

ORDINANCE NO. 2015-307

AN ORDINANCE OF THE TOWN OF WALDEN, TENNESSEE ADDING A NEW
CHAPTER 4 TO TITLE 9 OF THE MUNICIPAL CODE RELATING TO
TELECOMMUNICATIONS USAGE RIGHTS ON THE TOWN RIGHTS OF WAY

WHEREAS, the Town has been approached for the right to use its rights of way for the purpose of installation by a private provider of fiberoptic cables; and

WHEREAS, while the Town is authorized by state law to charge franchise fees for cable television usage of the Town rights of way, it only has the power to set a reasonable "police power" rent. See T.C.A. § 65-21-103, T.C.A. § 65-21-203. Also see *City of Chattanooga v. BellSouth Telecommunications*, 2000 W.L. 122199 (Tenn. Ct. App. 2000); and

WHEREAS, the Town is concerned with coordinating the various users of its rights of way, and with proper maintenance of the same and respect for the public's use of the same.

NOW, THEREFORE, BE IT ORDAINED by the Board as follows:

Section 1: That a new Chapter 4 be added to Title 9 of the Town of Walden Municipal Code as follows:

Sec. 9-401. - Definitions.

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

Excess capacity means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

Usage rights means the right of a telecommunications carrier to operate a telecommunications system in the town for a limited term and in a manner in agreement with this chapter.

User means a grantee of rights under this chapter by means of an award or franchise or its permitted successor, transferee or an applicant thereof.

Overhead facilities means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

Street means the surface of all rights-of-way and the space, above and below, of any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the town for the purpose of public travel, and shall also mean other easements or rights-of-way as shall be now held or hereafter held by

the town which shall, within their proper use and meaning, entitle a telecommunications carrier to the use thereof for the purposes of installing plant facilities and equipment as may be ordinarily necessary and pertinent to a telecommunications system.

Surplus space means that portion of the usable space on a utility pole which has the necessary clearance from other pole users to allow its use by a telecommunications carrier for a pole attachment.

Telecommunications carrier means every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the town, used or to be used for the purpose of offering telecommunications service.

Telecommunications facilities or facility means the plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

Telecommunications service or service means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice or data information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium. "Telecommunications service" does not mean cable television service as defined in T. C. A. § 7-59-303.

Telecommunications system or system. See Telecommunications facilities.

Underground facilities means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

Usable space means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance.

Utility easement means any easement owned by the town and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

Utility facilities means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the streets of the town and used or to be used for the purpose of providing utility or telecommunications services.

Sec. 9-402. - Registration.

All telecommunications carriers who would, by this chapter, require usage rights, shall register with the town pursuant to this article on forms to be provided by the town clerk, which shall include the following:

- (1) The identity and legal status of the registrant, including any affiliates.
- (2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- (3) A description of registrant's existing or proposed telecommunications facilities within the town.
- (4) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the town.
- (5) Information sufficient to determine whether the registrant is subject to telecommunications franchising under this chapter.
- (6) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility message tax or other occupation tax imposed by the town.
- (7) Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Tennessee Regulatory Authority and/or the Federal Communications Commission to provide telecommunications services or facilities within the town.
- (8) Such other information as the town may reasonably require.

Sec. 9-403. – Application Fee.

Each application for registration as a telecommunications carrier shall be accompanied by a fee of \$25.00.

Sec. 9-404. - Purpose.

The purpose of registration under this article is to:

- (1) Provide the town with accurate and current information concerning the telecommunications carriers who offer or provide telecommunications services within the town or that own or operate telecommunication facilities within the town.
- (2) Assist the town in enforcement of this chapter.
- (3) Assist the town in the collection and enforcement of any municipal taxes, usage rights fees or charges that may be due the town.

(4) Assist the town in monitoring compliance with local, state and federal laws.

Sec. 9-405. - Telecommunications usage rights

Any telecommunications carrier who desires to continue to or begin to operate, use, maintain lease or otherwise locate or continue to locate telecommunications facilities in, under, over or across any street of the town for the providing of a telecommunications service to persons or areas in the town or leasing such telecommunication facilities, shall obtain usage rights from the town pursuant to this chapter. The use of public rights of way for the delivery of any service not covered by this chapter is subject to all other applicable town rights.

Sec. 9-406. - Usage rights application.

