



County Highway Issues

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County Uniform Highway Law (CUHL)

T.C.A. § 54-7-101 *et seq.*

- Covers
 - Qualifications
 - Duties & powers of CAO
 - Term of office
 - Vacancy
- Sets important parameters for most highway departments
- Does not cover everything
 - Ex. purchasing
- Generally, does not apply to:
 - Shelby
 - Davidson
 - Knox
 - Hamilton
 - There are certain exceptions to this

Private Acts (Road Law)

- Where CUHL is silent, private acts fill in blanks
- Private acts
 - Existed long before the CUHL
 - Determine whether the CAO is elected or appointed
 - Determine whether there is a highway commission in your county and how you get it (election or appointment)

Removal of Obstructions under CUHL

- CUHL authorizes the CAO to remove or cause to be removed any gate, fence or other obstruction from the county roads, bridges and rights-of-way. T.C.A. § 54-7-201.



Prohibited Acts under CUHL

- The law generally prohibits:
 - Use of county highway department equipment or materials for anything other than a county highway purpose.
 - Work on private roads or for private purposes.
 - Selling or giving away rock, crushed stone or other road material.
 - Employees using equipment or material for personal use. If they do so, they are to be discharged immediately.
 - T.C.A. § 54-7-202.

Exceptions

- Board of education or postal authorities may request a route and turnaround area on private property
- County legislative body may authorize the CAO to do work for other governmental entities
 - Costs must be reimbursed
 - If working for another county department, a transfer should be made to the highway department to cover the cost
- Joint purchasing agreements
- Interlocal agreements

Bridges and Roads in State Parks

- TDOT responsible for maintenance of bridges and roads within state parks.
- TDOT may contract with county to do work and reimburse county with state highway funds. T.C.A. § 54-1-126.
- TDEC responsible for mowing, litter removal, golf cart paths, greenways, trails, restricted access roads, parking lots and other similar facilities. § 54-1-126.



Gifts to the County under CUHL

- The highway department may receive “gifts” of materials, property, services, funds or supplies which can be used or disbursed in accordance with the terms of the donation.
- Highway department authorize a private party to repair county roads damaged by that party.
- T.C.A. § 54-7-115

Road Acceptance and Classification

- How does the county acquire a road?

Act of a public authority

- Purchase of property interest
- Eminent domain
- Classification and placing on county road list

Express dedication by the owner

- Deed
- Contract

Implied dedication

- Owner has intent to dedicate
- Public use
- Not applicable to subdivision roads

Adverse use continuing for 20 years

- Owner has no intent to dedicate, or objected to public use
- Use is adverse, under a claim of right, continuous, uninterrupted, open, visible, exclusive & with the knowledge of owner for full 20-year period

County Road List

- CLB is charged with classifying public roads.
- Prior to the CLB classifying the roads, the CAO is required to submit a current road list to the CLB. That list should include a summary of all changes from the list previously submitted. The CAO should also include his/her recommendations for classifying the roads. T.C.A § 54-10-103.
- It is vitally important that the road list be kept current and that the CAO avoid working on any road (or part of a road) not on the road list.
- County road list can (and should) be updated at any time.



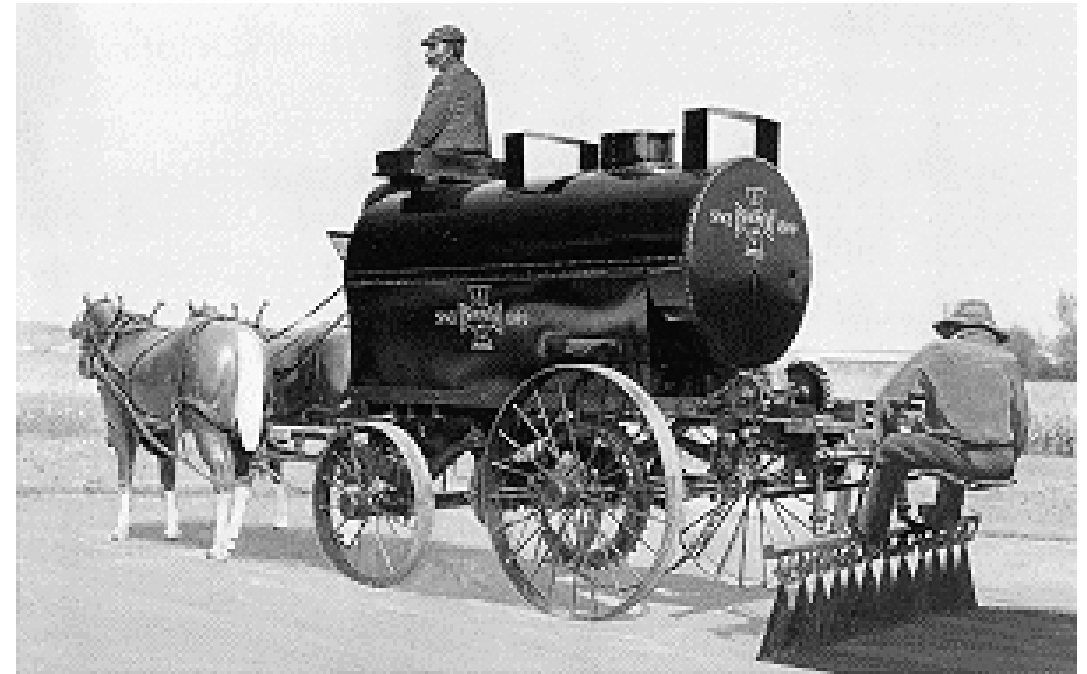
Eight Items the Road List Should Include:

