the proposed facilities and equipment, minimizing the physical and visual impact to the community, including but not limited to:

(a) Any associated equipment that is required for a Small Wireless Facility shall be mounted at least 8 feet above grade on the pole and located in a shelter or case that does not extend more than 12 (twelve) inches past the edge of the pole it is mounted on. In the case of co-location, the mounts shall be on the same side of the pole. City staff has the discretion for authorizing ground-mounted equipment when unique or exceptional circumstances exist to protect the character of the surround area.

(7) From time to time, additional criteria regarding the location, type, and/or design of Small Cell Facilities and Utility Poles shall be subject to change. All changes shall be made available to the public for 30 days and compiled into a set of guidelines titled, City of Hendersonville Guidelines for Wireless Communications Facilities in the Public Right-of-Way. In no case, shall any Guidelines be retroactive. Facilities approved in executed

Agreements or facilities for which Right-of-Way Use Permits have been issued prior to the effective date of a new Guideline shall not be affected.

(8) Construction in the Right-of-Way. All construction, installation, maintenance, and operation of Wireless Facilities in the Right-of-Way by any Wireless Provider shall conform to the requirements of the following publications, as from time to time amended: The Rules of Tennessee Department of Transportation Right-of-Way Division, the National Electrical Code, and the National Electrical Safety Code, as might apply.

(9) Planning Commission Approval. Unless otherwise provided in this ordinance, approval of the Hendersonville Regional Planning Commission shall be required for:

(a) Any Wireless Provider that seeks to construct or modify a Utility Pole, Wireless Support Structure or Wireless Facility that is determined to not comply with the Height, Diameter, Design, Color standards and expectations set forth in Sections 6(A)—(D) above.

(b) New Utility Poles or Wireless Support Structures shall not be permitted without prior approval by the Hendersonville Regional Planning Commission.

20-1307. Effect of Permit. (1) Authority Granted: No Property Right or Other Interest Created. A Permit authorizes an Applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Rights-of-Way.

(2) Duration. No Permit issued under this Chapter shall be valid for a period longer than twelve (12) months unless construction has commenced within that period and is thereafter diligently pursued to completion. In the event that construction begins but is inactive for more than ninety (90) days, the Permit expires.

(3) Termination of Permit. In all other circumstances, the Permit expires in twelve (12) months.

20-1308. Maintenance, Removal, Relocation or Modification of Small Wireless Facility and Fiber in the ROW. (1) Notice. Within ninety (90) days following written notice from the City, the Permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Small Wireless Facilities within the Rights-of-Way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-of-Way. The City agrees to use good faith efforts to accommodate any such disconnection, removal, relocation, change, or alteration and to assist with identifying and securing a mutually agreed upon alternative location.

(2) Maintenance of existing Facilities. With respect to each Wireless Facility installed pursuant to a Right-of-Way Use Permit, Permittee is hereby permitted to enter the Right-of-Way at any time to conduct repairs, maintenance or replacement not substantially changing the physical dimension of the Wireless Facility. Permittee shall comply with all rules, standards and restrictions applied by the City to all work within the Right-of-Way. If required by City, Permittee shall submit a "maintenance of traffic" plan for any work resulting in significant blockage of the Right-of-Way. However, no excavation or work of

any kind may be performed without a Permit, except in the event of an emergency. In the event of emergency, Permittee shall attempt to provide advance written or oral notice to the Public Works Director.

(3) Removal of existing Facilities. If the Permittee removes any Wireless Facilities, it shall notify the City of such change within sixty (60) days.

(4) Damage to Facilities of property. A Permittee, including any contractor or subcontractor working for a Permittee, shall avoid damage to any Wireless Facilities or public or private property. If any Wireless Facilities or public or private property are damaged by Permittee, including any contractor or subcontractor working for Permittee, the Permittee shall promptly commence such repair and restore such property within ten (10) business days. Permittee shall utilize the Tennessee One Call System prior to any disturbance of the Rights-of-Ways and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.

(5) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any Small Wireless Facility located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any serious public health or safety emergency. If circumstances permit, the City shall notify the Wireless Provider in writing and provide the Wireless Provider a reasonable opportunity to move its own Wireless Facilities prior to cutting or removing a Wireless Facility and shall notify the Wireless Provider after cutting or removing a Wireless Facility. Any removal shall be at the Wireless Providers sole cost. Should the Wireless Facility be collocated on property owned by a third-party, the City shall rely on the third party to remove the Wireless Facility and shall be provided adequate notice and time to facilitate such removal.

(6) Abandonment of Facilities. Upon abandonment of a Small Wireless Facility within the Rights-of Way of the City, the Wireless Provider shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the Wireless Provider to remove all or any portion of the Small Wireless Facility if the City reasonably determines that such removal will be in the best interest of the public health, safety and welfare. Should the Wireless Facility be collocated on property owned by a third-party, the City shall rely on the third-party to remove the Wireless Facility and shall be provided adequate notice and time to facilitate such removal. Any removal shall be at the Wireless Providers sole cost.

(7) Use Agreement Expiration. At the expiration of each Agreement, the Applicant shall remove all Wireless Facilities. Should the Applicant not remove the Wireless Facilities, the City shall remove the Wireless Facilities and shall assess costs to the Applicant and shall use all available remedies to recover said costs. Should the Wireless Facility be collocated on property owned by a third-party, the City shall rely on the third-party to remove the Wireless Facility and shall be provided adequate notice and time to facilitate such removal. Failure to remove Wireless Facilities pursuant to this Code will result in no future permits being granted.

