

ORDINANCE NO. BL2016-343

An ordinance to amend Title 13 of the Metropolitan Code of Laws by adding a new chapter to facilitate efficient access to and enhance the public safety and convenience for accessing the public rights-of-way to manage communications facilities.

WHEREAS, communications networks providing advanced broadband, cable, and information services in Nashville and Davidson County provide residents, businesses, and institutions with better telecommunications, cable, and information services at more competitive prices; and

WHEREAS, communications networks providing advanced broadband, cable, and information services in Nashville and Davidson County spur economic growth and business development, citizen engagement, and social interaction; and

WHEREAS, in many cases it is desirable for operational, efficiency, aesthetic, and public safety reasons to place facilities for communications networks providing advanced broadband, cable, or information services in Nashville and Davidson County on existing utility poles that already are located in the public rights-of-way; and

WHEREAS, pursuant to Sections 2.01(23), 2.01(40), and 2.02 of the Metropolitan Charter and Tennessee Code Annotated Sections 7-59-102(k), 7-59-302, and 65-21-103, the Metropolitan Government of Nashville and Davidson County has the right and obligation to manage the public rights-of-way within its boundaries in the public interest and for the public safety and may exercise its police powers to further a public purpose; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County desires to facilitate the efficient construction or upgrade of communications networks on utility poles located in the public rights-of-way while promoting and protecting public safety and reducing inconvenience to Nashville and Davidson County residents and businesses from the construction; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County seeks to act consistent with Communications Act of 1934, as amended (47 U.S.C. §§ 151 et seq.).

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 13 of the Metropolitan Code is hereby amended by adding the following new Chapter 13.18 – Management of Public Rights-of-Way for Make Ready Work:

Chapter 13.18 Management of Public Rights-of-Way for Make Ready Work

13.18.010 Definitions. As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

As-Built Report: means a report indicating any changes to an Attachment caused by Make Ready, including a unique field label identifier, the pole number if available, and the address or coordinates of the Attachment.

Attacher: means any person, corporation, or other entity or its agents or contractors seeking to fasten or affix any Attachment in the public rights-of-way.

Attachment: means communications equipment, antenna, line, or facility of any kind fastened or affixed to a utility pole or similar structure, or its guys and anchors used to support communications attachments.

Attachment Application: means the application made by an Attacher to an Owner for consent to attach such Attacher's Attachments to the Owner's utility pole or similar structure, or its guys and anchors used to support communications Attachments.

Complex Make Ready: means Make Ready that will cause or would reasonably be expected to cause a customer outage.

Make Ready: means the transfer, relocation, rearrangement, or alteration of a Pre-Existing Third Party User's communications equipment, antenna, line or facility of any kind necessary to provide space for Attacher to install an Attachment.

Owner: means a person, corporation, or other entity owning a utility pole or similar structure in the public rights-of-way on which facilities for the transmission of electricity or communications are or may be located.

Pre-Existing Third Party User: means the owner of any pre-existing Attachment located in the public rights-of-way.

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using contractors approved by the Owner if required by the Owner, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher's Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User;
2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and
3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the notice required in section 13.18.020(A)(1), the Attacher, using contractors approved by the Owner if required by the Owner, may undertake Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments.

C. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within thirty (30) days. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

D. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the thirty (30) day inspection window. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a contractor approved by the Owner if required by the Owner. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

E. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

Section 2. This Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Anthony Davis, Jeremy Elrod, Bill Pridemore, Russ Pulley, Mina Johnson, Colby Sledge, Angie Henderson, Robert Swope, Holly Huezco, Mike Freeman, Brenda Haywood, DeCosta Hastings, Burkley Allen, Mary Carolyn Roberts, Karen Johnson, Jason Potts, Nancy VanReece

**AMENDMENT NO. 1
TO
ORDINANCE NO. BL2016-343**

Mr. President –

I move to amend Ordinance No. BL2016-343 as follows:

I. By amending the first three recitals clauses by adding the word “telecommunications,” after the word “broadband,” as it appears after each “WHEREAS” as set forth below:

WHEREAS, communications networks providing advanced broadband, telecommunications, cable, and information services in Nashville and Davidson County provide residents, businesses, and institutions with better telecommunications, cable, and information services at more competitive prices;

WHEREAS, communications networks providing advanced broadband, telecommunications, cable, and information services in Nashville and Davidson County spur economic growth and business development, citizen engagement, and social interaction;

