



**MIDVALE CITY COUNCIL MEETING
AGENDA
August 28, 2018**

PUBLIC NOTICE IS HEREBY GIVEN that the **Midvale City Council** will hold a special meeting on the **28th day of August 2018** at Midvale City Hall, 7505 South Holden Street, Midvale, Utah as follows:

**6:30 PM
REGULAR MEETING**

I. GENERAL BUSINESS

- A. WELCOME AND PLEDGE OF ALLEGIANCE
- B. ROLL CALL

II. ACTION ITEMS

- A. Consider Ordinance No. 2018-O-10 Amending Midvale Municipal Code, Chapter 5.54 Wireless Communications Services [**Garrett Wilcox, Deputy Attorney**]
- B. Consider Ordinance No. 2018-O-11 Creating the Midvale Municipal Code, Chapter 12.14, Installations within the City Rights-of-Way [**Garrett Wilcox, Deputy Attorney**]

III. ADJOURN

In accordance with the Americans with Disabilities Act, Midvale City will make reasonable accommodations for participation in the meeting. Request assistance by contacting the City Recorder at 801-567-7207, providing at least three working day notice of the meeting. TTY 711

A copy of the foregoing agenda was provided to the news media by email and/or fax. The agenda was also posted at the following locations on the date and time as posted above: City Hall Lobby, on the City's website at www.midvalecity.org and the State Public Notice Website at <http://pmn.utah.gov>. Council Members may participate in the meeting via electronic communications. Council Members' participation via electronic communication will be broadcast and amplified so other Council Members and all other persons present in the Council Chambers will be able to hear or see the communication.

PLEASE MAKE SURE ALL CELL PHONES ARE TURNED OFF DURING THE MEETING

DATE POSTED: AUGUST 24, 2018

**RORI L. ANDREASON, MMC
H.R. DIRECTOR/CITY RECORDER**



MIDVALE CITY COUNCIL SUMMARY REPORT

Meeting Date: August 28, 2018

SUBJECT: Consider adopting Ordinance 2018-O-10 amending Chapter 5.54 Wireless Communications Services.

SUBMITTED BY: Lisa Garner, City Attorney

SUMMARY:

On January 16, 2018, the Council adopted Chapter 5.54 'Wireless Communications Services.' This ordinance put a regulatory scheme in place that allows wireless providers to install small wireless facilities in the City's right-of-way under certain conditions. This ordinance had been negotiated with several providers who were ultimately supportive of the adoption of the ordinance.

Earlier that day, the Legal Department attended a meeting at the State Capitol in which they were told that S.B. 189 'Small Wireless Facilities Deployment Act' would likely be introduced and passed that legislative session. In coordination with the Utah League of Cities and Towns, the Legal Department assisted in negotiating with wireless providers, state legislators, and others in improving the bill. The passed version of the bill was an improvement from the original draft, but it had the unfortunate effect of a limiting municipalities' ability to regulate and control the deployment of small wireless facilities within their right-of-way. This bill specifically prohibited grandfathering existing ordinances. Any municipality with an existing ordinance, such as Midvale, is required under the bill to have an ordinance that is compliant with S.B. 189 before the 'Small Wireless Facilities Deployment Act' goes into effect on September 1.

The proposed ordinance makes the necessary changes to the City's Chapter 5.54 'Wireless Communications Services.' As mentioned above, under S.B. 189 the City became limited in what requirements it could impose on providers of small wireless facilities. To the extent possible, the proposed ordinance attempts to keep the most important requirements in place. The City is still requiring that small wireless facilities are stealthed and that the impact on the right-of-way from their associated ground equipment is minimized. The amendment specifically requires heightened aesthetic standards in Downtown Midvale, State Street, Bingham Junction, Jordan Bluffs, and Transit-Oriented zones. The amendment also requires providers to bring their small wireless facilities up to existing requirements every 10 years as a condition of renewal. And to the extent permitted under federal law, the amended ordinance continues to prohibit the installation of any wireless facility or utility pole that does not meet the requirements of a permitted use in the 'Small Wireless Facilities Deployment Act.'

Unfortunately, because of the 'Small Wireless Facilities Deployment Act,' the proposed ordinance loses some a number of tools the City had put in place to

incentivize certain kinds of installation. First, the state required definition of small wireless facilities is nearly double in volume from that adopted by the City. Second, municipalities are prohibited from requiring placement of small wireless facilities on specific structures. Third, municipalities are prohibited from requiring minimum separation distances. As a result of these prohibitions, the City's current scheme to incentivize providers to install their facilities on existing infrastructure has largely been gutted. The City must now allow noticeably larger facilities in the right-of-way without much control over the type of installation or their placement.

With the 'Small Wireless Deployment Act' taking effect on September 1, the staff recommends adopting the proposed ordinance to bring Chapter 5.54 into compliance with the law. Although the proposed amendments will reduce the City's control over its right-of-way, the amended Chapter 5.54 will provide more control, especially over aesthetics, than relying on the minimal default standards established in the 'Small Wireless Deployment Act.'

FISCAL IMPACT: None.

STAFF'S RECOMMENDATION AND MOTION: I move that we approve Ordinance No. 2018-O-10 amending Chapter 5.54 Wireless Communications Services.

**Attachments: Proposed Ordinance 2018-O-10
Amended Chapter 5.54 Wireless Communications
Services**

MIDVALE CITY

ORDINANCE NO. 2018-O-10

AN ORDINANCE AMENDING CHAPTER 5.54 WIRELESS COMMUNICATION SERVICES.

WHEREAS, the City, as a trustee of the public, manages the rights-of-way within the City subject to applicable law; and

WHEREAS, the City Council finds that the rights-of-way within the City:

1. Are critical to the travel and transport of persons and property in the business and social life of the City;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
4. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities construction, placement, relocation, and maintenance in the rights-of-way; and

WHEREAS, providers and infrastructure providers of personal wireless services have requested permission to install wireless communication facilities within the City's rights-of-way; and

WHEREAS, the City Council finds the right to occupy portions of the rights-of-way for limited times for the business of providing personal wireless services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the rights-of-way; and

WHEREAS, the City Council finds that while wireless communication facilities are in part an extension of interstate commerce, their operations also involve rights-of-way, municipal franchising, and vital business and community service, which are of local concern; and

WHEREAS, the City Council finds that it is in the interests of its taxpayers and citizens to promote the rapid development of wireless communication services, on a

nondiscriminatory basis, responsive to community and public interest, and to assure availability for municipal, educational and community services; and

WHEREAS, The City Council finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

1. Fairly and reasonably compensates the City on a competitively neutral and nondiscriminatory basis as provided herein;

2. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;

3. Fully protects the public interests and the City from any harm that may flow from such commercial use of rights-of-way;

4. Protects the police powers and rights-of-way management authority of the City, in a manner consistent with federal and state law;

5. Otherwise protects the public interests in the development and use of the City's infrastructure;

6. Protects the public's investment in improvements in the rights-of-way; and

7. Ensures that no barriers to entry of providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting personal wireless services, within the meaning of the Telecommunications Act of 1996;

WHEREAS, the City adopted Ordinance No. 2018-O-1 on January 16, 2018, which created Chapter 5.54 'Wireless Communication Services' and allowed for the responsible installation of small wireless facilities in the right-of-way;

WHEREAS, Utah passed S.B. 189 'Small Wireless Facilities Deployment Act' (the "Act") which will put Utah Code Ann. §§54-21-101 to 603 into effect on September 1, 2018;

WHEREAS, the Act requires all municipalities' agreements and ordinances passed before May 11, 2018, to fully comply with the Act or they will be invalid or unenforceable upon the effective date of the Act;

WHEREAS, the City's current Chapter 5.54 'Wireless Communications Services' was passed prior to May 11, 2018, and does not currently comply with the Act;

WHEREAS, the City wishes to amend Chapter 5.54 'Wireless Communication Services' to fully comply with the Act on or before September 1, 2018;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

SECTION I

The City Council desires to amend Midvale Municipal Code Chapter 5.54 'Wireless Communication Services' as set forth in Exhibit A.

SECTION II

This Ordinance shall be effective on September 1, 2018.

PASSED AND APPROVED this 28th day of August, 2018.

MIDVALE CITY

By: _____
Mayor Robert M. Hale

[SEAL]

VOTING:

Paul Glover	Yea	___	Nay	___
Quinn Sperry	Yea	___	Nay	___
Paul Hunt	Yea	___	Nay	___
Bryant Brown	Yea	___	Nay	___
Dustin Gettel	Yea	___	Nay	___

ATTEST:

Rori L. Andreason, MMC
City Recorder

Published this ___ day of ___, 2018.

Chapter 5.54

WIRELESS COMMUNICATION SERVICES

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- 5.54.020 Scope of ordinance.
- 5.54.030 Excluded activity.

Article II. Defined Terms

- 5.54.040 Definitions.

Article III. Wireless Franchise Required

- 5.54.050 Nonexclusive wireless franchise.
- 5.54.060 Every provider must obtain.
- 5.54.070 Nature of grant.
- 5.54.080 Current providers.
- 5.54.090 Nature of wireless franchise.
- 5.54.100 Regulatory approval needed.
- 5.54.110 Term.

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- 5.54.130 Timing.
- 5.54.140 Fee statement and certification.
- 5.54.150 Future costs.
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- 5.54.170 Interest on late payments.
- 5.54.180 No accord and satisfaction.
- 5.54.190 Not in lieu of other taxes or fees.
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- 5.54.210 Costs of publication.

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- 5.54.230 Application criteria.
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Article VI. Site Applications

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- 5.54.270 Site preference.
- 5.54.280 Poles adjacent to residential properties.
- ~~5.54.290~~ Height and size restrictions.
- ~~5.54.290—300~~ Sidewalks and paths Safety.
- ~~5.54.300—310~~ Equipment.
- ~~5.54.310—320~~ Undergrounding.
- ~~5.54.330~~ Visual impact.
- ~~5.54.320—340~~ Stealth design/technology.
- ~~5.54.330—350~~ Lighting.

- ~~5.54.340—360~~ Signage.
- ~~5.54.350—370~~ Site design flexibility.
- ~~5.54.360—380~~ General requirements.
- ~~5.54.370—~~ ~~Application to install an in-strand antenna.~~
- ~~5.54.380—~~ ~~Application to colocate on an existing pole.~~
- ~~5.54.390—~~ ~~Application to replace a pole.~~ ~~Application review process.~~
- ~~5.54.400—~~ ~~Application to construct a new pole.~~
- ~~5.54.4010—~~ ~~Application for an eligible facilities request.~~ ~~Application consolidation and submission limit.~~
- ~~5.54.420—410~~ ~~Application submission limit~~ ~~Expired application.~~
- ~~5.54.430—420~~ ~~Incomplete application~~ ~~Site permit approval.~~
- ~~5.54.440—430~~ ~~Exceptions to standards~~ ~~Site permit renewal.~~
- ~~5.54.450—440~~ ~~Exemptions.~~ ~~Accessory uses.~~
- ~~5.54.450—~~ ~~Exceptions to standards.~~
- ~~5.54.460—~~ ~~Application to install macrocell or unpermitted utility pole.~~

Article VII. Construction and Technical Requirements

- ~~5.54.460—470~~ General requirement.
- ~~5.54.470—480~~ Quality.
- ~~5.54.480—490~~ Licenses and permits.
- ~~5.54.490—500~~ Relocation of the system.
- ~~5.54.500—510~~ Protect structures.
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Article VIII. Provider Responsibilities

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- ~~5.54.630—640~~ Provider's expense.
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Article XI. Rights of City

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- 5.54.780—790 City failure to enforce.
- 5.54.790—800 Construed according to Utah law.

Article I. Declaration of Findings and Intent—Scope of Ordinance

5.54.010 Findings regarding rights-of-way.

- A. Midvale City finds that the rights-of-way within the city-City:
 - 1. Are-Is critical to the travel and transport of persons and property in the business and social life of the city-City;
 - 2. Are-Is intended for public uses and must be managed and controlled consistent with that intent;
 - 3. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit to the enhancement of the health, welfare, and general economic well-being of the city-City and its citizens; and
 - 4. Are-Is a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities construction, placement, relocation, and maintenance in the rights-of-way.
- B. Finding Regarding Compensation. The city-City finds the right to occupy portions of the rights-of-way for limited times for the business of providing personal wireless services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the city-City and its taxpayers, and, therefore, the taxpayers of the city-City should receive fair and reasonable compensation for use of the rights-of-way.
- C. Finding Regarding Local Concern. The city-City finds that while wireless communication facilities are in part an extension of interstate commerce, their operations also involve rights-of-way, municipal franchising, and vital business and community service, which are of local concern.
- D. Finding Regarding Promotion of Wireless Communication Services. The city-City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of wireless communication services, on a nondiscriminatory basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.
- E. Findings Regarding Franchise Standards. The city-City finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:
 - 1. Fairly and reasonably compensates the city-City on a competitively neutral and nondiscriminatory basis as provided herein;
 - 2. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;

3. Fully protects the public interests and the ~~city~~City from any harm that may flow from such commercial use of rights-of-way;
4. Protects the police powers and rights-of-way management authority of the ~~city~~City, in a manner consistent with federal and state law;
5. Otherwise protects the public interests in the development and use of the ~~city's~~City's infrastructure;
6. Protects the public's investment in improvements in the rights-of-way; and
7. Ensures that no barriers to entry of providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting personal wireless services, within the meaning of the Telecommunications Act of 1996 ("Act") (P.L. No. 96-104).