Any person that desires a telecommunications usage rights pursuant to this chapter shall file an application with the office of town administrator which shall include the following information:

- (1) The identity of the applicant, including all affiliates of the applicant.
- (2) A description of the telecommunications services that are or will be offered or provided by the applicant over its existing or proposed facilities.
- (3) A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services.
- (4) Preliminary engineering plans, specifications and a network map of the facilities to be located within the town, all in sufficient detail to identify:
 - a. The location and route requested for the applicant's proposed telecommunications facilities.
 - b. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route.
 - c. The locations, if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
 - d. The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (5) If the applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.
- (6) If the applicant is proposing an underground installation in existing ducts or conduits within the streets, information in sufficient detail to identify:

a. The excess capacity currently available in such ducts or conduits before installation of the applicant's telecommunications facilities; and

b. The excess capacity, if any, that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.

(7) If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the streets:

a. The location proposed for the new ducts of conduits; and

b. The excess capacity that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.

(8) A preliminary construction schedule and completion dates.

(9) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

(10) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

(11) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.

(12) Whether the applicant intends to provide cable service, video dialtone service or other video programming service and sufficient information to determine whether such service is subject to cable franchising.

(13) An accurate map showing the location of any existing telecommunications facilities in the town that the applicant intends to use or lease.

(14) A description of the services or facilities that the applicant will offer or make available to the town and other public, educational and governmental institutions.

(15) A description of the applicant's access and line extension policies.

(16) The areas of the town the applicant desires to serve and a schedule for build-out to the entire usage rights area.

(17) All fees, deposits or charges required pursuant to this chapter.

(18) Such other and further information as may be requested by the town.

Sec. 9-407. - Determination by the town; Reconsideration

Within 60 days after receiving a complete application under section 9-406, the town shall issue a written determination granting or denying the application, in whole or in part, applying the following standards. If the application is denied, the written determination shall include the reasons for denial. Reasons for denial will include all those allowed under applicable law, which may include, but are not limited to:

- (1) The financial and technical ability of the applicant.
- (2) The legal ability of the applicant.
- (3) The capacity of the streets to accommodate the applicant's proposed facilities.
- (4) The capacity of the streets to accommodate additional utility and telecommunications facilities if the usage rights is granted.
- (5) The damage or disruption, if any, of public or private facilities, improvements, services, travel or landscaping if the usage rights is granted.
- (6) The public interest in minimizing the cost and disruption of construction within the streets.
- (7) The service that the applicant will provide to the community and region.
- (8) The effect, if any, on public health, safety and welfare if the usage rights requested is granted.
- (9) The availability of alternate routes and/or locations for the proposed facilities.
- (10) Applicable federal and state telecommunications laws, regulations and policies.
- (11) Such other factors as may demonstrate that the usage rights to use the streets will not serve the community interest.

The act of granting, denying or terminating a municipal right-of-way use permit is an exercise of the police power of the Town. A person whose application for a municipal right-of-way use permit is denied must petition the Town council for reconsideration before seeking judicial remedies, and must file such a petition within forty-five (45) days of the written denial of such application of the Town. A petition is considered denied if the Town council does not act within forty-five (45) days after the petition is filed with the Town clerk.

Sec. 9-408. - Agreement.

No usage rights shall be granted unless the applicant and the town have executed a written agreement setting forth the particular terms and provisions under which the usage rights to

occupy and use the streets will be granted. Said agreement will define the rent charged the user for usage rights.

Sec. 9-409. - Nonexclusive grant.

No usage rights granted under this chapter shall confer any exclusive right, privilege, usage rights to occupy or use the streets of the town for delivery of telecommunications services or any other purposes.

Sec. 9-410. - Term of grant.

Unless otherwise specified in a usage rights agreement, a telecommunications usage rights granted under this chapter shall be valid for a term of ten years.

Sec. 9-411. - Rights granted.

No usage rights granted under this chapter shall convey any right, ordinance or interest in the streets, but shall be deemed a grant only to use and occupy the streets for the limited purposes and term stated in the usage rights agreement.

Further, no usage rights shall be construed as any warranty of ordinance.

Sec. 9-412. - Usage rights territory.

Telecommunications usage rights granted under this chapter shall be limited to the specific geographic area of the town to be served by the user and the specific streets necessary to serve such areas.

Sec. 9-413. - Nondiscrimination.