WHEREAS, in many cases it is desirable for operational, efficiency, aesthetic, and public safety reasons to place facilities for communications networks providing advanced broadband, telecommunications, cable, or information services in Nashville and Davidson County on existing utility poles that already are located in the public rights-of-way;

II. By further amending the recitals clauses by adding the following additional “Whereas” paragraphs:

“WHEREAS, the Federal Communications Commission (FCC) has not addressed one touch make ready in its Pole Attachment Orders, therefore The Metropolitan Government of Nashville and Davidson County has the right to address one touch make ready within its boundaries;”

“WHEREAS, the Ordinance is not intended to preempt the FCC Pole Attachment Orders to the extent those are applicable to pole attachments within the jurisdiction of The Metropolitan Government of Nashville and Davidson County;”

III. By amending Section 1 by adding the following term and definition to proposed section 13.18.010 Definitions:

“Preapproved Contractor – means a contractor approved by the Owner to perform Make Ready.”

IV. By further amending Section 1 by deleting subsection 13.18.020 in its entirety and submitting in lieu thereof the following:

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using Preapproved Contractors and at the Attacher’s expense, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher’s Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days’ prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User so that a field meeting can be scheduled within that time frame with technicians from the Pre-Existing Third Party and the Attacher. The technicians will decide what steps need to be taken to complete the Complex Make Ready;

2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and

3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.

4. The Attacher will not perform Make Ready without first providing fifteen (15) days’ prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the written notice required in section 13.18.020(A)(1), the Attacher, using Pre-Approved Contractors, may undertake Complex Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments at the Attacher’s expense; provided, however, that the Pre-Existing Third Party User will have sixty (60) days from the date of notice to

perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting required in section 13.18.020(A)(1).

C. The Attacher will place its Attachment where instructed by the Owner.

D. At its own expense, Attacher shall ensure that any Make Ready Attachments that are transferred, relocated, rearranged or altered are done in accordance with all applicable federal, state and local laws and regulations; and all applicable engineering and safety standards.

E. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within sixty (60) days without waiving any rights. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

F. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, the standards in 13.18.020(D), or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the sixty (60) day inspection window without waiving any rights. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a Pre-Approved Contractor. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

G. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

H. In the event of a dispute arising out of this Chapter, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.

Sponsored by: Anthony Davis, Jeremy Elrod, Bill Pridemore

**Amendment No. 2
To
Ordinance No. BL2016-343**

Mr. President:

I move to amend Ordinance No. BL2016-343 by renumbering the existing Section 2 as Section 3, and by adding the following new Section 2:

"Section 2. The provisions of this ordinance shall not apply to the Metropolitan Government's Attachments on utility poles or other similar structures that consist of cameras, radios, or any equipment used for emergency communications, and facilities used for traffic signalization, including the following: cameras, detection devices, traffic control boxes, traffic signals, and pedestrian traffic control related appurtenances, such as buttons and wires. The relocation by Attachers of the Metropolitan Government's Attachments consisting of cameras, radios, equipment used for emergency communications or facilities used for traffic signalization shall only be done in accordance with a written agreement negotiated between and executed by the Metropolitan Government and the Attacher(s)."

Sponsored by: Anthony Davis, Jeremy Elrod, Mina Johnson

**AMENDMENT NO. 3
TO
ORDINANCE NO. BL2016-343**


Mr. President –

I move to amend Ordinance No. BL2016-343 as follows:

I. By amending Section 1 by deleting subsection 13.18.020(E) it in its entirety and substituting therefore the following:

E. An Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall obtain and maintain, at its sole cost and expense, and file with the metropolitan clerk, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the metropolitan attorney, in the amount of one million dollars, both to safeguard the public right of way and to guarantee the timely performance of Make Ready construction and implementation of the telecommunications system. Additionally, such Attachers, to the extent permitted by applicable law, shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

Sponsored by: Tanaka Vercher

LEGISLATIVE HISTORY	
Introduced:	August 2, 2016
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Referred to:	Budget & Finance Committee Public Works Committee
Deferred:	August 16, 2016
Amended:	September 6, 2016
Passed Second Reading:	September 6, 2016 - Roll Call Vote
Passed Third Reading:	September 20, 2016
Approved:	September 21, 2016
By:	

Requests for ADA accommodation should be directed to the Metropolitan Clerk at 615/862-6770.