- Type of road (county or state-aid)
- State-aid road description (only for counties in the state-aid road system)
- Local name of road
- Beginning and end of road (reference to geographical features)



Eight Items the Road List Should Include (cont'd)

- Miles (length to nearest 1/10 of a mile)
- Class (classify according to width as set out by T.C.A. §§ 54-10-103 & 54-10-104)
- Right-of-way width (in feet)
- Roadbed width (in feet)



Opening and Closing Roads

- Provisions on opening and closing roads are found at T.C.A., Title 54, Chapter 10, Part 2.
 - These were adopted in 1891 and haven't been updated since, which makes it difficult to fit the process within the current structure of county government.
 - AG has said authority to approve new road, change route of existing road, and close a road rests with CAO. Op. Tenn. Atty. Gen. U89-10 (January 31, 1989). CLB must also vote on additions/deletions to road list. T.C.A. § 54-10-103.

Procedure under General Law

The procedures may be summarized as follows:

- A resident of the county may make an application to the highway commissioner of the district through which the road runs to open, change, or close a road through a signed petition. T.C.A. § 54-10-201.
- A highway commissioner may, without a petition, proceed to open, change, or close a road which is deemed necessary for the public interest. T.C.A. § 54-10-213.
- Before a road can be opened, closed, or changed, at least five (5) days' notice must be given to all interested parties of the time the road is to be changed. Landowners and those controlling land touched by the road are interested parties. T.C.A. § 54-10-202.

Procedures under General Law

- Once notice has been given, the highway commissioner in whose district the road runs will pick two other freeholders of the same district who have never been consulted on the issue and who will take an oath of impartiality and these persons will constitute a jury of view. T.C.A. § 54-10-204.
- The jury of view will assess the damages to any property affected by the opening, change, or closing of the road. T.C.A. § 54-10-205.
- Any aggrieved party may appeal the action of the jury of view to the court of general sessions and from there to circuit and appellate courts. In case of an appeal, the jury of view will forward all the papers in the case to the general sessions court. T.C.A. § 54-10-206.

Highway Commissioners

- When the old law was adopted, counties were required to have highway commissioners who supervised all road work in their respective districts.
- The law requiring these commissioners was repealed in 1963, but the provisions for accepting and closing county roads were not amended to reflect this change.
- AG opinion from 1989 seems to indicate it should be done by CAO; however, some counties use CLB highway committee to carry out procedures with full CLB approving committee's actions. Other counties use their highway board. Process varies throughout state.

Alternative Procedure for Closing a County Road

- Local option public law enacted in 1995 and codified in T.C.A. § 54-10-216.
- Enacted by 2/3 vote of CLB.
- Law provides a specific process to close road: Application to close road submitted to CAO, public notice to interested parties, CAO makes recommendation to regional planning commission, planning commission gives appropriate notice, planning commission recommends to CLB, then CLB votes to close road.

Sample Petition

COUNTY, TENNESSEE
PETITION FOR ROAD CLOSURE

1. Name and address of petitioner(s): _____

2. Name of road to be affected: _____
3. Length of closure (nearest tenth of mile) _____
4. Width of right-of-way, nearest foot _____
5. Width of roadbed, nearest foot _____

6. Names and address of property owners whose property is accessible via the portion of the road to be closed:

Name: _____
Address: _____
Name: _____
Address: _____
Name: _____
Address: _____
Name: _____
Address: _____
Name: _____
Address: _____

Description of beginning and ending points (Refer to names of existing public road or attach legal description with survey):

1

7. Recommendation of Regional Planning Commission:

8. Recommendation of the Road Superintendent:

9. Recommendation of the County Attorney:

2

We, the following property owners request the above-described road closure:

Signature

Print Name

Address

Telephone #

Signature

Print Name

Address

Telephone #

Signature

Print Name

3

Deannexation and Roads

- Municipal limits can be contracted by ordinance or referendum. § 6-51-201.
- Municipal jurisdiction ceases on date of ordinance. § 6-51-204.
- What happens to deannexed roads? Do they automatically become county roads?
 - Would argue it is not automatic and that roads must be accepted by CLB to become part of the county road system.