20-1309. <u>Public Right-of-Way Rates - Attachment to City-Owned/Leased Utility Poles</u> <u>and New Utility Poles installed within the Public Right-of-Way or City-Owned/Leased Property</u>. (1) Annual rate. The rate to place a Small Wireless Facility on a City-owned or leased pole in the Right-of-Way shall be reasonable direct cost-based compensation in the amount stated in Ordinance 2018-3 per year for all City-owned or

leased poles in the Rights-of-Way. All equipment attached to a City-owned pole shall constitute a single attachment and therefore a single use of a City-owned pole. Such compensation, for the first year, together with the Application Fee specified in this Chapter shall be the sole compensation that the Wireless Provider shall be required to pay the City. This rate will be due January 1 of each year of the Agreement.

(2) A Wireless Provider authorized to place a new Utility Pole within Public Right-of-Way or on City-owned or leased property shall pay to the City reasonable direct cost-based compensation for use of the Right-of-Way or property in the amount stated in Ordinance 2018-3. This rate will be due January 1 of each year of the Agreement.

(3) Make-ready. For City-Owned or leased Utility Poles in the Rights-of-Way, the City shall provide a good faith reasonable direct cost-based estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Provider.

20-1310. Remedies; violations. In the event a reasonable determination is made that a Person has violated any provision of this Chapter, Right-of-Way Use Agreement, or a Right-of-Way Use Permit, such Person shall be provided written notice of the determination and the specific, detailed reasons therefor. Except in the case of an emergency, the Person shall have thirty (30) days to commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time-period, the City, in its reasonable judgment, may extend the time period to cure, provided that the Person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the City may take all actions authorized by this chapter and/or Tennessee law and regulations.

20-1311. General provisions. (1) Historic Preservation Overlay. For Applications for property located inside the Historic Preservation Overlay, the Applicant must also obtain approval from the Hendersonville Historic Zoning Commission prior to execution of an Agreement.

(2) Proprietary information. If a Person considers information it is obligated to provide to the City under this Chapter to be a business or trade secret or otherwise proprietary or confidential in nature and desires to protect the information from disclosure, then the Person shall mark such information as proprietary and confidential. Subject to the requirements of the Tennessee Open Records Act (Tenn. Code Ann. 510-7-101 et seq.) as amended, and other applicable law, the City shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure to the maximum extent of the law. The City shall provide written notice to the Person in the following circumstances: i) if the City receives a request for disclosure of such proprietary and confidential information and the City Attorney determines that the information is or may be subject to disclosure under applicable law; or ii) if the City Attorney determines that the information should be disclosed in relation to its enforcement of this Chapter or the exercise of its police or regulatory powers. In the event the Person does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction

within thirty (30) days following receipt of the City's notice, then the City may disclose the information without further written notice to the Person.

(3) Duty to provide information. Within ten (10) days of a written request from the City, a Permittee shall furnish the City with information sufficient to demonstrate the following: that the Permittee has complied with all requirements of this Chapter; that all fees due to the City in connection with the services provided and Wireless Facilities installed by the Permittee have been properly paid by the Permittee; and any other information reasonably required relating to the Permittee's obligations pursuant to this Chapter.

(4) No substitute for other required permissions. No Right-of-Way Use Agreement or Right-of-Way Use Permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the City for the privilege of transacting and carrying on a business within the City or any permit or agreement for occupying any other property of the City.

(5) No waiver. The failure of the City to insist on timely performance or compliance by any Permittee holding a Right-of-Way Use Agreement shall not constitute a waiver of the City's right to later insist on timely performance or compliance by that Permittee or any other Permittee holding such Right-of-Way Use Agreement. The failure of the City to enforce any provision of this Chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Chapter on any other occasion, nor shall the failure to enforce any prior ordinance or City Charter provision affecting the Right-of-Way, any Wireless Facilities, or any user or occupant of the Right-of-Way act as a waiver or estoppel against enforcement of this Chapter or any other provision of applicable law.

(6) Policies and Procedures. The City is authorized to establish such written policies and procedures consistent with this Chapter as the City reasonably deems necessary for the implementation of this Chapter.

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

(8) Severability. If any section, subsection, sentence, clause, phrase or word of this Chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid. (Ord. 2018-2, Jan. 2018)

20-1312. <u>Fees Established.</u> The following fees will be assessed for the use of City-owned property, including the public right-of-way: (1) Application for Right-of-Way Use Plan Review and Agreement Processing is $500

(2) Annual rate for use of City-owned or leased poles/structures is $100 minimum per installation (spot location) or as specified in the applicable approved Right-of-Way Use Agreement.

(3) Permit/Inspection Fees is $100 per installation (spot location). The Public Works Department has the discretion to issue permits that include single or multiple installations based on the ease of tracking inspections and mapping of installations.

(4) Comprehensive General Liability minimum is $1,000,000 per occurrence, combined single limit and $2,000,000 in aggregate.

(5) Commercial Automobile Liability is $1,000,000 per occurrence, combined single limit each accident. (Ord. 2018-3, Jan. 2018)