F. Power to Manage Rights-of-Way. The ~~city~~City adopts the wireless communication services ordinance codified in this chapter pursuant to its power to manage the rights-of-way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of rights-of-way by providers as expressly set forth by Section 253 of the Act. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.020 Scope of ordinance.

The ordinance codified in this chapter shall provide the basic local framework for providers of wireless services and systems that require the use of the rights-of-way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. The ordinance codified in this chapter shall apply to all future providers and to all providers in the ~~city~~City prior to the effective date of the ordinance codified in this chapter, whether operating with or without a wireless franchise as set forth in Section 5.54.7760. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.030 Excluded activity.

- A. Cable TV. This chapter shall not apply to cable television operators otherwise regulated by Chapter 5.50 (~~the "cable television ordinance"~~) or to open video system providers otherwise regulated.
- B. Wireline Services. This chapter shall not apply to wireline service facilities or providers otherwise regulated by Chapter 5.52.
- C. Provisions Applicable. All of the requirements imposed by this chapter through the exercise of the ~~city's~~City's police power and not preempted by other law shall be applicable. (Ord. 2018-01 § 1 (Exh. A) (part))

Article II. Defined Terms

5.54.040 Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this ~~S~~section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

~~-"Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals. is defined in Utah Code Ann. § 54-21-101(1), as amended.~~

~~"Applicable codes" is defined in Utah Code Ann. § 54-21-101(2), as amended.~~

~~"Applicable standards" is defined in Utah Code Ann. § 54-21-101(3), as amended.~~

~~"Antenna array" means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.~~

~~“Applicant” means any person engaged in the business of providing wireless communication services or the wireless communications infrastructure required for wireless communications services and who submits an application, is defined in Utah Code Ann. § 54-21-101(4), as amended.~~

~~“Application” means the process by which a provider submits a request and indicates a desire to be granted a wireless franchise or site approval to utilize the rights-of-way of the city. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the city concerning: the construction of a wireless communication facilities system over, under, on or through the rights-of-way; the personal wireless services proposed to be provided in the city by a provider; and any other matter pertaining to a proposed system or service, is defined in Utah Code An.. § 54-21-101(5), as amended.~~

~~“Backhaul network” means the lines that connect a provider’s towers, WCFs or cell sites to one or more cellular telephone switching offices or long distance providers, or the public switched telephone network.~~

~~“Base station” means a structure or equipment at a fixed location that enables city licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.~~

~~1.—The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.~~

~~2.—The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks).~~

~~3.—The term includes any structure other than a tower that, at the time the relevant application is filed with the city under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.~~

~~4.—The term does not include any structure that, at the time the relevant application is filed with the state or the city under this section, does not support or house equipment described in this section.~~

~~“City” means Midvale City, Utah.~~

~~“Collocate” is defined in Utah Code Ann. § 54-21-101(11), as amended.~~

~~“Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Except as otherwise allowed by this chapter, the cumulative impact of collocation at a site is limited to no more than six ~~6~~ cubic feet in volume for antennas and antenna arrays, and no more than seventeen ~~28~~ cubic feet in volume of associated equipment, whether deployed on the ground or on the structure itself. ~~In calculating equipment volume, the volume of power meters and vertical cable runs for the connection of power and other services shall be excluded.~~~~

~~“Construction costs” means all costs of constructing a system, including make ready costs, other than engineering fees, attorney’s or accountant’s fees, or other consulting fees.~~

~~“Control” or “controlling interest” means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than thirty-five percent ~~35~~% of any provider (which person or group of persons is hereinafter referred to as “controlling person”). “Control” or “controlling interest” as used herein may be held simultaneously by more than one person or group of persons.~~

~~“Distributed antenna system” or “DAS” means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.~~

~~“Eligible facilities request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:~~

- ~~1. Colocation of new transmission equipment;~~
- ~~2. Removal of transmission equipment; or~~
- ~~3. Replacement of transmission equipment.~~

~~“Eligible support structure” means any tower or base station as defined in this section; provided, that it is existing at the time the relevant application is filed with the city under this section.~~

~~“Existing” means a tower or base station that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.~~

“FAA” means the Federal Aviation Administration.

“FCC” means the Federal Communications Commission, or any successor thereto.

“Franchise” means the rights and obligations extended by the cityCity to a provider to own, lease, construct, maintain, use or operate a wireless communication system in the ~~rights-of-way~~ within the boundaries of the cityCity. Any such authorization, in whatever form granted, shall not mean or include: (1) any other permit or authorization required for the privilege of transacting and carrying on a business within the cityCity required by the ordinances and laws of the cityCity; (2) any other permit, agreement or authorization required in connection with operations on ~~rights-of-way~~ or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the cityCity or a private entity, or for excavating or performing other work in or along the ~~rights-of-way~~.

“Franchise agreement” means a contract entered into in accordance with the provisions of this chapter between the cityCity and a provider that sets forth, subject to this chapter, the terms and conditions under which a wireless franchise will be exercised.

“In-strand antenna” means an antenna that is suspended by or along a wireline between ~~support structures~~utility poles and is not physically supported by any attachments to a base station, utility support structure, or tower. An in-strand antenna may not exceed ~~three~~3 cubic feet in volume. For each in-strand antenna, its associated equipment, whether deployed on the ground or on the structure itself, may not be larger than ~~seventeen~~17 cubic feet in volume. In calculating equipment volume, the volume of power meters and vertical cable runs for the connection of power and other services shall be excluded. In-strand antennas in the ~~rights-of-way~~ are exempt from the requirements of “telecommunications facilities” found under Title 17.

“Infrastructure provider” means a person providing to another, for the purpose of providing personal wireless services to customers, all or part of the necessary system which uses the ~~rights-of-way~~.

“Macrocell” means a wireless communication facility that provides radio frequency coverage served by a high power cell site (tower, antenna or mast). Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities are typically greater than ~~three~~3 cubic feet per antenna and typically cover large geographic areas with relatively high capacity and are capable of hosting multiple wireless service providers. For purposes of this chapter, a macrocell is any ~~wireless facility~~thing other than a small ~~wireless facility, micro wireless facility, cell~~ or in-strand antenna. In addition to the requirements found in this chapter, a macrocell must comply with the applicable zoning and use requirements as a “telecommunications facility” under Title 17.

“Micro wireless facility” is defined in Utah Code Ann. § 54-21-101(21).

~~“Operator” means any person who provides service over a wireless communication system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.~~

“Ordinance” or “wireless ordinance” means the ordinance concerning the granting of wireless franchises in and by the cityCity for the construction, ownership, operation, use or maintenance of a wireless communication system.

“Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the cityCity.

“Personal wireless services facilities” has the same meaning as provided in Section 704 of the Act (47 U.S.C. Section 332(c)(7)(c)), which includes what is commonly known as cellular services.

~~“Provider” means an operator, infrastructure provider, reseller, or system lessee.~~

“PSC” means the Public Service Commission, or any successor thereto.

~~“Reseller” refers to any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.~~

“Rights-of-way” means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the city is defined in Utah Code Ann. § 54-21-101(24), as amended.

~~“Signal” means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.~~

~~“Site” means the location in the rights-of-way of a wireless communication facilitiesfacility, a utility pole, and or their associated equipment. In relation to support structures other than wireless communication facilities, site means an area in proximity to the structure and to other transmission equipment already deployed on the ground.~~

~~“Small cellswireless facility” mean compact, low-power wireless equipment which contain their own transeiver-equipment and function like cells in a wireless network, but provide a smaller coverage area than traditional macrocells. A small cell antenna or antenna array is located inside an enclosure of no more than three cubic feet in volume, or in the case of a small cell antenna or antenna array with exposed elements, the antenna and antenna array and all of its exposed elements fit within an imaginary enclosure of no more than three cubic feet. Small cells may not have more than six cubic feet in volume of antennas or antenna arrays cumulatively. For each small cell, its associated equipment, whether deployed on the ground or on the structure itself, may not be larger than seventeen cubic feet in volume. In calculating equipment volume, the volume of power meters and vertical cable runs for the connection of power and other services shall be excluded.is defined in Utah Code Ann. § 54-21-101(35), as amended. Small cellswireless facilities in the rights-of-way are exempt from the requirements of “telecommunications facilities” found under Title 17.~~

“Stealth design” means technology or installation methods that minimize the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines), utility and light poles, and street furniture.

~~“Substantial changemodification” means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:~~

1.—~~For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base-~~

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~~station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 U.S.C. Section 1455(a));~~

~~2.—For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty-feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;~~

~~3.—For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;~~

~~4.—It entails any excavation or deployment outside the current site;~~

~~5.—It would defeat the concealment elements of the eligible support structure; or~~

~~6.—It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in subsections (1) through (4) of this definition as defined in Utah Code Ann. § 54-21-101(26), as amended.~~

~~“System lessee” refers to any person that leases a wireless system or a specific portion of a system to provide services.~~

~~“Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.~~

~~“Telecommunications service(s)” or “services” means any telecommunications or communications services provided by a provider within the cityCity that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the cityCity, except that these terms do not include “cable service” as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. Section 521, et seq.), and the Telecommunications Act of 1996.~~

~~“Telecommunications system” or “system” means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services.~~

~~“Utility pole” or “pole” is defined in Utah Code Ann. § 54-21-101(28), as amended.~~

~~“Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.~~

~~“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.~~

~~“Utility support structure” means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities; street light standards; or pedestrian light standards.~~

-“Wire” means fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

~~“Wireless communication facilities facility” or “WCF” means a staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies. (Ord. 2018-01 § 1 (Exh. A) (part)) is defined in Utah Code Ann. § 54-21-101(29).~~

“Wireless provider” or “provider” is defined in Utah Code Ann. § 54-21-101(31), as amended.

“Wireless service” is defined in Utah Code Ann. § 54-21-101(32), as amended.

“Wireless support structure” is defined in Utah Code Ann. § 54-2-101(34), as amended.

Article III. Wireless Franchise Required

5.54.050 Nonexclusive wireless franchise.

The ~~city~~ City is empowered and authorized to issue nonexclusive wireless franchises governing the installation, construction, operation, use and maintenance of ~~wireless~~ systems in the ~~city's~~ City's rights-of-way, in accordance with the provisions of this chapter. The wireless franchise is granted through a wireless franchise agreement entered into between the ~~city~~ City and provider. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.060 Every provider must obtain.

Except to the extent preempted by federal or state law, every provider must obtain a wireless franchise prior to constructing, operating, leasing, or subleasing a wireless communication system or providing ~~personal~~ wireless services using the rights-of-way. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide ~~personal~~ wireless services over the same system, must also obtain a ~~personal~~ wireless franchise. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.070 Nature of grant.

A wireless franchise shall not convey title, equitable or legal, in the rights-of-way. A wireless franchise is only the right to occupy rights-of-way on a nonexclusive basis for the limited purpose and for the limited period stated in the wireless franchise; the right may not be subdivided, assigned, or subleased. A wireless franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the ~~city's~~ City's property. This ~~S~~section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.080 Current providers.

Except to the extent exempted by federal or state law, any provider acting without a wireless franchise on the effective date of the ordinance codified in this chapter shall request issuance of a wireless franchise from the ~~city~~ City within ~~ninety~~ 90 days of the effective date of the ordinance codified in this chapter. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a wireless franchise is not granted, the provider shall comply with the provisions of Section 5.54.6870. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.090 Nature of wireless franchise.

The wireless franchise granted by the ~~city~~ City under the provisions of this chapter shall be a nonexclusive wireless franchise providing the right and consent to install, repair, maintain, remove and replace its ~~wireless~~ system on, over and under the rights-of-way in order to provide ~~wireless~~ services. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.100 Regulatory approval needed.

Before offering or providing any services pursuant to the wireless franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the

appropriate federal, state and local authorities, if required, and shall submit to the ~~city~~City upon the written request of the ~~city~~City evidence of all such approvals, permits, authorizations or licenses. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.110 Term.