A user shall make its telecommunications services available to any customer within its usage rights area who shall request such service, without discrimination as to the terms, conditions, rates or charges for user's services and in accordance with applicable law; provided, however, that nothing in this chapter shall prohibit a user from making any reasonable classifications among differently situated customers.

Sec. 9-414. - Service to the town.

User shall make its telecommunications services available to the town at its most favorable rate for similarly situated users, unless otherwise directed by a state or federal regulatory agency having jurisdiction over telecommunication rates.

Sec. 9-415. - Amendment of usage rights.

(a) A new usage rights application shall be required of any telecommunications carrier that desires to extend its usage rights territory or to locate its telecommunications facilities in streets of the town which are not included in a usage rights previously granted under this chapter.

(b) If ordered by the town to locate or relocate its telecommunications facilities in streets not included in previously granted usage rights under this chapter, the town shall grant usage rights amendment without further application.

Sec. 9-416. - Renewal applications.

A user that desires to renew its usage rights under this chapter shall, not more than 240 days, nor less than 150 days before expiration of the current term of usage rights, file an application with the town for renewal of its usage rights which shall include the following information:

- (1) The information required pursuant to section 9-406.
- (2) Any information required pursuant to the usage rights agreement between the town and the user.

Sec. 9-417. - Renewal determinations.

Within 150 days after receiving a complete renewal application under section 9-416, the town shall issue a written determination granting or denying the renewal application, in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal. Reasons for nonrenewal will include all those allowed under applicable law, but are not limited to:

- (1) The financial and technical ability of the applicant.
- (2) The legal ability of the applicant.
- (3) The continuing capacity of the streets to accommodate the applicant's existing facilities.
- (4) The applicant's compliance with the requirements of this chapter and the usage rights agreement.
- (5) Applicable federal, state and local telecommunications laws, rules and policies.
- (6) Such other factors as may demonstrate that the continued grant to use the streets will serve the community interest.

Sec. 9-418. - Obligation to cure as a condition of renewal.

No usage rights shall be renewed until any ongoing violations or defaults in the user's performance of the usage rights agreement, or of the requirements of this chapter, have been

cured, or a plan detailing the corrective action to be taken by the usage rightse has been approved by the town.

Sec. 9-419. - Application and review fee.

- (a) Any applicant for usage rights pursuant to this article shall pay a fee of \$1,500.00.
- (b) The application and review fee of \$1,500.00 shall be deposited with the office of town administrator as part of the application filed pursuant to this chapter.
- (c) An applicant whose usage rights application has been withdrawn, abandoned or denied shall, within 60 days of such event, be refunded, within 60 days of such written request, the balance of its deposit under this section, less all ascertainable costs and expenses incurred by the town in connection with the application.

Sec. 9-420. - Other town costs.

All users shall, within 30 days after written demand therefor, reimburse the town for all reasonable direct and indirect costs and expenses incurred by the town in connection with any modification, amendment, renewal or transfer of the usage rights or any usage rights agreement.

Sec. 9-421. - Construction permit fee.

Prior to issuance of a construction permit, the usage rightse shall pay a permit fee equal to one percent of the estimated cost of constructing the telecommunication facilities, as certified by the user's engineer and approved by the town engineer, to cover the town costs for inspections, survey and mapping.

Sec. 9-422. - Usage rights fees.

- (a) Each user shall pay an annual usage rights fee to the town for use of the street and for costs associated with procurement, maintenance and oversight of the street for the public, current and future users. The town expressly reserves the right to review and/or modify any telecommunications usage rights agreement every third year of the usage rights.
- (b) The payment of a usage rights fee shall be in addition to any tax or payment owed to the town by a telecommunications carrier.
- (c) The usage rights fee and any other costs or penalties assessed shall be payable on a quarterly basis to the town, and a telecommunications carrier shall pay the same and file a complete and accurate verified statement of all gross revenue, as defined in this section, within 45 days after each calendar quarter.
- (d) If any usage rights fee or recomputed amount, cost or penalty is not paid on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the then

legal maximum rate in the state, and a telecommunications carrier shall reimburse the town for any additional expenses and costs incurred by the town by reason of the delinquent payments.

(e) The usage rights fee does not include any tax, fee or assessment of general applicability.

Sec. 9-423. - Regulatory fees and compensation not a tax.