Interaction of Highway Department and the Planning Commission

- Subdivision regulations may include road standards.
 - Make sure road standards in subdivision regulations are consistent with any road acceptance standards adopted by the CLB.
 - RPC can require completion of infrastructure improvements prior to final plat approval or may grant final plat approval subject to submittal and acceptance of bond, LOC or other form of security to guarantee completion.
 - Form, amount and conditions are determined by RPC.
 - RPC sets time period for completion of improvements, which should be specified in the bond/LOC.
 - Enforced by county attorney, money paid to county and used for infrastructure improvements on the order of the RPC.
 - T.C.A. § 13-3-403.

Interaction of Highway Department and the Planning Commission

- Plat approval does not constitute acceptance of roads shown on plat. T.C.A. § 13-3-405.
- Once jurisdiction of RPC has attached, county cannot accept subdivision roads unless roads shown on approved plat. T.C.A. § 13-3-406.
- Planning statutes impose duty on developers to obtain acceptance of roads by county. *Foley v. Hamilton*, 659 S.W.2d 356 (Tenn. 1983).
- Vested Property Rights: T.C.A. § 13-3-413 allows development standards (including road standards) in effect on date of approval of preliminary development plan/final development plan or building permit (if no preliminary plan approval required).

Underground Utility Damage Prevention Act (T.C.A. § 65-31-101 *et seq.*)

- Must notify one-call service at least three days prior to excavation.
- Exceptions to notification requirements:
 - Routine maintenance
 - Emergencies
- Violations of one-call statutes separate from civil liability for damage to utilities.
- Penalties for violations of one-call statutes include mandatory training (at county's cost) and fines.

ROW Regulation

- Counties are authorized to regulate their rights-of-way
- CLB can enact regulations and require permits
- If duly enacted by the CLB, can assess civil penalties for violations (T.C.A. § 5-1-118)
- CTAS has model regulations and permit applications on website

Regulating New Technology in the ROW

- Distributed Antenna Systems (DAS)
- Small Cell Towers
- Technology is key in meeting growing demand for telecommunications services
- Need to balance protection of ROW with support of high-speed internet and cellular telephone access

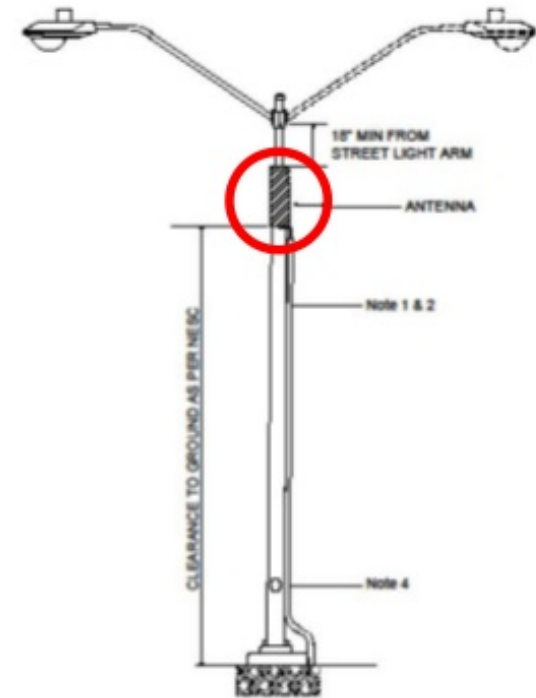
DAS (collocation)

DAS Antenna Examples

Utility Pole



Street Light



DAS (pole)



Small Cell Tower



Regulating DAS and Small Cells

- Local zoning ordinances and ROW regulations need to be reviewed and most likely updated to address this new technology in compliance with federal and state law
- Require collocation rather than new structures in the ROW when possible
- Retain authority to manage your ROW and exercise your police powers to extent allowed

Regulating DAS and Small Cells

- When placing these facilities in the ROW, counties can regulate (to some extent) such things as:
 - Location (spacing)
 - Height
 - Undergrounding of transmission equipment
 - Aesthetics (camouflaging of facilities)
 - Building/safety codes

State Law

- Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018 (Public Chapter 819)
- Codified at T.C.A. § 13-24-401 *et seq.*
- Sets limits on regulation of small cells by local governments.
- Addresses applications/permits, fees and substantive regulations such as spacing requirements and aesthetics.
- General rule under this new law is that small cell regulations cannot be more onerous than regulations of other types of facilities in the ROW.
- Detailed summary available from MTAS.