No wireless franchise issued pursuant to this chapter shall have a term of less than ~~five~~10 years or greater than ~~fifteen~~15 years. Each wireless franchise shall be granted in a nondiscriminatory manner. (Ord. 2018-01 § 1 (Exh. A) (part))

Article IV. Compensation and Other Payments

5.54.120 Compensation.

As fair and reasonable compensation for any wireless franchise granted pursuant to this chapter, a provider shall have the following obligations:

A. ~~Application Fees. In order to offset the cost to the city to review an application for a wireless franchise and in addition to all other fees, permits or charges, a provider shall pay to the city, at the time of application, seven hundred dollars as a one-time nonrefundable application fee. The application fee shall also be paid when an amendment is filed with the city. A provider shall pay the following application fees for the respective applications in accordance with Utah Code Ann. § 54-21-503, as amended:~~

- ~~1. \$100 for each small wireless facility;~~
- ~~2. \$250 for each utility pole associated with a small wireless facility.~~
- ~~3. \$1000 for each utility pole or WCF that is not permitted under Utah Code Ann. § 54-21-204, as amended.~~

B. ~~Wireless Franchise Fees. The wireless franchise fee, if any, shall be set forth in the wireless franchise agreement. The obligation to pay a wireless franchise fee shall commence on the effective date of the wireless franchise. The wireless franchise fee is offset by any business license fee or business license tax enacted by the city. Right-of-Way Rate. A provider shall pay a right-of-way rate of the greater of 3.5% of all gross revenues related to the provider's use of the City's right-of-way for small wireless facilities or \$250 annually for each small wireless facility in accordance with Utah Code Ann. § 54-21-502(2). A provider does not have to pay this rate if it is subject to the municipal telecommunications license tax under Title 10, Part 4, Municipal Telecommunications License Tax Act.~~

C. ~~Permit Fees. The provider shall also pay fees required for any permit necessary to install and maintain the proposed WCF or utility pole.~~

D. ~~Third-Party Experts. Although the city intends for city staff to review applications to the extent feasible, to provide technical evaluations, the city may retain the services of an independent RF expert or engineering consultant of its choice to provide technical evaluations of permit applications for WCFs except in-stand antennas. The third-party RF expert shall have recognized training and qualifications in the field of radio frequency engineering or experience in WCF matters. The RF expert's review may include, but is not limited to: (1) the accuracy and completeness of the items submitted with the application; (2) the applicability of analysis and techniques and methodologies proposed by the applicant; (3) the validity of conclusions reached by the applicant; and (4) whether the proposed WCF complies with the applicable approval criteria set forth in this chapter. The third-party engineering consultant shall have recognized training and qualifications in the field of structural engineering. The engineering consultant's review may include, but is not limited to: (1) the accuracy and completeness of the items submitted with the application; (2) the applicability of analysis and techniques and methodologies proposed by the applicant; (3) the validity of the conclusions reached by the applicant; and (4) whether the proposed WCF complies with the applicable approval criteria set forth in this chapter. The applicant shall pay the cost for any independent expert/consultant fees through a deposit, estimated by the city, paid within ten days of the city's request which shall not exceed one thousand dollars per site. When the city requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the city shall refund any unused portion within thirty days after the final permit is released or, if no final permit is released, within thirty days after the city receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the city.~~

~~before the permit is issued. (Ord. 2018-01 § 1 (Exh. A) (part))~~ Authority Pole Collocation Rate. The City adopts the authority pole collocation rate as established in Utah Code Ann. § 54-21-504, as amended.

5.54.130 Timing.

Unless otherwise agreed to in the wireless franchise agreement, all ~~wireless franchise fees~~ right-of-way rates shall be paid ~~on a monthly basis within forty-five days of the close of each calendar month~~ in accordance with Utah Code Ann. § 54-21-502, as amended. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.140 Fee statement and certification.

~~Unless a wireless franchise agreement provides otherwise, e~~ Each fee rate payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.150 Future costs.

A provider shall pay to the city-City or to third parties, at the direction of the city-City, an amount equal to the reasonable costs and reasonable expenses that the city-City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or provider-initiated renegotiation, transfer, amendment, or a wireless franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.160 Taxes and assessments.

To the extent taxes or other assessments are imposed by taxing authorities, other than the city-City on the use of the city-City property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter to the extent permitted by law. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.170 Interest on late payments.

In the event that any payment is not actually received by the city-City on or before the applicable date fixed in the wireless franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.180 No accord and satisfaction.

~~No acceptance~~ Acceptance by the city-City of any rate or fee shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the city-City may have for additional sums payable. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.190 Not in lieu of other taxes or fees.

~~The A rate or~~ fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees are not waived and remain applicable. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.200 Continuing obligation and holdover.

In the event a provider continues to operate all or any part of the system after the term of the wireless franchise, such operator shall continue to comply with all applicable provisions of this chapter and the wireless franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the wireless franchise, nor as a limitation on the remedies, if any, available to the city-City as a result of such continued operation after the term, including, but not limited to, damages and restitution. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.210 Costs of publication.

A provider shall assume any publication costs associated with its wireless franchise that may be required by law. (Ord. 2018-01 § 1 (Exh. A) (part))

Article V. Wireless Franchise Applications

5.54.220 Wireless franchise application.

To obtain a wireless franchise to construct, own, maintain or provide wireless services through any wireless system within the city's City's rights-of-way, to obtain a renewal of a wireless franchise granted pursuant to this chapter, or to obtain the city City approval of a transfer of a wireless franchise, as provided in Section 5.54.570590, granted pursuant to this chapter, an application must be filed with cityCity. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.230 Application criteria.

In making a determination as to an application filed pursuant to this chapter, the city City may, but shall not be limited to, request the following from the provider:

- A. A copy of the order from the PSC granting a certificate of convenience and necessity, if any is necessary for provider's offering of wireless communication services within the state of Utah;
- B. An annually renewed performance bond or letter of credit from a Utah-licensed financial institution in the amount of twenty-five thousand dollars to compensate the city City for any damage caused by the provider to the city's City's rights-of-way or property during the term of the franchise agreement or the provider's abandonment of WCFs within a year after the expiration or termination of the franchise agreement;
- ~~C. A written statement signed by a person with the legal authority to bind the applicant and the project owner, which indicates the applicant's agreement to comply with the requirements of this chapter;~~
- ~~D. A copy of the provider's FCC license or registration, if applicable; and~~
- ~~E. An insurance certificate for the provider that lists the city City as an additional insured and complies with the requirements of the franchise agreement;~~

~~F. A written statement signed by a person with the legal authority to bind the applicant and the project owner, which indicates that the applicant is willing to allow other equipment owned by others to colocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable. In the case of new multi-user towers, poles, or similar support structures, the applicant shall submit engineering feasibility data and a letter stating the applicant's willingness to allow other carriers to colocate on the proposed WCF;~~

~~G. A clear and complete description of the applicant's general approach to minimizing the visual impact of its WCFs within the city. The approach should account for the standards established under this chapter including finished colors, stealth, camouflage, and design standards. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.240 Wireless franchise determination.

The city City, in its discretion, shall determine the award of any wireless franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.250 Incomplete application.

The city City may deny an applicant's wireless franchise application for incompleteness if:

- A. The application is incomplete; and
- B. The city City provided notice to the applicant that application was incomplete and provided with reasonable specificity the necessary information needed to complete the application; and
- C. The provider did not provide the requested information within ~~thirty~~ 30 days of the notice. (Ord. 2018-01 § 1 (Exh. A) (part))

Article VI. Site Applications

5.54.260 Franchise necessary.

Prior to the City approving a site permit, the applicant must have a valid franchise agreement granted by applicable law. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.270 Site preference.

When ~~WCFs~~ small wireless facilities are to be constructed in the ~~rights-of-way~~, the ~~city's~~ City's order of preference for a provider:

A. To install in-strand antennas;

B. To collocate ~~on~~use existing poles;

~~BC.~~ To ~~construct~~collocate on replacement poles in the same or nearly the same location and with such heights as provided in this chapter or in the franchise; and lastly

~~CD.~~ To collocate ~~one~~construct new poles. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.280 Poles adjacent to residential properties.

In accordance with Utah Code Ann. § 54-21-103(6), as amended, a provider may not install a new utility pole in a right-of-way if the right-of-way is adjacent to a street or thoroughfare that is:

A. 60 feet wide or less, as depicted on the official plat records; and

B. adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions.

5.54.280290 Height and size restrictions.

A. Any proposed pole shall not exceed fifty feet in height. The height of a new or modified utility pole including a collocated WCF may not exceed 50 feet above the ground level.

B. For a utility pole existing on or before September 1, 2018, an antenna of a WCF may not extend more than 10 feet above the top of the utility pole.

C. The height of a pole means the vertical distance measured from the base of the pole at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten feet in height, shall not be included within pole height. Each antenna or antenna array shall be located inside an enclosure of no more than three cubic feet in volume, or in the case of an antenna or antenna array that have exposed elements, the antenna or antenna array and all of its exposed elements shall fit within an imaginary enclosure of no more than three cubic feet. WCFs may not have more than six cubic feet in volume of antennas or antenna arrays cumulatively unless otherwise noted in chapter. For each WCF, associated equipment, whether deployed on the ground or on the structure itself, may not be larger than seventeen cubic feet in volume. In calculating equipment volume, the volume of power meters and vertical cable runs for the connection of power and other services shall be excluded. (Ord. 2018-01 § 1 (Exh. A) (part)) A small wireless facility and its associated equipment may not exceed the dimensions set forth in Utah Code Ann. § 54-21-101(25), as amended.

5.54.290300 Sidewalks and paths Safety.

A WCF, pole, cabinets, and/or other equipment shall not violate the requirements in Utah Code Ann. § 54-21-302, as amended. A small wireless facility, pole, cabinet, and other equipment may not:

A. Materially interfere with the safe operation of traffic control equipment;

B. Materially interfere with a sight line or clear zone for vehicular or pedestrian traffic;

C. Materially interfere with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement;

D. Create a public health or safety hazard;

E. impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land. (Ord. 2018-01 § 1 (Exh. A) (part)) Obstruct or hinder the usual travel or public safety of the right-of-way; or

F. Violate any applicable law or legal obligation.

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5.54.300310 Equipment.

A. Due to the limited size of the ~~city~~City's rights-of-way, applicants shall be required to install any ~~WCF~~ equipment ~~associated with a small wireless facility~~ according to the following requirements to the extent operationally and technically feasible and to the extent permitted by law. ~~WCF equipment shall be installed either:~~

1. ~~Existing utility poles. If a WCF is collocated on an existing utility pole, the WCF's associated equipment may be installed in one of the following methods:~~

~~a. Within a pole. Any equipment installed within a pole may not protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.~~

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~~b. On a pole. Any equipment enclosure installed on a pole must:~~

~~i. be flush with the pole;~~

~~ii. painted to reasonably match the color of the pole;~~

~~iii. may not exceed in width the diameter of the pole by more than 3 inches on either side;~~

~~iv. may not allow the furthest point of the enclosure to extend more than 18 inches from the pole; and~~

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~~v. be installed flush with the grade or, alternatively, the lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.~~

~~c. Underground. Any equipment installed underground shall be located in a park strip within the City's right-of-way and shall be installed and maintained level with the surrounding grade.~~

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~~d. Private property. Any equipment installed on private property must provide written permission from the property owner allowing the applicant to locate facilities on the property. If equipment is placed in an enclosure, the enclosure shall be designed to blend in with existing surroundings, using architecturally compatible construction and colors, and landscaping and shall be located as unobtrusively as possible consistent with the proper functioning of the WCF. Equipment placed on private property may be subject to zoning requirements in Title 17.~~

~~On or within the pole. If the equipment is installed on the pole, the equipment enclosure must be flush with the pole, painted to reasonably match the color of the pole, may not exceed in width the diameter of the pole by more than three inches on either side, the furthest point may not exceed eighteen inches from the pole, and the base must be flush with the grade or, alternatively, the lowest point may not be lower than eight and one half feet from the grade directly below the equipment enclosure. If the equipment is installed within the pole, no equipment may protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.~~

2. ~~Replacement utility poles. If a WCF is collocated on a replacement utility pole, the WCF's associated equipment may be installed in the following manner:~~

~~a. To the extent technologically and economically feasible, a provider must install the WCF's associated equipment within the replacement utility pole in accordance with 5.54.310(A)(1)(a).~~

~~b. If the installation of the WCF's equipment within the replacement utility pole is technologically or economically infeasible, a provider may install the WCF's associated equipment in accordance with any of the methods established in 5.54.310(A)(1)(b) – (d).~~

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~~Underground. All underground equipment shall be installed and maintained level with the surrounding grade. To the extent possible, any equipment installed underground shall be located in a park strip within the city's rights-of-way. If a park strip is unavailable, the provider may install equipment within a city-owned sidewalk within the right-of-way. However, underground equipment installed in a sidewalk may not be located within any driveway, pedestrian ramp, or immediately in front of a walkway or entrance to a building. To the extent~~

~~possible, underground equipment being located in a sidewalk may not be installed in the center of the sidewalk, but should be installed as close to the edge of the sidewalk as is structurally viable.~~

3. New utility poles. If a WCF is collocated on a new utility pole, a provider must install the WCF's associated equipment in accordance with 5.54.310(A)(1)(a) or (d).