The regulatory fees and costs provided for in this chapter, and any compensation charged and paid for the streets provided for in sections 9-403, 9-419, 9-420, 9-421, and 9-422 are separate from, and additional to, any and all federal, state, local and town taxes as may be levied, imposed or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

Sec. 9-424. - Location of facilities.

All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a usage rights agreement:

(1) A user shall install its telecommunications facilities within an existing underground duct or conduit whenever excess capacity exists.

(2) A user with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available. The town engineer must review and approve the use of overhead facilities.

(3) Whenever any existing electric utilities, cable system or telecommunications facilities are located underground within a street of the town, a user with permission to occupy the same street must also locate its telecommunications facilities underground.

(4) Whenever any new or existing electric utilities, cable system or telecommunications facilities are located, or relocated, underground within a street of the town, a user that currently occupies the same street shall relocate its facilities underground within a reasonable period of time, which shall not be later than the end of the usage rights term. Absent extraordinary circumstances or undue hardship as determined by the town, such relocation shall be made concurrently to minimize the disruption of the streets.

(5) Whenever new telecommunications facilities will exhaust the capacity of a street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the user shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future telecommunications carriers.

Sec. 9-425. - Compliance with joint trenching rules.

All users shall, before commencing any construction in the streets, comply with all regulations of utility joint trenching rules.

Sec. 9-426. - Construction permits.

All users are required to obtain construction permits for telecommunications facilities as required in this chapter. However, nothing in this chapter shall prohibit the town and a user from agreeing to alternative plan review, permit and construction procedures in a usage rights agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Sec. 9-427. - Interference with the streets.

No user may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the streets by the town, by the general public or by other persons authorized to use or be present in or upon the streets. All such facilities shall be moved by the user temporarily or permanently, as determined by the town.

Sec. 9-428. - Damage to property.

No user nor any person acting on a user's behalf shall take any action or permit any action to be done which may impair or damage any town property, streets of the town or other permanent property located in, on or adjacent thereto.

Sec. 9-429. - Notice of work.

Unless otherwise provided in a usage rights agreement, no user, nor any person acting on the user's behalf, shall commence any nonemergency work in or about the streets of the town without ten working days' advance notice to the town.

Sec. 9-430. - Repair and emergency work.

In the event of an unscheduled repair or emergency, a user may commence such repair and emergency response work as required under the circumstances, provided that the user shall notify the town as promptly as possible before such repair or emergency work is commenced, or as soon thereafter as possible if advance notice is not practical.

Sec. 9-431. - Maintenance of facilities.

Each user shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Sec. 9-432. - Relocation or removal of facilities.

Within 30 days following written notice from the town, a user shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the streets whenever the town shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The construction, repair, maintenance or installation of any town or other public improvement in or upon the streets.
- (2) The operations of the town or other governmental entity in or upon the streets.

Sec. 9-433. - Removal of unauthorized telecommunications facilities.

Within 30 days following written notice from the town, any telecommunications carrier that owns, controls or maintains any unauthorized telecommunications system, telecommunications facility or related appurtenances within the streets of the town shall, at its own expense, remove such telecommunications facilities or appurtenances from the streets of the town. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- (1) Upon expiration or termination of the user's telecommunications usage rights.
- (2) Upon abandonment of a facility within the streets of the town.
- (3) If the system or facility was constructed or installed without the prior grant of a telecommunications usage rights.
- (4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- (5) If the system or facility was constructed or installed at a location not permitted by the telecommunications usage rights.

Sec. 9-434. - Emergency removal or relocation of facilities.

The town retains the right and privilege to cut or move any telecommunications facilities located within the streets of the town as the town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The town, where feasible, shall attempt to contact user prior to cutting or removing facilities from the streets.

Sec. 9-435. - Damage to user's facilities.

Unless directly and proximately caused by the willful, intentional or malicious acts by the town, the town shall not be liable for any damage to or loss of any telecommunications facility within the streets of the town as a result of or in connection with any public works, public

improvements, construction, excavation, grading, filling or work of any kind in the streets by or on behalf of the town.

Sec. 9-436. - Restoration of streets and town property.

(a) When a user, or any person acting on its behalf, does any work in or affecting any streets or town property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such streets or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the town.

(b) If weather or other conditions do not permit the complete restoration required by this section, the user shall temporarily restore the affected ways or property. Such temporary restoration shall be at the user's sole expense, and the user shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) A user or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

Sec. 9-437. - Facilities maps.