FCC Ruling and Order

- *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Declaratory Ruling and Third Report and Order*; WT Docket No. 17-79; WC Docket No. 17-84
- Effective January 14, 2019 (April 15, 2019 as to aesthetic requirements)

FCC Ruling and Order

- State law preempted to the extent it conflicts
- Caps fees (creates safe harbors):
 - Non-recurring: \$500 for up to five small cells (allows additional \$100 per beyond five) and \$1,000 for new pole
 - Recurring: \$270 per small cell per year (ROW access fee or pole attachment)
 - Can charge more if reasonable, non-discriminatory and related to actual costs

FCC Ruling and Order

- Preempts aesthetic requirements unless they are:

Reasonable

Non-
discriminatory

Objective

Published in
advanced

FCC Ruling and Order

- Establishes Shot Clocks
 - 60 days for small cells added to existing structures
 - 90 days for small cells using a new structure
 - No deemed granted provision; if violate timelines, allows provider to seek expedited injunctive relief
- On appeal in the Ninth Circuit
- Other parties have asked FCC to reconsider
- Could be vacated in part or whole

FCC Ruling and Order



Model Ordinance

<https://www.nlc.org/resource/model-code-for-municipalities-0>



THE FCC'S DECLARATORY RULING AND THIRD REPORT AND ORDER ON SMALL WIRELESS FACILITIES DEPLOYMENT: GUIDE FOR IMPLEMENTATION

On September 27, 2018, the FCC released a [Declaratory Ruling and Third Report and Order](#) ("Order") that significantly limits state and local management of small wireless infrastructure deployment and associated fees for use of the rights of way and public property in the rights of way. The Ruling and Order will take effect **January 14, 2019**.¹ We strongly encourage local governments to consider necessary steps to implement the Order prior to its effective date.

To that end, this guide provides a summary of the Order and considerations for local governments in implementing the Order. Due to variations in state law, local authority and existing ordinances (among other things), there will be no "one-size-fits-all" solution for complying with the new rules and statutory interpretations in the Order. As such, this guide is intended to raise issues for municipalities to consider rather than proposing specific solutions. Jurisdictions should consult with legal counsel and appropriate staff to determine what, if any, steps should be taken in response to the Order.

SUMMARY OF THE ORDER

- **Caps all fees** related to small wireless facilities ("SWF") at "a reasonable approximation of the state or local governments' actual and reasonable costs."

<https://www.natoa.org/documents/FCC%20Small%20Wireless%20Facilities%20Rules%20Compliance%20Guide.pdf>

Modifications of Facilities

- Decision-making by local governments is significantly restricted by Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012:
 - “[A] State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station.”
 - “Substantially change” means (for towers in ROW):
 - Increase in height of 10% or 10 feet, whichever is greater
 - Increase in width more than 6 feet
 - Installation of new equipment cabinets if none or cabinets 10% larger than current cabinets
 - Any excavation outside the current site
 - Would “defeat the concealment elements”
 - Does not comply with prior conditions associated with zoning approval (there are exceptions to this)

Modifications of Facilities

- If modification is a substantial change:
 - Review of request must be completed in 60 days or the request will be “deemed granted.”
 - Parties can agree to extend time of review.
- Section 6409(a) only applies to local governments when they are acting in their regulatory role, and not when they are acting in in their proprietary capacities.
- Can apply to DAS and small cell support structures.

Remedies for Road Damage

- **Weight Limits**
 - Counties may lower max gross weight of vehicles operating over county roads/bridges by 2/3 vote. T.C.A. § 55-7-205.
 - Should conduct study to ascertain max weight road/bridge can hold.
 - Must post signs so public has notice.
 - Violators subject to civil penalties.
 - Must have scales to enforce.
- **Damage to County Highway Structures**
 - T.C.A. § 54-7-207.
 - Includes roads, bridges, rights-of-way, etc.
 - Criminal offense to damage (Class A misdemeanor—jail/fine up to \$2,500).
 - Civil action for damage.
 - Reward (\$250) for information that leads to conviction.
 - Applies to all counties.

Remedies for Sign Damage or Theft

Unlawful possession of traffic control signs

- T.C.A. § 54-10-112
- Class B misdemeanor
- Fine up to \$500
- Each sign is separate offense

Unlawful possession of road signs

- T.C.A. § 54-10-113
- Class B misdemeanor
- Fine up to \$500
- Each sign is separate offense

Vandalism of signs

- T.C.A. § 54-7-207
- Class A misdemeanor
- Jail/Fine up to \$2,500

Tampering with construction signs/barricades

- T.C.A. § 39-17-108
- Class A misdemeanor
- Covers intentionally tampering with or disregarding signs/barricades

A scenic landscape featuring a two-lane asphalt road that curves through a valley. The road is flanked by golden-brown grass on the left and green fields on the right. In the distance, a small white house with a red roof sits on a hillside. Further back, snow-capped mountains are visible under a dramatic sky with dark, heavy clouds on the left and a bright, glowing sunset on the right. The sun is low on the horizon, casting a warm, golden light across the scene.

Questions?

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