~~On private property in an existing building or in an enclosure. If equipment is placed on private property, the applicant shall provide written permission from the property owner allowing the applicant to locate facilities on the property. If equipment is placed in an enclosure, the enclosure shall be designed to blend in with existing surroundings, using architecturally compatible construction and colors, and landscaping and shall be located as unobtrusively as possible consistent with the proper functioning of the WCF.~~

B. As required for the operation of a WCF or its equipment, an electric meter may be installed in accordance with requirements from the electric provider; provided, that the electric meter must be installed in the location that (1) minimizes its interference with other users of the city's rights-of-way including, but not limited to, pedestrians, motorists, and other entities with equipment in the right-of-way, and (2) minimizes its aesthetic impact.

C. The city shall not provide an exemption to these requirements when there is insufficient room in the right-of-way to place facilities at ground-level and comply with ADA requirements, public safety concerns for pedestrians, cyclists, and motorists, or other articulable public safety concerns. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.3210 Undergrounding.

A provider must underground its equipment in accordance with Chapter 12.14, as amended, and Utah Code Ann. §54-21-207, as amended.

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5.54.330 Visual impact.

A. Minimization. All WCFs shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible within ~~one hundred~~100 feet of a site and consistent with the proper functioning of the WCF. ~~Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant vicinity.~~

B. Integration. WCFs and equipment shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall be designed to be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant vicinity.

C. Decorative poles. If a provider must displace to decorative pole to collocate a small wireless facility, the replacement pole must reasonable conform to design aesthetic of the displaced decorative pole.

D. Design/Historic Districts. Subject to Utah Code Ann. § 54-21208, a provider's design and location must be approved prior to collocating a new small wireless facility or installing a new utility pole in the following zones:

1. Historic Commercial Zone (HC) and any neighboring area within a ¼ mile

2. State Street Zone (SSC)

3. Bingham Junction Zone

4. Jordan Bluffs Zone

5. Transit-Oriented Development Zone (TOD)

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(Ord. 2018-01 § 1 (Exh. A) (part))

5.54.320340 Stealth design/technology.

A. ~~Stealth design is required and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding utility poles, light poles, or other similar support structures in the rights-of-way so the WCF is visually unobtrusive.~~

B. ~~Stealth design requires screening WCFs in order to reduce visual impact. The provider must screen all substantial portions of the facility from view. Such screening should match the color and be of similar finish of the attached support structure.~~

C. ~~Antennas, antenna arrays, WCFs and their associated equipment must be installed flush with any pole or support structure (including antennas or antenna arrays mounted directly above the top of an existing pole or support structure) and the furthest point of an antenna, antenna array, or equipment may not extend beyond eighteen-18 inches from the pole or support structure except if the pole owner requires use of a standoff to comply with federal, state, or local rules, regulations, or laws. Any required standoff may not defeat stealth design and concealment techniques.~~

D. ~~Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the state. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.330350 Lighting.

~~Only such lighting as is necessary to satisfy FAA requirements is permitted. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.340360 Signage.

~~No facilities may bear any signage or advertisement except as permitted herein. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.350370 Site design flexibility.

~~Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within the rights-of-way. Therefore, the WCF and supporting equipment shall be installed so as to best camouflage, disguise them, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, to minimize the visual impact of the WCF, supporting equipment, and equipment enclosures on neighboring properties, or to interfere less with pedestrians, cyclists, motorists, and other users of the rights-of-way upon approval by the city/City. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.360380 General requirements.

~~All wireless communication facilities and utility poles shall be required to obtain a site permit and shall be subject to the site development standards prescribed herein. Every site permit application, regardless of type, shall contain the following information/information required for an application under Chapter 12.14 and shall provide an industry standard pole load analysis. :~~

~~A. — The location of the proposed WCF.~~

~~B. — The specifications for each style of WCF and equipment. A WCF or piece of equipment will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.~~

~~C. — Construction drawings showing the proposed method of installation.~~

~~D. — The manufacturer's recommended installations, if any.~~

~~E. — Identification of the entities providing the backhaul network for the WCFs described in the application and other cellular sites owned or operated by the applicant in the municipality.~~

F. — For each style of WCF, a written affirmation from the provider that demonstrates the WCF's compliance with the RF emissions limits established by the FCC. A WCF will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.

G. — For each style of WCF, the application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. Except for in-strand antennas, the application shall also include a noise study for each style of WCF and all associated equipment. The applicant shall provide a noise study prepared and sealed by a qualified Utah-licensed professional engineer that demonstrates that the WCF will comply with intent and goals of this chapter. A WCF will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.

H. — If the applicant is not using the proposed WCF to provide personal wireless services itself, a binding written commitment or executed lease from a service provider to utilize or lease space on the WCF. Any speculative WCF shall be denied by the city. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.370390 Application to install an in-strand antenna review process.

A. **Review for completeness.** This section implements, in part, 47 U.S.C. Section 332(e)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153. Except when a shorter time frame is otherwise required under this chapter or by law, the following time frames apply to colocation:

B. — Application Review.

1. — The city shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the city to consider whether an application is a colocation request.

2. — Upon receipt of an application for a colocation request pursuant to this section, the city shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. — Within ninety days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the city shall review and act upon the application, subject to the tolling provisions below.

4. — The ninety-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the city and the applicant, or in cases where the city determines that the application is incomplete.

a. — To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. — The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

c. — Following a supplemental submission, the city will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. — Failure to Act. In the event the city fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

C. — In addition to the information required in Section 5.54.360, an in-strand antenna application must also include the following information:

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1. ~~For each style of in-strand antenna, a description, drawing, elevations, and visual analysis of the design of the proposed equipment with the finished color, the method of camouflage, and illumination. The visual analysis shall include to-scale photo and visual simulations that show unobstructed before and after construction daytime and clear-weather views from at least two angles, together with a map that shows the location of each view, including all equipment and ground wires. An in-strand antenna will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.~~

2. ~~Authorization from the proposed wireline owner that explicitly gives the applicant permission to attach and suspend the in-strand antenna on the wireline. Upon receiving an application for the collocation of a small wireless facility or a new, modified, or replacement utility pole, the City will determine within 30 days if the application is complete. The City shall notify the applicant whether the application is complete.~~

B. Incomplete application. If the City determines the application is incomplete:

1. the City will specifically identify the missing information in the written notification to the applicant; and
2. the review deadline in 5.54.390(A) is tolled from the day that the City sends the applicant written notice of the missing information or as the applicant and the City agree.

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C. Shot clocks. The City must approve or deny a complete application within:

1. 30 days for the installation of an in-strand antenna;
2. 60 days for the collocation of a small wireless facility; or
2. 105 days for a new, modified, or replacement utility pole.

D. Extension. The City may extend the shotclock deadline in 5.54.390(C) for an additional 10 business days if the City notifies the applicant before the day in which the deadline expires.

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E. Deemed granted. If the City fails to approve or deny an application before its deadline, the application is deemed granted.

F. Denial. The City may deny an application that fails to meet the requirements of this chapter. If the City denies the application, the City will notify the applicant of the denial and document the basis for the denial including any specific laws on which the denial is based.

G. Cure. Within 30 days of the City's denial, the applicant may cure any deficiency identified in the City's denial and resubmit its application without paying an additional application fee. The City must approve or deny the resubmitted application within 30 days of its receipt. The City may only review the portions of the application that were deficient or that have been changed.

D. — For any associated in-strand antenna equipment, the in-strand antenna application must also include the following information:

1. — A sealed site plan clearly indicating the location, type, height and width of the proposed equipment (both above and below ground), the boundaries of the rights-of-way, property ownership, separation distances, adjacent roadways, existing above and below ground equipment, existing underground utility and wirelines, curbs and gutters, sidewalks, park strips, other physical features of the site, proposed bore pits, proposed means of access, setbacks from property lines and the nearest buildings, parking, utility runs and other information deemed by the city planner to be necessary to assess compliance with this chapter.

2. — A description, drawing, elevations, and visual analysis of the design of the proposed equipment with the finished color, the method of camouflage, and illumination. The visual analysis shall include to-scale photo and visual simulations that show unobstructed before and after construction daytime and clear weather views from at least two angles, together with a map that shows the location of each view, including all equipment and ground wires. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.380 — Application to collocate on an existing pole:

A. — This section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153. Except when a shorter time frame is otherwise required under this chapter or by law, the following time frames apply to collocation:

B. — Application Review:

1. — The city shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the city to consider whether an application is a collocation request.

2. — Upon receipt of an application for a collocation request pursuant to this section, the city shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. — Within ninety days of the date on which an applicant submits an application seeking approval of a collocation request under this section, the city shall review and act upon the application, subject to the tolling provisions below.

4. — The ninety-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the city and the applicant, or in cases where the city determines that the application is incomplete.

a. — To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. — The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

c. — Following a supplemental submission, the city will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. — Failure to Act. In the event the city fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

C. — In addition to the information required in Section 5.54.360, a collocation application must also include the following information:

1. — Authorization from the proposed collocation pole owner that explicitly gives the applicant permission to collocate the proposed WCF on the pole.

2. — A sealed site plan clearly indicating the location, type, height and width of the proposed WCF and its associated equipment (both above and below ground), the boundaries of the rights-of-way, property ownership, separation distances, adjacent roadways, existing poles and associated heights, existing above and below ground equipment, existing underground utility and wirelines, curbs and gutters, sidewalks, park strips, other physical features of the site, proposed bore pits, proposed means of access, setbacks from property lines and the nearest buildings, parking, utility runs and other information deemed by the city planner to be necessary to assess compliance with this chapter.

3. — A description, drawing, elevations, and visual analysis of the design of the proposed WCF and all proposed equipment with the finished color, the method of camouflage, and illumination. The visual analysis shall include to-scale photo and visual simulations that show unobstructed before and after construction daytime and

clear-weather views from at least two angles, together with a map that shows the location of each view, including all equipment and ground wires. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.390 — Application to replace a pole.

A. — This section implements, in part, 47 U.S.C. Section 332(e)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.

B. — Application Review.

1. — The city shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the city to consider whether an application is for a replacement pole.

2. — Upon receipt of an application for a replacement pole pursuant to this section, the city shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. — Within one hundred fifty days of the date on which an applicant submits an application seeking approval of a replacement pole under this section, the city shall review and act upon the application, subject to the tolling provisions below.

4. — The one hundred fifty day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the city and the applicant, or in cases where the city determines that the application is incomplete.

a. — To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. — The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

c. — Following a supplemental submission, the city will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. — Failure to Act. In the event the city fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

C. — In addition to the information required in Section 5.54.360, a replacement pole application must include the following information:

1. — Authorization from the owner of the pole that is proposed to be replaced which explicitly gives the applicant permission to replace the proposed pole for the specific purpose of installing a WCF.

2. — A sealed site plan clearly indicating the location, type, height and width of the proposed WCF and its associated equipment (both above and below ground), the boundaries of the rights-of-way, property ownership, separation distances, adjacent roadways, existing poles and associated heights, existing above and below ground equipment, existing underground utility and wirelines, curbs and gutters, sidewalks, park strips, other physical features of the site, proposed bore pits, proposed means of access, setbacks from property lines and the nearest buildings, parking, utility runs and other information deemed by the city planner to be necessary to assess compliance with this chapter.

3. — A description, drawing, elevations, and visual analysis of the design of the proposed WCF and all proposed equipment with the finished color, the method of camouflage and illumination. The visual analysis shall include to-scale photo and visual simulations that show unobstructed before and after construction daytime and clear-weather views from at least two angles, together with a map that shows the location of each view, including all equipment and ground wires.

4. — An affidavit certifying that the applicant has posted or mailed notices on properties adjacent to the proposed pole location.

a. — For purposes of this requirement, adjacent properties shall mean any property that directly shares a property or boundary line with the location of the proposed replacement pole.

b. — If the adjacent property is a multifamily or commercial property, notice shall be given to the property owner(s) and shall be posted in a common area, if in existence, where all owners, residents, tenants, or lessees can view the notice.

c. — A small cell attached to a replacement pole shall be exempt from this requirement if it meets the following requirements:

- i.— The height of the replacement pole, including all antennas, antenna arrays, and equipment, is not more than five feet taller than the height of the existing pole;
 - ii.— The replacement pole meets all the requirements of this chapter; and
 - iii.— The replacement pole is not located more than two feet from the location of the existing pole.
- d.— The notice shall provide the following information:
- i.— The applicant's name and contact information;
 - ii.— A phone number for the provider by which an individual could request additional information;
 - iii.— A description of the pole including the type, height and width of the proposed tower and a map identifying the location of the pole;
 - iv.— Language that states:

If you have any public safety concerns or comments regarding the placement of this wireless communication facility, please submit your written comments within 14 days to:

Midvale City

ATTN: City Engineer

7505 S. Holden Street

Midvale, Utah 84047

5.— For macrocells, a detailed explanation justifying why the WCF could not be collocated. The applicant must demonstrate in a clear and complete written alternative sites analysis that at least three collocation sites were considered in the geographic range of the service coverage objectives of the applicant. This analysis must include a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

a.— A complete alternative sites analysis provided under this subsection may include less than three alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three potentially available collocation sites.

b.— For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage objectives the applicant will provide (i) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (ii) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and (iii) a description of why the alternative (collocation or a more preferred location) does not meet the objective.