Each user shall provide the town with an accurate map certifying the location of all telecommunications facilities within the streets. Each user shall provide updated maps annually.

Sec. 9-438. - Duty to provide information.

Within ten days of a written request from the town, each user shall furnish the town with information sufficient to demonstrate that:

- (1) The user has complied with all requirements of this chapter.
- (2) All municipal sales, message and/or telecommunications taxes due the town in connection with the telecommunications services and facilities provided by the user have been properly collected and paid by the user.
- (3) All books, records, maps and other documents maintained by the user with respect to its facilities within the streets shall be made available for inspection by the town at reasonable times and intervals.

Sec. 9-439. - Leased capacity.

A user shall have the right, without prior town approval, to offer or provide capacity or band width to other providers of telecommunications service, provided that:

- (1) The user shall furnish the town with a copy of any such lease or agreement with other telecommunication service.
- (2) The telecommunications service provider has complied, to the extent applicable, with the requirements of this chapter or other applicable town ordinances.

Sec. 9-440. - User insurance.

Unless otherwise provided in a usage rights agreement, each user shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring the user and the town, and its elected and appointed officers, officials agents and employees as co-insureds:

- (1) Comprehensive general liability insurance with limits not less than:
 - a. Two million dollars for bodily injury or death to each person;
 - b. Two million dollars for property damage resulting from any one accident; and
 - c. Two million dollars for all other types of liability.
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 for each person and \$3,000,000.00 for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products complete hazard with limits of not less than \$3,000,000.00.
- (5) Umbrella liability with limits of not less than \$5,000,000.00.
- (6) The liability insurance policies required by this section shall be maintained by the user throughout the term of the telecommunications usage rights and such other period of time during which the user is operating without usage rights hereunder or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the town, by registered mail, of a written notice addressed to the town recorder of such intent to cancel or not to renew."
- (7) Within 60 days after receipt by the town of such notice, and in no event later than 30 days prior to such cancellation, the user shall obtain and furnish to the town replacement insurance policies meeting the requirements of this section.

Sec. 9-441. - General indemnification.

Each usage rights agreement shall include, to the extent permitted by law, the user's express undertaking to defend, indemnify and hold the town and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the user or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities and in providing or offering telecommunications' services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a usage rights agreement made or entered into pursuant to this chapter.

Sec. 9-442. - Performance and construction surety.

Before the usage rights granted pursuant to this chapter are effective, and as necessary thereafter, the user shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the town as may be required by this chapter or by an applicable usage rights agreement.

Sec. 9-443. - Security fund.

(a) Each user shall establish a permanent security fund with the town by depositing the amount of \$20,000.00 with the town in cash, an unconditional letter of credit or other instrument acceptable to the town, which fund shall be maintained at the sole expense of the user so long as any of the user's telecommunications facilities are located within the streets of the town.

(b) The fund shall serve as security for the full and complete performance of this chapter, including any costs, expenses, damages or loss the town pays or incurs because of any failure attributable to the user to comply with the codes, ordinances, rules, regulations or permits of the town.

(c) Before any sums are withdrawn from the security fund, the town shall give written notice to the user:

(1) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the town has incurred by reason of the user's act or default.

(2) Providing a reasonable opportunity for the user to first remedy the existing or ongoing default or failure, if applicable.

(3) Providing a reasonable opportunity for user to pay any monies due the town before the town withdraws the amount thereof from the security fund, if applicable.

(4) That the user will be given an opportunity to review the act, default or failure described in the notice with the town administrator or his designee.

(d) A user shall replenish the security fund within 14 days after written notice from the town that there is a deficiency in the amount of the fund.

Sec. 9-444. - Construction and completion bond.

(a) Unless otherwise provided in a usage rights agreement, a performance bond written by a corporate surety acceptable to the town equal to at least 50 percent of the estimated cost of constructing the user's telecommunications facilities within the streets of the town shall be deposited before construction is commenced.

(b) Notwithstanding the provisions of this subsection (a) of this section, if a user makes application to the town to be relieved from furnishing a performance and payment bond relative to construction of a system or improvements thereto, the town may waive the requirement for such bond or reduce the required amount thereof if the town determines that:

(1) Such user has a net worth of not less than \$50,000,000.00 as reflected by its most current financial statement; and

(2) The performance of such user of its obligations generally, whether financial or otherwise, has been satisfactory with respect to the town and with respect to other parties with which such company has had obligations of construction or improvements to telecommunication systems.