6.— For macrocells, an affidavit certifying that the applicant has posted or mailed notices to property owners within three hundred feet of the proposed pole location. The notice shall provide the following information:

a.— The applicant's name and contact information;

b.— A phone number for the provider by which an individual could request additional information;

c.— A sealed site plan clearly indicating the location, type, height and width of the proposed tower, separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, setbacks from property lines and the nearest buildings, and elevation drawings or renderings of the proposed tower and any other structures;

d.— Language that states:-

If you have any public safety concerns or comments regarding the aesthetics or placement of this wireless communication facility, please submit your written comments within 14 days to:

Midvale City

ATTN: City Engineer

7505 S. Holden Street

Midvale, Utah 84047

e.— In the event the applicant is subject to this requirement, compliance with this requirement is deemed to satisfy the notice requirement found under subsection (C)(4) of this section.

7.— For macrocells, an explanation that demonstrates the following:

a.— A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

b.— The gap can only be filled through an exception to one or more of the standards herein;

c.— The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to these standards to the greatest extent possible; and

d.— The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

8.—For macrocells, a noise study for the proposed WCF and all associated equipment. The application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a qualified Utah-licensed professional engineer that demonstrates that the WCF will comply with intent and goals of this chapter.

D.—If the replacement pole matches the same material as the pole to be replaced, the replacement pole must substantially match the appearance of the pole being replaced. If the replacement pole is of a different material than the pole being replaced, the design of the replacement pole must comply with the standards of this chapter and be approved by the city. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.400 — Application to construct a new pole.

A.—This section implements, in part, 47 U.S.C. Section 332(e)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.

B.—Application Review:

1.—The city shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the city to consider whether an application is for a new pole.

2.—Upon receipt of an application for a new pole pursuant to this section, the city shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3.—Within one hundred fifty days of the date on which an applicant submits an application seeking approval of a new pole under this section, the city shall review and act upon the application, subject to the tolling provisions below.

4.—The one hundred fifty-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the city and the applicant, or in cases where the city determines that the application is incomplete.

a.—To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application.

b.—The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

c.—Following a supplemental submission, the city will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5.—Failure to Act. In the event the city fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

C.—In addition to the information required in Section 5.54.360, a new pole application must include the following information:

1.—A sealed site plan clearly indicating the location, type, height and width of the proposed WCF and its associated equipment (both above and below ground), the boundaries of the rights-of-way, property ownership, separation distances, adjacent roadways, existing poles and associated heights, existing above and below ground equipment, existing underground utility and wires, curbs and gutters, sidewalks, park strips, other physical features of the site, proposed bore pits, proposed means of access, setbacks from property lines and the nearest buildings, parking, utility runs and other information deemed by the city planner to be necessary to assess compliance with this chapter.

2.—The separation distance from other WCFs described in the inventory of existing sites submitted pursuant to this chapter shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing WCFs and the owner/operator of the existing WCFs, if known. Small cell or DAS antennas mounted on rooftops shall be exempt from these minimum separation requirements.

3.—A description, drawing, elevations, and visual analysis of the design of the proposed WCF and all proposed equipment with the finished color, the method of camouflage and illumination. The visual analysis shall include to-scale photo and visual simulations that show unobstructed before and after construction daytime and clear weather views from at least two angles, together with a map that shows the location of each view, including all equipment and ground wires.

4.—A detailed explanation justifying why the WCF could not be collocated or placed on a replacement pole. The applicant must demonstrate in a clear and complete written alternative sites analysis that at least two collocation and two replacement pole sites were considered in the geographic range of the service coverage objectives of the applicant. This analysis must include a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

a.—A complete alternative sites analysis provided under this subsection may include less than four alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least four potentially available alternative sites.

b.—For purposes of disqualifying potential collocations or replacement poles for the failure to meet the applicant's service coverage objectives the applicant will provide (i) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (ii) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a replacement pole); and (iii) a description of why the alternative (collocation or replacement pole site) does not meet the objective.

5.—For new poles that are thirty five feet in height or less, an affidavit certifying that the applicant has posted or mailed notices to property owners within seventy five feet of the proposed pole location.

a.—This requirement is not required to be met at the time application is submitted, but is required to be completed prior to approval of a permit.

b.—The notice shall provide the following information:

i.—The applicant's name and contact information.

ii.—A phone number for the provider by which an individual could request additional information.

iii.—A description of the pole including the type, height and width of the proposed tower and a map identifying the location of the pole.

iv.—Language that states:

If you have any public safety concerns or comments regarding the aesthetics or placement of this wireless communication facility, please submit your written comments within 14 days to:

Midvale City

ATTN: City Engineer

7505 S. Holden Street

Midvale, Utah 84047

6.—For new poles that are greater than thirty five feet in height, an affidavit certifying that the applicant has posted or mailed notices to property owners within one hundred fifty feet of the proposed pole location.

a.—This requirement is not required to be met at the time application is submitted, but is required to be completed prior to approval of a permit.

b.—The notice shall provide the following information:

i.—The applicant's name and contact information.

ii.—A phone number for the provider by which an individual could request additional information.

iii.—A description of the pole including the type, height and width of the proposed tower and a map identifying the location of the pole.

iv.—Language that states:

If you have any public safety concerns or comments regarding the aesthetics or placement of this wireless communication facility, please submit your written comments within 14 days to:

Midvale City

ATTN: City Engineer

7505 S. Holden Street

Midvale, Utah 84047

7.—For macrocells, an explanation that demonstrates the following:

a.—A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

b.—The gap can only be filled through an exception to one or more of the standards herein;

c.—The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to these standards to the greatest extent possible; and

d.—The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

8. For macrocells, an affidavit certifying that the applicant has posted or mailed notices to property owners within three hundred feet of the proposed pole location.

a. This requirement is not required to be met at the time application is submitted, but is required to be completed prior to approval of a permit.

b. In the event the applicant is subject to this requirement, compliance with this requirement is deemed to satisfy the notice requirement found under subsection (C)(5) or (6) of this section.

c. The notice shall provide the following information:

i. The applicant's name and contact information.

ii. A phone number for the provider by which an individual could request additional information.

iii. A sealed site plan clearly indicating the location, type, height and width of the proposed tower, separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, setbacks from property lines and the nearest buildings, and elevation drawings or renderings of the proposed tower and any other structures.

iv. Language that states:

If you have any public safety concerns or comments regarding the aesthetics or placement of this wireless communication facility, please submit your written comments within 14 days to:

Midvale City

ATTN: City Engineer

7505 S. Holden Street

Midvale, Utah 84047

9. For macrocells, a noise study for the proposed WCF and all associated equipment. The application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a qualified Utah-licensed professional engineer that demonstrates that the WCF will comply with intent and goals of this chapter.

D. A new pole must be no closer than the average distance between existing poles that are within one mile of the proposed new pole site. If no poles exist within one mile of proposed pole site, then all subsequently placed poles must be at least two hundred fifty feet from each other.

E. The design of a new pole must comply with the requirements of this chapter and be approved by the city. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.410 — Application for an eligible facilities request.

A. This section implements Section 6409(a) of the Spectrum Act (47 U.S.C. Section 1455(a)), as interpreted by the FCC in its Report and Order No. 14-153 and regulated by 47 C.F.R. Section 1.40001, which requires a state or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

B. Application Review.

1. The city shall prepare and make publicly available an application form, the requirements for which shall be limited to the information necessary for the city to consider whether an application is an eligible facilities request. The city may not require an applicant to submit any other documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.

2. Upon receipt of an application for an eligible facilities request pursuant to this section, the city shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. Within sixty days of the date on which an applicant submits an application seeking approval of an eligible facilities request under this section, the city shall review and act upon the application, subject to the tolling provisions below.

4. The sixty-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the city and the applicant, or in cases where the city determines that the application is incomplete. The time frame for review is not tolled by a moratorium on the review of applications.

a. To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

c. Following a supplemental submission, the city will have ten days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The

~~time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.~~

~~5. Failure to Act. In the event the city fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the city in writing after the review period has expired.~~

~~C. Any Section 6409(a) colocation/modification permit approved or deemed granted by the operation of federal law shall be automatically subject to the conditions of approval described in this section. The city's grant or grant by operation of law of a Section 6409(a) colocation/modification permit constitutes a federally mandated modification to the underlying permit or approval for the subject tower or base station. The city's grant or grant by operation of law of a Section 6409(a) colocation/modification permit will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.420400 Application consolidation and submission limit.

~~Applications may be submitted in batches of no more than ten sites per application submittal and no more frequently than once per every fifteen days per batch. Where there is more than one application to be submitted at once, the applicant shall make an appointment to meet with the city and discuss the multiple applications. This meeting shall occur prior to the filing of the applications. (Ord. 2018-01 § 1 (Exh. A) (part))~~
A. Consolidated application. An applicant may file a consolidated application for either:

1. the collocation of up to 25 small wireless facilities if all the small wireless facilities in the application are substantially the same type and are proposed for collocation on substantially the same types of structures; or
2. the installation, modification, or replacement of up to 25 utility poles.

A consolidated application may not combine the collocation of small wireless facilities and the installation, modification, or replacement of utility poles.

C. Submission limit. Within a 30-day period, an applicant may not file more than one consolidated application or multiple applications that collectively seek for a combined total of more than 25 small wireless facilities and utility poles.

5.54.430410 Incomplete/Expired application.

Subject to applicable law, the city may deny an applicant's site permit application for incompleteness if:

- A. The application is incomplete; and
- B. The city provided notice to the applicant that application was incomplete and provided with reasonable specificity the necessary information needed to complete the application; and
- C. The provider did not provide the requested information within one hundred eighty days of the notice. (Ord. 2018-01 § 1 (Exh. A) (part))
An application expires if the City has notified the applicant that the application is incomplete and the applicant fails to respond within 90 days of the City's notification.

5.54.420 Site permit approval.

Upon approval of a site permit, a provider:

A. Must complete the work approved within the permit and make the small wireless facility operational within 270 days after the day on which the authority issues the permit, unless the lack of commercial power or communications facilities at the site delays completion.

B. Is authorized to operate and maintain any small wireless facility or utility pole covered by the permit for a period of 10 years from the date of approval.

C. Is not authorized to provide communications service within the right-of-way or to install, place, or operate any other facility or structure in the right-of-way.

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5.54.430 Site permit renewal.

A. A provider with a current franchise agreement may renew an expiring site permit by submitting an application no sooner than 90 days prior the expiration of the site permit with the following information:

1. The location of the site permit;
2. The type of site permit;
3. Sufficient evidence that the WCF or utility pole meets or exceeds the requirements of this chapter at the time of renewal.

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B. A site permit renewal may not be approved unless the covered WCF or utility pole is in compliance with this chapter at the time of the site permit renewal application is submitted.

C. A site permit renewal application will have the same application fee and review process as a collocation application.

5.54.440 Exceptions to standards.

A. Except as otherwise provided in this chapter (under site design flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and design departure provisions in this code; provided this section does not provide an exception from this chapter's visual impact and stealth design.

B. A WCF's exception is subject to approval by the city.

C. An application for a WCF exception shall include:

1. A written statement demonstrating how the exception would meet the criteria.

2. A site plan that includes:

a. Description of the proposed facility's design and dimensions, as it would appear with and without the exception.

b. Elevations showing all components of the WCF, as it would appear with and without the exception.

c. Color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.

d. An explanation that demonstrates the following:

i. For macrocells, a significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

ii. The gap can only be filled through an exception to one or more of the standards herein;

iii. The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to these standards to the greatest extent possible; and

iv. The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

e. Any other information requested by the city in order to review the exception.

D. An application for a WCF exception shall be granted if the exception is consistent with the purpose of the standard for which the exception is sought. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.450 Accessory uses Exemptions.

A. In accordance with Utah Code Ann. § 54-21-303, as amended, a provider is not required to submit an application, obtain a permit, or pay a rate for:

1. routine maintenance;

2. the replacement of a small wireless facility with a small wireless facility that is substantially similar or smaller in size; or

3. the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles in compliance with the National Electrical Safety Code. Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception

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functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions:

B. A provider must obtain a permit for any of the activities described in 5.54.460(A) that requires excavation or closing of sidewalks or vehicular lanes in a right-of-way.

C. A provider must provide the City with 14 days prior, written notice with sufficient supporting documentation of any of the activities described in 5.54.406(A). For example, the notice of the replacement of a small wireless facility that is substantially similar to an existing small wireless facility must include documentation that demonstrates that the replacement small wireless facility meets the requirements of being substantially similar.

5.54.450 Exceptions to standards.

A. Except as otherwise provided in this chapter (under site design flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this Section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and design departure provisions in this code; provided this Section does not provide an exception from this chapter's visual impact and stealth design.

B. A WCF's exception is subject to approval by the City at its sole discretion.

C. An application for a WCF exception shall include:

1. A written statement demonstrating how the exception would meet the criteria.

2. A site plan that includes:

a. Description of the proposed facility's design and dimensions, as it would appear with and without the exception.

b. Elevations showing all components of the WCF, as it would appear with and without the exception.

c. Color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.

d. An explanation that demonstrates the following:

i. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

ii. The gap can only be filled through an exception to one or more of the standards herein;

iii. The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to these standards to the greatest extent possible; and

iv. The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

e. Any other information requested by the City in order to review the exception.

D. An application for a WCF exception shall be granted if the exception is consistent with the purpose of the standard for which the exception is sought. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.460 Application to install a macrocell or nonpermitted utility pole.

A. The City generally does not permit macrocells and utility poles that are not permitted under Utah Code Ann. § 54-21-204. The City will only permit a nonpermitted macrocell or utility pole if required by federal law.

B. Macrocells and utility poles that are not permitted under Utah Code Ann. § 54-21-204, as amended, and are not subject to the application approval process established in Section 5.54.390. As such, this Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153.

C. Application Review for nonpermitted macrocells and utility poles.

1. The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a request to install a nonpermitted macrocell or utility pole.

2. Upon receipt of an application for a nonpermitted macrocell or utility pole pursuant to this Section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

3. Within 150 days of the date on which an applicant submits an application seeking approval of a nonpermitted macrocell or utility pole under this Section, the City shall review and act upon the application, subject to the tolling provisions below.

4. The 150-day review period begins to run when the application is filed and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

a. To toll the time frame for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

c. Following a supplemental submission, the City will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. Failure to Act. In the event the City fails to approve or deny a complete application under this Section within the time frame for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

D. In addition to the information required in Section 5.54.380, a nonpermitted macrocell or utility pole application must also include the following information:

1. The manufacturer's recommended installation, if any;

2. A written affirmation for the applicant that the macrocell or utility pole meets or exceeds all applicable codes, applicable standards, and federal, state, and local requirements, laws, regulations, and policies;

3. A map that indicates the type and separation distance of other WCFs owned or operated by the same wireless provider from the proposed WCF.

4. A visual analysis including to-scale photo and visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least two angles, together with a map that shows the location of each view including all equipment and ground wires. Such visual analysis must include a description, drawing, and elevations with the finished color, method of camouflage, and any illumination;

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5. A detailed explanation justifying why the WCF is required in the right-of-way. The applicant must demonstrate in a clear and complete written alternative sites analysis that multiple alternatives in the geographic range of the service coverage objectives of the applicant were considered. This includes, but is not limited to, explaining why the installation of permitted small wireless facilities and the installation of a macrocell on private property are insufficient. This analysis must include a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

i. A complete alternative sites analysis provided under this subsection may not include less than 5 alternative sites unless the applicant provides a factually detailed rationale for why it could not identify at least 5 potentially available sites.

ii. For purposes of disqualifying potential alternative sites for the failure to meet the applicant's service coverage objectives the applicant must provide (a) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (b) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative; and (c) a description of why the alternative does not meet the objective. All accessory equipment shall be constructed of materials equal to or better than those of the primary poles on the site and shall be subject to site plan approval.

6. An explanation that demonstrates the following:

i. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

ii. The gap can only be filled through an exception to one or more of the standards herein; and

iii. The exception is narrowly tailored to fill the service gap such that WCF conforms to these standards to the greatest extent possible.

iv. The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

7. A noise study for the proposed WCF and all associated equipment. The application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a qualified Utah-licensed Professional Engineer that demonstrates that the WCF will comply with intent and goals of this chapter.

8. The proposed WCF may not be closer than the average distance between existing poles that are within one mile of the proposed site. If no poles exist within one mile of proposed pole site, then all subsequently placed poles must be at least 250' from each other.

9. The design of a new pole must comply with the requirements of this chapter and be approved by the City.

10. An affidavit certifying that the applicant has posted or mailed notices to property owners within 300' of the proposed WCF site.

i. This requirement is not required to be met at the time application is submitted, but is required to be completed prior to approval of a permit.

ii. The notice shall provide the following information:

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- a. The applicant's name and contact information.
- b. A phone number for the provider by which an individual could request additional information.
- c. A scaled site plan clearly indicating the location, type, height and width of the proposed tower, separation distances, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, setbacks from property lines and the nearest buildings, and elevation drawings or renderings of the proposed tower and any other structures.
- d. Language that states "If you have any public safety concerns or comments regarding the aesthetics or placement of this wireless communication facility, please submit your written comments within 14 days to:

Midvale City
 ATTN: City Engineer
 7505 S. Holden Street
 Midvale, Utah 84047

~~C. No equipment shall be stored or parked on the site of the pole, unless used in direct support of the poles that are being repaired. (Ord. 2018-01 § 1 (Exh. A) (part))~~

Article VII. Construction and Technical Requirements

5.54.460470 General requirement.

- A. No provider shall receive a wireless franchise unless it agrees to comply with each of the terms set forth in this chapter governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the cityCity or the wireless franchise, ~~including requirements regarding collocation and cost sharing.~~
- B. ~~All new WCFs in the city's rights-of-way in the city shall be subject to these regulations, except as otherwise provided herein. While holiday decorations may be temporarily put on city poles, n~~No antenna, small wireless facility, or other equipment ~~or facilities shall may~~ be added to cityCity poles without a pole attachment agreement with the City. No antenna, small wireless facility, or other equipment may be added to where the cityCity poles that are not able to structurally accommodate ~~same the antenna, small wireless facility, or other equipment, or where this creates public safety or interference issues.~~
- C. WCFs that lawfully existed prior to the adoption of this chapter shall be allowed to continue their use as they presently exist. This code does not make lawful any WCF that is not fully approved on the date the ordinance codified in this chapter is adopted and those pending WCFs will be required to meet the requirements of this code.

~~Routine maintenance shall be permitted on such lawful preexisting WCFs. Lawfully existing WCFs may be replaced as long as the replacement is in the exact or nearly the exact location of the WCF being replaced and is of a construction type identical in height, width, weight, lighting, and painting.~~
- D. The applicant must comply with all federal (such as the Americans with Disabilities Act), state, and local laws and ~~requiements~~requirements. This includes, but is not limited to, participating in Blue Stakes of Utah as required by Utah Code Ann. §§ 54-8a-2 through 54-8a-13, as amended.
- E. In the installation of any WCF within the rights-of-way, care must be taken to install in such a way that does not damage, interfere with, or disturb any other utility or entity that may already be located in the area. Any damage done to another utility's or entity's property must be immediately reported to both the cityCity and the owner of the damaged property, and must be promptly repaired by the provider, with the provider being responsible for all costs of repair, including any extra charges that may be assessed for emergency repairs. Failure to notify the cityCity and the damaged property owner will result in revocation of the franchise agreement. When approving the location for a WCF, the location of utilities or other entities' property, or the need for the location of other utilities, within the right-of-way must be considered before approval to locate the WCF will be given in order to ensure those other services to the public are not disrupted.

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F. — A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells spaced to provide wireless coverage in a defined geographic area. A single franchise agreement may be used for multiple node locations in DAS and/or small cell networks.

GF. All ~~towers and antennas~~ WCFs and utility poles must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate ~~towers and antennas~~ WCFs and utility poles including, but not limited to, RF emissions. If such standards and regulations are changed, and if WCF equipment is added either through collocation or replacement, then the owners of the ~~towers and antennas~~ WCFs and utility poles governed by this chapter shall bring such ~~towers and antennas~~ WCFs and utility poles into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring ~~towers and antennas~~ WCFs and utility poles into compliance with such revised standards and regulations shall constitute grounds for the removal of the ~~tower or antenna~~ WCF or utility pole at the owner's expense.

H. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is built and maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. A WCF or utility pole must comply with the all applicable codes and applicable standards. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty days shall constitute grounds for the removal of the tower at the owner's expense. Any appeal hearing under this chapter shall follow the city's code enforcement procedures under Title 7.

I. — All WCFs shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.

J. — Stealth design is required, and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Due consideration will be given by the city for microcell strand-mounted, pole-top, and flush-mounted design and various options for supporting equipment (attached to poles and wires, placed within poles and placed underground). Stealth and concealment techniques do not include incorporating faux tree designs of a kind that are not native to the state.

K]. All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand a minimum ~~one hundred~~ 100-mile per hour (mph) wind, or the minimum wind speed as required by the city's ~~City's~~ currently adopted Uniform Building Code, as amended, and required setback provisions as prescribed for the zoning districts.

L. — All structures shall conform to FCC and FAA regulations, if applicable.

M. — Due to the limited size of the city's rights of way, applicants shall be required to install any WCF equipment according the following requirements to the extent operationally and technically feasible and to the extent permitted by law. WCF equipment shall be installed either:

1. — On or within the pole. If the equipment is installed on the pole, the equipment enclosure must be flush with the pole, painted to reasonably match the color of the pole, may not exceed in width the diameter of the pole by more than three inches on either side, the furthest point may not exceed eighteen inches from the pole, and the base must be flush with the grade, or alternatively the lowest point may not be lower than eight and one-half feet from the

grade directly below the equipment enclosure. If the equipment is installed within the pole, no equipment may protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.

2. ~~Underground. All underground equipment shall be installed and maintained level with the surrounding grade. To the extent possible, any equipment installed underground shall be located in a park strip within the city's rights-of-way. If a park strip is unavailable, the provider may install equipment within a city-owned sidewalk within the right-of-way. However, underground equipment installed in a sidewalk may not be located within any driveway, pedestrian ramp, or immediately in front of a walkway or entrance to a building. To the extent possible, underground equipment being located in a sidewalk may not be installed in the center of the sidewalk, but should be installed as close to the edge of the sidewalk as is structurally viable.~~

3. ~~On private property in an existing building or in an enclosure. If equipment is placed on private property, the applicant shall provide written permission from the property owner allowing the applicant to locate facilities on the property. If equipment is placed in an enclosure, the enclosure shall be designed to blend in with existing surroundings, using architecturally compatible construction and colors, and landscaping and shall be located as unobtrusively as possible consistent with the proper functioning of the WCF.~~

~~The city shall not provide an exemption to this requirement when there is insufficient room in the right-of-way to place facilities at ground level and comply with ADA requirements, public safety concerns for pedestrians, cyclists, and motorists, or other articulable public safety concerns.~~

~~NJ.~~ The following maintenance requirements apply to WCFs, as applicable:

1. All landscaping shall be maintained at all times and shall be promptly replaced if not successful.
2. All WCF sites shall be kept clean, neat, and free of litter.
3. A WCF shall be kept clean and painted in good condition at all times. Rusting, dirt, or peeling facilities are prohibited.
4. All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.
5. The applicant shall provide a description of anticipated maintenance needs, including frequency of service, personnel needs, equipment needs and potential safety impacts of such maintenance.

~~OK.~~ Inspections.

1. ~~The cityCity or its agents shall have the authority to enter onto the rights-of-way upon which a WCF is located to inspect the facility for the purpose of determining whether it complies with the building code and all other standards provided by the city and federal and state law. the applicable codes and applicable standards.~~
2. ~~The cityCity reserves the right to conduct such inspections at any time, upon reasonable notice to the WCF owner. In the event such inspection results in a determination that violation of applicable standards set forth by the cityCity has occurred, the City will notify the provider of the violation.~~
3. ~~Upon receipt of a notice of violation, the provider will have 30 days from the date of violation to correct the violation. If the provider fails to correct the violation within the 30-day period, the City may remove the violating WCF or utility pole at the provider's sole expense.~~
4. ~~The City may recover all of its costs remedy of the violation may include cost recovery for all costs incurred in conforming and processing and removing the violation the violation.~~
5. ~~The provider may appeal a notice of violation by following the appeals process found in Title 7.~~

~~P. Any construction of macrocells in the rights-of-way shall necessitate approvals as required elsewhere in the municipal code and approval by the city council. For a new macro-cell proposed to be located in the rights-of-way in~~

a residential zone or in the rights-of-way in a downtown core area or in the rights-of-way within two hundred feet of a residential zone or in the rights-of-way within two hundred feet of the downtown core area, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values that this chapter seeks to protect.