(c) The construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the town engineer, including restoration of streets and other property affected by the construction.

(d) The construction bond shall guarantee, to the satisfaction of the town:

(1) Timely completion of construction;

(2) Construction in compliance with applicable plans, permits, technical codes and standards;

(3) Proper location of the facilities as specified by the town;

(4) Restoration of the streets and other property affected by the construction;

(5) The submission of as-built drawings after completion of the work as required by this chapter; and

(6) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Sec. 9-445. – Conditions of rights-of-way occupancy.

(a) In the exercise of governmental functions, the Town has first priority over all other uses of the public rights-of-way. The Town reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachment, restructuring or changes in aerial facilities in, across, along, over or under a public street, alley or right-of-way occupied by a provider, and to change the curb, sidewalks or the grade of streets.

(b) In case of conflict or interference between the facilities of different users, the user whose facilities were first permitted shall have priority over a competing user's use of the public rights-of-way.

(c) If, during the term of a municipal permit, the Town authorizes abutting landowners to occupy space under the surface of any public street, alley, or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the user. If the Town closes or abandons a public right-of-way that contains a portion of a user's facilities, the Town shall convey the land in the closed or abandoned public rights-of-way subject to the rights granted in the municipal permit.

(d) If the Town gives written notice, a provider shall, at the user's expense, temporarily or permanently remove, relocate, change or alter the position of the provider's facilities that are in the public rights-of-way within one hundred twenty (120) days. The Town shall give notice whenever the Town had determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a Town or other governmental entity's public improvement in the public rights-of way. This section shall not be construed to prevent a user's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal.

(e) A user who holds a municipal permit may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its network. All tree trimming shall be performed in accordance with standards promulgated by the Town. When ordered by the director of public works, tree trimming shall be done under the supervision of the Town.

Sec. 9-446. - Transfer of ownership or control.

(a) Usage rights shall not be sold, assigned or transferred (including through inheritance), either in whole or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity without full compliance with the procedure set forth in this section.

(b) The provisions of this section shall apply to the sale or transfer of all or a share of a telecommunications carrier's assets or shares of stock, and to a merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation of the parent company, or sale or transfer of stock in a company so as to create a new controlling interest. The term "controlling interest" as used in this section is not limited to majority stock ownership, but includes actual working control in whatever manner exercised, including the creation or transfer of decision-making authority to a new or different board of directors.

(1) The parties to the sale or transfer shall make a written request to the town for its approval of a sale or transfer. The written request shall be accompanied by all information required by FCC rules and shall be presented on a form as prescribed by FCC rules. Thereafter, the town shall have 120 days to act on the request, or it shall be deemed granted subject to the provisions following. If the town finds that the application is not complete, as required by FCC rules, it shall notify the parties within 60 days of the initial filing. Such notice shall stay the running of the 120 days until such time as the parties file a complete application in accordance with FCC rules. If the town does not so notify the parties within the 60 days following the filing of an application, the application shall be deemed complete and the 120 days shall run from the date such application was filed. The town may request such additional information as it might reasonably determine to be necessary to act on the request. Such request shall not, however, extend the 120-day period unless mutually agreed to by all parties or such extension is expressly permitted by the FCC rules.

(2) The town shall signify in writing within the time aforesaid its approval of the request or its determination that a public hearing is necessary due to potential adverse effect on a company's subscribers.

(3) If a public hearing is deemed necessary pursuant to subsection (b)(2) of this section, such hearing shall be commenced within 30 days of such determination, and notice of any such hearing shall be given 14 days prior to the hearing by publishing a notice. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the town.

(4) Within 30 days after the closing of the public hearing, the town shall approve or deny in writing the sale or transfer request.

(5) Within 30 days of any transfer, a company shall file with the town a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by such company.

(c) In reviewing a request for sale or transfer pursuant to subsection (a) of this section, the town may inquire into the legal, technical and financial qualifications of the prospective controlling party, and a user shall assist the town in so inquiring. The town may condition such transfer upon

such terms and conditions as it deems reasonably appropriate to satisfy such qualifications; provided, however, that the town shall not unreasonably withhold its approval. As a condition of approval of a transfer or assignment of ownership or control, the town may require that the transferee become a signatory to the usage rights agreement entered into by the town and the predecessor of the transferee.