Q. — Final Inspection.

1. — A certificate of completion will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations. As a condition of approval and prior to final inspection of the WCF, the applicant shall submit evidence, such as photos, to the satisfaction of the city, sufficient to prove that the WCF is in substantial conformance with photo simulations provided with the application. Nonconformance shall require modification to compliance within thirty days or the WCF, or nonconforming components, must be removed.

2. — If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the WCF in operation. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.470480 Quality.

All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.480490 Licenses and permits.

A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair a WCF, utility pole, or the wireless communication system, including but not limited to any necessary approvals from persons, entities, the cityCity, and other government entities (such as neighboring cities or the Utah Department of Transportation) to use private property, easements, poles, conduits, and rights-of-way. A provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.490500 Relocation of the system.

A. New Grades or Lines. If the grades or lines of any rights-of-way are changed at any time in a manner affecting the wireless communication system, then a provider shall comply with the requirements of the excavation ordinance. Generally, The City may require a provider to relocate or adjust a small wireless facility or utility pole in a right-of-way in a timely manner and without cost to the City.

B. The City Authority to Move System in Case of an Emergency. The cityCity may, at any time, in case of fire, disaster or other emergency, as determined by the cityCity in its reasonable discretion, cut or move any parts of the a WCF, utility pole, wireless communication system, and or appurtenances on, over or under the rights-of-way of the cityCity, in which event the cityCity shall not be liable therefor to a provider. The cityCity shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Ssection. Notice shall be given as provided in Section 5.54.730740.

C. A Provider Required to Temporarily Move System for Third Party. A provider shall, upon prior reasonable written notice by the cityCity or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its wireless communication system to permit the moving of the structure. A provider may impose a reasonable charge on any person other than the cityCity for any such movement of its systems.

D. Rights-of-Way Change—Obligation to Move System. When the city is changing rights-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the city. This obligation exists whether or not the provider has obtained an excavation permit. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.500510 Protect structures.

A. In connection with the construction, maintenance, repair, upgrade or removal of a WCF, utility pole, or the wireless communication system, a provider shall, at its own cost and expense, protect any and all existing structures, ~~belonging to the city and all designated landmarks, as well as all other structures within any designated historic district.~~

B. A provider shall obtain the prior written consent of the ~~city~~City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the rights-of-way of the ~~city~~City required because of the presence of a WCF, utility pole, or wireless ~~the~~system. Such consent may be given at the sole discretion of the ~~city~~City. Any such alteration shall be made by the ~~city~~City or its designee on a reimbursable basis.

C. A provider agrees that it shall be liable for the costs incurred by the ~~city~~City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the ~~city~~City any municipal structure or any other rights-of-way of the ~~city~~City involved in the construction, maintenance, repair, upgrade or removal of ~~the system~~a WCF, utility pole, or wireless system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the wireless franchise. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.510520 No obstruction.

In connection with the construction, maintenance, upgrade, repair or removal of ~~the~~a WCF, utility poles, or system, a provider shall not unreasonably obstruct the rights-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the ~~city~~City without the prior consent of the appropriate authorities. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.520530 Safety precautions.

A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.530540 Damage and Repair.

A. ~~If a provider's activity causes damage to a right-of-way, the provider must repair the right-of-way to substantially the same condition as before the damage.~~

B. ~~If the provider fails to make a repair required by the City within a reasonable time after written notice, the City may make the required repair and charge the provider the reasonable, documented, actual cost for the repair.~~

C. ~~If the provider's damage causes an urgent safety hazard, the City may immediately make the necessary repair and charge the provider the reasonable, documented, actual cost for the repair.~~

D. ~~After written reasonable notice to the provider, unless, in the sole determination of the city, an eminent danger exists, any rights-of-way within the city which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the city at the provider's expense to a condition as good as that prevailing before such work was commenced. Upon doing so, the city shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-way intruded upon. The provider shall, within thirty days after receipt of the statement, pay to the city the entire amount thereof of the repair within 30 days of receiving of the City's invoice.~~ (Ord. 2018-01 § 1 (Exh. A) (part))

Article VIII. Provider Responsibilities

5.54.540550 System maintenance.

A provider shall:

A. Install and maintain all parts of its wireless communication system in a nondangerous condition throughout the entire period of its wireless franchise.

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B. Install and maintain its system in accordance with standard prudent engineering practices and shall conform; ~~when with all applicable, with the National Electrical Safety Code codes and all applicable other federal, state and local laws or regulations standards.~~

C. At all reasonable times, permit examination by any duly authorized representative of the cityCity of the system and its effect on the rights-of-way. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.550560 Trimming of trees.

A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its wireless communication system. A provider must provide the City with written notice at least 14 days before performing such work. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.560570 Inventory of existing sites.

A provider shall provide every July 1st to the cityCity an inventory of its existing WCFs or sites approved for WCFs, that are either within the jurisdiction of the cityCity or within one mile of the border thereof, including specific information about the location, height, and design of each ~~tower or antenna~~ WCF and utility pole. The cityCity may share such information with other applicants applying for permits under this chapter or other organizations seeking to locate antennas within the jurisdiction of the cityCity; provided, however, that the cityCity is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. (Ord. 2018-01 § 1 (Exh. A) (part))

Article IX. Wireless Franchise and License Transferability

5.54.570580 Notification of sale.

A. PSC Approval. When a provider or wireless communication system is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the cityCity of the nature of the transaction and, if applicable, request a transfer of the wireless franchise to the successor entity. A request for transfer shall include a certification that the successor entity unequivocally agrees to all the terms of the original provider's wireless franchise agreement.

B. Transfer of Wireless Franchise. Upon receipt of a request to transfer a wireless franchise, the cityCity designee shall, if it approves such transfer, send notice affirming the transfer of the wireless franchise to the successor entity. If the cityCity has good cause to believe that the successor entity may not comply with this chapter or the wireless franchise agreement, it may require an application for the transfer. The application shall comply with Article V of this chapter.

C. If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in this Ssection, and the cityCity has good cause to believe that the successor entity may not comply with this chapter or the wireless franchise agreement, it may require an application. The application shall comply with Article V of this chapter. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.580590 Events of sale.

The following events shall be deemed to be a sale, assignment or other transfer of the wireless franchise requiring cityCity approval: (A) the sale, assignment or other transfer of all or a majority of a provider's assets to another person; (B) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider; (C) the issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or (D) the entry by a provider into an agreement with respect to the management or operation of such provider or its system. (Ord. 2018-01 § 1 (Exh. A) (part))

Article X. Oversight and Regulation

5.54.590600 Insurance, indemnity, and security.

A. A provider will deposit with the cityCity an irrevocable, unconditional letter of credit or surety bond as required by the terms of the wireless ~~franchise, and franchise and~~ shall obtain and provide proof of the insurance coverage required by the wireless franchise. A provider shall also indemnify the cityCity as set forth in the wireless franchise.

B. Each permit issued for a WCF or utility pole located within the right-of-way or on cityCity property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the cityCity and its officials, officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF or utility pole. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.600610 Oversight.

The cityCity shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the wireless communication system, and any part thereof, in accordance with the provisions of the wireless franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the cityCity at all times throughout the term, that a provider is in compliance with the wireless franchise. A provider shall retain such records for not less than the applicable statute of limitations. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.610620 Maintain records.

A provider shall at all times maintain:

A. On file with the cityCity, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the cityCity's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights-of-way where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within ~~thirty-30~~ days of completion of work or within ~~thirty-30~~ days after completion of modification and repairs. "As-built" maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.

B. Throughout the term of the wireless franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the cityCity at all times to determine whether a provider is in compliance with the wireless franchise. Should the cityCity reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this ~~section~~Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the state of Utah, and generally accepted accounting principles, shall be deemed to be acceptable under this ~~section~~Section. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.620630 Confidentiality.

If the information required to be submitted is proprietary in nature or ~~must may~~ be kept confidential ~~by under~~ federal, state or local law, ~~the provider may upon proper request by a provider, such information shall be classified as a protected record within the meaning of make such a request in accordance with~~ the Utah Government Records Access and Management Act, Title 63G Chapter 2 of the Utah Code Ann., as amended ("GRAMA"). A provider recognizes that the City, as a governmental entity under GRAMA, cannot guarantee the confidentiality of any information in the City's possession, and the provider submits such information at its own risk. -making it available only to those who must have access to perform their duties on behalf of the city; provided, that a provider notifies the city of and clearly labels the information which a provider deems to be confidential, proprietary information- ~~Such notification and labeling shall be the sole responsibility of the provider.~~ (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.630640 Provider's expense.

All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a wireless franchise. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.640650 Right of inspection.

For the purpose of verifying the correct amount of the wireless franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the cityCity at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided, that the cityCity shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the cityCity the reasonable costs of an audit if the audit discloses that the provider has paid ninety-five percent or less of the compensation due the cityCity for the period of such audit. In the event the accounting rendered to the cityCity by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty-30 calendar days of written notice, it being agreed that the cityCity may accept any amount offered by the provider, but the acceptance thereof by the cityCity shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect. (Ord. 2018-01 § 1 (Exh. A) (part))

Article XI. Rights of City

5.54.650660 Enforcement and remedies.

A. The cityCity is responsible for enforcing and administering this chapter, and the cityCity or its designee, as appointed by the mayor, is authorized to give any notice required by law or under any wireless franchise agreement.

B. In the event that an individual or entity violates this chapter, the cityCity will notify the violating party of the violation and provide thirty-30 days for the party to cure the violation.

C. If the violation is not cured within thirty-30 days, the cityCity may:

1. Fine the violating party ~~five hundred dollars~~\$500 per day until the violation is cured; and
2. Terminate or suspend any franchises, permits, or licenses held by the violating party.

D. If the violation is not cured within ~~one hundred eighty~~180 days of the cityCity's notice, the cityCity may remove and impound the grantee's equipment until the violation has been cured.

E. The violating entity may appeal the cityCity's notice of violation within ~~ten-10~~ days in accordance with Chapter 7.02. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.660670 Force majeure.

In the event a provider's performance of any of the terms, conditions or obligations required by this chapter or a wireless franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this ~~section~~Section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.670680 Extended operation and continuity of services.

A. Continuation after Expiration. Upon either expiration or revocation of a wireless franchise granted pursuant to this chapter, the cityCity shall have discretion to permit or require a provider to continue to operate its system or provide services for an extended period of time not to exceed six months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this chapter and the wireless franchise granted pursuant to this chapter.

B. Continuation by Incumbent Local Exchange Carrier. If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.680690 Removal or abandonment of wireless franchise property.

~~A. — Abandoned System. In the event that (1) the use of any portion of the wireless communication system is discontinued for a continuous period of twelve months, and thirty days after no response to written notice from the city to the last known address of provider; (2) any system has been installed in the rights-of-way without complying with the requirements of this chapter or wireless franchise; or (3) the provisions of Section 5.54.080 are applicable and no wireless franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.~~

~~B. — Removal of Abandoned System. Any antenna or tower that is not operated for a continuous period of twelve months shall be considered abandoned, and the owner of such antenna or tower shall so notify the city in writing and remove the same within ninety days of giving notice to the city of such abandonment. Failure to remove an abandoned antenna or tower within said ninety days shall be grounds to remove the tower or antenna at the owner's expense, including all costs and attorneys' fees. The city shall be able to draw from any security and security fund which is established under the wireless franchise. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.~~

~~The city, upon such terms as it may impose, may give a provider written permission to abandon, without removing any wireless communication system, or portion thereof, directly constructed, operated or maintained under a wireless franchise. Unless such permission is granted or unless otherwise provided in this chapter, a provider shall remove within a reasonable time the abandoned wireless communication system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The city shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and any security fund provided in a wireless franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.~~

~~C. — Transfer of Abandoned System to City. Upon abandonment of any wireless communication system in place, a provider, if required by the city, shall submit to the city a written instrument, satisfactory in form to the city, transferring to the city the ownership of the abandoned wireless communication system.~~

~~D. — Removal of Above-Ground System. At the expiration of the term for which a wireless franchise is granted, or upon its revocation or earlier expiration, as provided for by this chapter, in any such case without renewal, extension or transfer, the city shall have the right to require a provider to remove, at its expense, all above-ground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than one hundred eighty days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.~~

~~E. — Leaving Underground System. Notwithstanding anything to the contrary set forth in this chapter, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person. (Ord. 2018-01 § 1 (Exh. A) (part)) A provider is subject to the removal and abandonment requirements of Chapter 12.14.~~

Article XII. Obligation to Notify

5.54.690700 Publicizing work.

~~Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and advance and describe the work to be performed. (Ord. 2018-01 § 1 (Exh. A) (part))~~

Article XIII. General Provisions

5.54.700710 Conflicts.

~~In the event of a conflict between any provision of this chapter and a wireless franchise entered pursuant to it, the provisions of this chapter shall control. (Ord. 2018-01 § 1 (Exh. A) (part))~~

5.54.740720 Severability.

If any provision of this chapter is held by any federal, state or local court of competent jurisdiction to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the chapter provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the eityCity and the provider; provided, that the eityCity shall give the provider ~~thirty-30~~ days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.720730 New developments.