(d) A user shall notify the town in writing of any change in administrative officials regarding its telecommunications system within 14 days of the change.

(e) Notwithstanding anything to the contrary in this chapter or a usage rights agreement, no prior consent by the town shall be required for any transfer or assignment to any entity controlling, controlled by, or under the same common control of the transferring party. However, in such a transfer or assignment, such transferring party shall remain liable for all financial obligations as required pursuant to its usage rights and this chapter, unless otherwise agreed to by the town. Such agreement to release the transferring company shall not be withheld unreasonably and shall further be provided in all transfers or assignments where the transferee party has a net worth of not less than \$25,000,000.00 as reflected by its most current audited financial statement.

Sec. 9-447. - Transactions affecting control of usage rights.

Any transactions which singularly or collectively result in a change of ten percent or more of the ownership or working control of the usage rightse, of the ownership or working control of a telecommunications usage rights, of the ownership or working control of affiliated entities having ownership or working control of the usage rightse or of a telecommunications system or of control of the capacity or band width of usage rightse's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring town approval pursuant to section 19-146.

Sec. 9-448. - Revocation or termination of usage rights.

Usage rights granted by the town to use or occupy streets of the town may be revoked for the following reasons:

- (1) Construction or operation in the town or in the streets of the town without a usage rights.
- (2) Construction or operation at an unauthorized location.
- (3) Unauthorized substantial transfer of control of the user.
- (4) Unauthorized assignment of a usage rights.
- (5) Unauthorized sale, assignment or transfer of usage rights or assets, or a substantial interest therein.

- (6) Misrepresentation or lack of candor by or on behalf of a user in any application to the town.
- (7) Abandonment of telecommunications facilities in the streets.
- (8) Failure to relocate or remove facilities as required in this chapter.
- (9) Failure to pay taxes, compensation, fees or costs when and as due the town.
- (10) Insolvency or bankruptcy of the user.
- (11) Violation of material provisions of this chapter.
- (12) Violation of the material terms of a usage rights agreement.

Sec. 9-449. - Notice and duty to cure.

If the Mayor or his designee believes that grounds exist for revocation of usage rights, he or his designee shall give the user written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the user a reasonable period of time not exceeding 30 days to furnish evidence that:

- (1) Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

- (2) Rebuts the alleged violation or noncompliance.

- (3) It would be in the public interest to impose some penalty or sanction less than revocation.

Sec. 9-450. - Hearing.

If a user fails to provide evidence reasonably satisfactory to the town recorder, the town recorder shall refer the apparent violation or noncompliance to the board of mayor and aldermen. The board of mayor and aldermen shall provide the user with notice and a reasonable opportunity to be heard concerning the matter.

Sec. 9-451. - Standards for revocation or lesser sanctions.

If persuaded that the user has violated or failed to comply with material provisions of this chapter, or of usage rights, the board of mayor and aldermen shall determine whether to revoke the usage rights, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) The misconduct was egregious.

- (2) Substantial harm resulted.
- (3) The violation was intentional.
- (4) There is a history of prior violations of the same or other requirements.
- (5) There is a history of overall compliance.
- (6) The violation was voluntarily disclosed, admitted or cured.

Sec. 9-452. - General.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the town except as provided in this article.

Sec. 9-453. - Construction codes.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Safety Code.

Sec. 9-454. - Construction permits.

No person shall construct or install any telecommunications facilities within the town without first obtaining a construction permit therefor, provided, however, that:

- (1) No permit shall be issued for the construction or installation of telecommunications facilities within the town unless the telecommunications carrier has filed a registration statement with the town pursuant to this chapter.
- (2) No permit shall be issued for the construction or installation of telecommunications facilities in the streets unless the telecommunications carrier has applied for and received a usage rights pursuant to this chapter.
- (3) No permit shall be issued for the construction or installation of telecommunications facilities without payment of the construction permit fee established in section 9-421.

Sec. 9-455. - Applications.

Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the town and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- (1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

- (2) The location and route of all facilities to be installed on existing utility poles.
- (3) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the streets.
- (4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the streets along the underground route proposed by the applicant.
- (5) The location of all other facilities to be constructed within the town, but not within the streets.
- (6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the streets.
- (7) The location, dimension and types of all trees within or adjacent to the streets along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

Sec. 9-456. - Engineer's certification.

All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Sec. 9-457. - Traffic control plan.

All permit applications which involve work on, in, under, across or along any streets shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

Sec. 9-458. - Issuance of permit.

Within 45 days after submission of all plans and documents required of the applicant and payment of the permit fees required by this chapter, the town, if satisfied that the applications, plans and document comply with all requirements of this chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate.

Sec. 9-459. - Construction schedule.

The user shall submit a written construction schedule to the town recorder ten working days before commencing any work in or about the streets. The user shall further notify the town engineer not less than two working days in advance of any excavation or work in the streets.

Sec. 9-460. - Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The town or its designees shall be provided access to the work and such further information as he may require to ensure compliance with such requirements.

Sec. 9-461. - Display of permit.

The user shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the town engineer or his representatives at all times when construction work is occurring.

Sec. 9-462. - Survey of underground facilities.

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the user shall cause the location of such facilities to be verified by a registered state land surveyor. The user shall relocate any facilities which are not located in compliance with permit requirements.

Sec. 9-463. - Noncomplying work.

Upon order of the town, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this chapter, shall be removed.

Sec. 9-464. - Completion of construction.

The user shall promptly complete all construction activities so as to minimize disruption of the streets and other public and private property. All construction work authorized by a permit within the streets, including restoration, must be completed within 120 days of the date of issuance.

Sec. 9-465. - As-built drawings.

Within 60 days after completion of construction, the user shall furnish the town with two complete sets of plans, drawn to scale and certified to the town as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

Sec. 9-466. - Construction surety.

Prior to issuance of a construction permit, the user shall provide a construction and completion bond.

Sec. 9-467. - Exceptions.

Unless otherwise provided in a usage rights agreement, all telecommunications carriers are subject to the requirements of this chapter.

Sec. 9-468. - Responsibility of owner.

The owner of the facilities to be constructed and, if different, the user, are responsible for performance of and compliance with all provisions of this chapter.

Section 2: This ordinance will take effect fifteen (15) days after the final passage of the same, the public welfare requiring the same.

Effective Date. The ordinances and amendment describe above shall take effect upon their adoption and publication, the public welfare requiring it.

SO ORDAINED, this 13 day of October, 2015.



Mayor William Trohanis



Fern Lockhart, Recorder

PASSED ON FIRST READING:

VOTE ON FIRST READING: 2 AYE

0 NO

Date: 9/8/2015

PASSED ON SECOND READING:

VOTE ON SECOND READING: 3 AYE

0 NO

Date: 10/13/2015

Approved as to form:

Town Attorney

11/25/2015

9:22 AM

Chattanooga Publishing Company

Acct: 74047

Name: TOWN OF WALDEN TN

Adid:

39437477

Ph: 4238864362

PO BOX 335

WALDON-SIGNAL MTN

SIGNAL MTN, TN 37377

Credit Status: GC

Rep: 26

Reply

Paytype BL

Source EM

☐ TFN

Rate LLN

Legal Line

Class 398

3Legal Notices

Days

1

Rate Iss

1

Start 11/27/2015

Stop 11/27/2015

Affidavit

10.00

Words.....

50

Price

62.64

0.00

Lines.....

18

Discount

0.00

0.00

Depth.....

1.48

Commis

0.00

0.00

Columns.....

1.00

Net

62.64

0.00

Graphic.....

0

St Tax

0.00

St Words.

2

Fed Tax

0.00

Free Day

0

☒ Boxed Ad

Total

62.64

Copy Line

PUBLIC NOTICE T TOW

Payment Du

0.00

On Hold

App Cr.

0.00

Product Code

Balance

62.64

Sort String

PUBLICNOTI9892

Receipt No:

☐ Disc

PO #

Tear Sheets 0

Comments

Reason for Discount

Editions

WEB6/T44C/

PUBLIC NOTICE

TOWN OF WALDEN, TENNESSEE
 THE TOWN OF WALDEN'S BOARD
 OF MAYOR AND ALDERMEN
 PASSED ON FINAL READING OR-
 DINANCE NO. 2015-307, AN ORDI-
 NANCE ADDING A NEW CHAP-
 TER 4 TO TITLE 9 OF THE
 MUNICIPAL CODE RELATING TO
 TELECOMMUNICATIONS USAGE
 RIGHTS ON THE TOWN RIGHTS
 OF WAY.

MAYOR WILLIAM TROHANIS

Ad shown is not actual print size