It shall be the policy of the eityCity to liberally amend this chapter, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of personal wireless services which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.730740 Notices.

All notices from a provider to the eityCity required under this chapter or pursuant to a wireless franchise granted pursuant to this chapter shall be directed to the officer as designated by the mayor. A provider shall provide in any application for a wireless franchise the identity, address and phone number to receive notices from the eityCity. A provider shall immediately notify the eityCity of any change in its name, address, or telephone number. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.740750 Exercise of police power.

To the full extent permitted by applicable law either now or in the future, the eityCity reserves the right to amend this chapter and/or to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers and its power to manage the right-of-way. (Ord. 2018-01 § 1 (Exh. A) (part))

Article XIV. Federal, State and City Jurisdiction

5.54.750760 Construction.

This chapter shall be construed in a manner consistent with all applicable federal and state statutes. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.760770 Chapter applicability.

This chapter shall apply to all wireless franchises granted or renewed after ~~the effective date of the ordinance codified in this chapter~~ January 16, 2018. This chapter shall further apply, to the extent permitted by applicable federal or state law, to all existing wireless franchises granted prior to the effective date of the ordinance codified in this chapter and to a provider providing services, without a wireless franchise, prior to the effective date of this chapter. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.770780 Other applicable ordinances.

A provider's rights are subject to the police powers of the eityCity to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the eityCity pursuant to its police powers. In particular, all providers shall comply with the eityCity zoning and other land use requirements. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.780790 City failure to enforce.

A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any wireless franchise granted pursuant to this chapter by reason of any failure of the eityCity to enforce prompt compliance. (Ord. 2018-01 § 1 (Exh. A) (part))

5.54.790800 Construed according to Utah law.

This chapter and any wireless franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state of Utah. Specifically, in the event of any conflict between this chapter with the Small Wireless Facilities Deployment Act, Title 54 Chapter 21 of the Utah Code Ann., as amended, the Small Wireless Facilities Deployment Act shall control. (Ord. 2018-01 § 1 (Exh. A) (part))



MIDVALE CITY COUNCIL SUMMARY REPORT

Meeting Date: August 28, 2018

SUBJECT: Consider adopting Ordinance 2018-O-11 creating Chapter 12.14 Installations Within City Rights-of-Way.

SUBMITTED BY: Lisa Garner, City Attorney

SUMMARY:

Midvale has historically used Chapter 12.12 'Excavations Within City Rights-of-Way' to regulate all activity within the City's rights-of-way. This was sufficient when the right-of-way was being utilized by a small number of users, and those users were installing predictable kinds of installations. However, in the last several years, the number of users and the types of installations have increased substantially. As a result, Chapter 12.12 is no longer sufficient to regulate all activity in the City's right-of-way.

The proposed Chapter 12.14 'Installations Within City Rights-of-Way' is an attempt to modernize the City's regulation of the right-of-way. With this new chapter, activity in the right-of-way will now be regulated by whether such intrusions are permanent or temporary. Chapter 12.12 will regulate temporary intrusions such as excavations, road cuts, the installation of conduit, etc. Chapter 12.14 will regulate anything that is installed in the right-of-way on a permanent basis such as boxes, cabinets, poles, etc.

The proposed Chapter 12.14 will serve the City in two ways. First, it will standardize the type of information collected by the City for installations within the right-of-way. This improved, standardized information will better assist our City Engineer and other City staff in planning right-of-way projects. It will also place the requirement on installation owners to maintain an inventory of such installations for the City to check its information against. Second, it will also standardize the types, sizes, placement, and aesthetic requirements for installations within the right-of-way. These requirements are based heavily on the requirements established in Chapter 5.54 for small wireless facilities.

Lastly, under S.B. 189 the 'Small Wireless Facilities Deployment Act,' the State has mandated that municipalities must treat all users of the right-of-way in a nondiscriminatory fashion. Additionally, it also mandates that municipalities may not collect additional information from a small cell provider that it does not also collect from communications providers. If municipalities are not completely compliant with S.B. 189 before its effective date on September 1, 2018, a municipality's ordinance is considered invalid and a wireless provider must only comply with the minimum protections of the 'Small Wireless Facilities Deployment Act.' The City wants to maintain the greatest control possible over its own property. Chapter 12.14 will bring the City into compliance with S.B. 189 and will allow the City to maintain the greatest amount of control over its right-of-way.

With the increasing congestion and multiple uses in the City's right-of-way, the proposed Chapter 12.14 will better help the City manage its right-of-way by collecting improved information, establishing general standards for installations, and establishing complete compliance with S.B. 189.

FISCAL IMPACT: None.

STAFF'S RECOMMENDATION AND MOTION: I move that we approve Ordinance No. 2018-O-11 creating Midvale Municipal Code Chapter 12.14 Installations Within City Rights-of-Way.

**Attachments: Proposed Ordinance 2018-O-11
Proposed Chapter 12.14 Installations Within City Rights-of-Way.**

MIDVALE CITY

ORDINANCE NO. 2018-O-11

AN ORDINANCE CREATING CHAPTER 12.14 INSTALLATIONS WITHIN CITY RIGHTS-OF-WAY.

WHEREAS, the City, as a trustee of the public, manages the rights-of-way within the City subject to applicable law; and

WHEREAS, the City Council finds that the rights-of-way within the City:

1. Are critical to the travel and transport of persons and property in the business and social life of the City;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
4. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities construction, placement, relocation, and maintenance in the rights-of-way; and

WHEREAS, the City's rights-of-way are becoming increasingly congested with multiple users including, but not limited to, the City, utilities, cable companies, and wireless providers;

WHEREAS, the City expects the number of users using its rights-of-way to provide services to continue to increase;

WHEREAS, the City has historically used Chapter 12.12 'Excavations Within City Rights-of-Way' to manage its rights-of-way;

WHEREAS, Chapter 12.12, as its title denotes, appears to have been written in large part to regulate excavations and temporary intrusions into the City's rights-of-way;

WHEREAS, with the increasing congestion in the City's rights-of-way, the requirements of Chapter 12.12 are no longer sufficient to collect the appropriate information about permanent installations in the City's rights-of-way;

WHEREAS, the City has witnessed an increasing variety of installations in the rights-of-way of differing size, placement, and appearance;

WHEREAS, the City expects even more variety of installations in the rights-of-way with the increased number of users;

WHEREAS, the increasing variety and quantity of installations in the rights-of-way increases congestion in the right-of-way, is more aesthetically distracting, and increases the safety risks of residents and individuals;

WHEREAS, while Chapter 12.12 has provided some minimum protections, Chapter 12.12 was not intended to regulate the safety, aesthetics, and placement of installations within the right-of-way;

WHEREAS, Utah passed S.B. 189 ‘Small Wireless Facilities Deployment Act’ (the “Act”) which will enact Utah Code Ann. §§54-21-101 to 603 on September 1, 2018;

WHEREAS, the Act requires a municipality to treat all users of the right-of-way on a nondiscriminatory basis and prohibits a municipality from requiring any additional information to obtain a permit than a communications service provider;

WHEREAS, the City’s current regulatory scheme is not in harmony with the Act;

WHEREAS, the City finds that it is necessary to create Chapter 12.14 to:

1. Collect better information regarding installations within its rights-of-way to assist City staff in managing the rights-of-way;
2. Establish minimum safety, aesthetic, and placement standards for all installations in its rights-of-way for the safety and benefit of its residents and other individuals using the City’s rights-of-way; and
3. Comply with the Act on or before September 1, 2018;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

SECTION I

The City Council desires to enact Midvale Municipal Code Chapter 12.14 ‘Installations Within City Rights-of-Way’ as set forth in Exhibit A.

SECTION II

A violation of this ordinance includes the possibility of imprisonment. As such, Midvale City is required, under Utah Code Ann. § 77-32-301, to provide for indigent legal defense, as those terms are defined in Utah Code Ann. § 77-32-201.

SECTION III

This Ordinance shall be effective on September 1, 2018.

PASSED AND APPROVED this 28th day of August, 2018.

MIDVALE CITY

By: _____
Mayor Robert M. Hale

[SEAL]

VOTING:

Paul Glover	Yea	___	Nay	___
Quinn Sperry	Yea	___	Nay	___
Paul Hunt	Yea	___	Nay	___
Bryant Brown	Yea	___	Nay	___
Dustin Gettel	Yea	___	Nay	___

ATTEST:

Rori L. Andreason, MMC
City Recorder

Published this ___ day of ___, 2018.

Chapter 12.14

INSTALLATIONS WITHIN CITY RIGHTS-OF-WAY

Sections:

- 12.14.010 Definitions.
- 12.14.020 Permit required.
- 12.14.030 Franchise required.
- 12.14.040 Application requirements.
- 12.14.050 Application fee.
- 12.14.060 Permit.
- 12.14.070 Siting.
- 12.14.080 Visual impact.
- 12.14.090 Safety.
- 12.14.100 Height restrictions.
- 12.14.110 Size restrictions.
- 12.14.120 Noise restrictions.
- 12.14.130 Speculation prohibited.
- 12.14.140 Undergrounding.
- 12.14.150 Restoration of public property.
- 12.14.160 Limitation of City liability.
- 12.14.170 Insurance.
- 12.14.180 Relocation
- 12.14.190 Maintenance
- 12.14.200 Removal or abandonment of a structure.
- 12.14.210 Inventory of structures.
- 12.14.220 Records.
- 12.14.230 Compliance with laws.
- 12.14.240 Failure to comply.
- 12.14.250 Appeal of suspension, revocation, or stop work order.
- 12.14.260 Conflict with governing provisions.
- 12.14.270 Penalties.

12.14.010 Definitions.

“Abandoned structure” means a structure is not in use for a continuous period of 12 months.

“Applicant” means any person who makes application for a permit.

“Application” means a right-of-way occupancy application for a right-of-way occupancy permit.

“City Engineer” means the city engineer of Midvale City or his/her authorized designee.

“City Manager” means the city manager or city administrator of Midvale City or his/her authorized designee.

“Franchise” means a franchise agreement between a person or entity with the City that authorizes the person or entity to perform a particular service or operate a particular system within the City and utilize the right-of-way in providing said service or maintaining said system.

“Permit” means a right-of-way occupancy permit that gives a person or entity to perform the work and install, maintain, and operate a structure included in a right-of-way occupancy application has been approved by the City Engineer.

“Right-of-way” means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever owned or managed by the City.

“Structure” means any pole, cabinet, box, antenna or other non-temporary structure that is installed within the right-of-way.

12.14.020 Permit required.

A person or entity must have a permit from the City authorizing the installation of a structure prior to performing any work in the application.

12.14.030 Franchise required.

A person or entity may only apply for a permit if the person or entity currently has an approved franchise with the City.

12.14.040 Application requirements.

- A. Only an authorized representative or agent of a franchise holder may apply for a permit.
- B. A person or entity submitting an application for a permit must submit the following information:
 - 1. The location of the structure;
 - 2. The specifications of the structure;
 - 3. The construction drawings of the structure;
 - 4. A scaled site plan clearly indicating the location, type, dimensions of the structure, the boundaries of the right-of-way, property ownership, adjacent roadways, existing above- and below-ground equipment, existing underground utility and wire lines, curbs and gutters, sidewalks, park strips, other physical features of the site, proposed bore pits, proposed means of access, setbacks from property lines and the nearest buildings, parking, utility runs and other information deemed by the City Engineer to be necessary to assess compliance with this chapter;
 - 5. A to-scale drawing or photo simulation of the structure;
 - 6. Identification of any other entity providing service to the structure in order to fulfill its intended use (for example, the entity providing backhaul services for a small wireless facility);
 - 7. If the structure is being located on another’s structure, written authorization from the structure owner to allow the applicant to locate the applicant’s structure on the owner’s structure;
 - 8. If the applicant is not providing the service the structure is constructed for, written confirmation from an authorized service provider that the applicant’s structure will be used by the service provider to provide such service.

12.14.050 Application fee.

A. As structures in the right-of-way are very specific to the nature and purpose of the installation, many right-of-way occupancy permits have been established in other chapters in this Code or in franchise agreements. If the proposed structure is already subject to an application fee for review of that structure, the person or entity must pay such fee when the right-of-way occupancy permit application is submitted.

B. For any right-of-way occupancy permit in which the application fee is not established elsewhere in the Code or in a franchise agreement, a person or entity submitting the right-of-way occupancy permit application must pay an application fee of \$100 per structure.

12.14.060 Permit.

A. A person or entity whose application is approved by the City Engineer and receives a permit from the City is authorized to perform the work in the approved application. A person or entity may not perform any work at any other location other than that included in the approved application.

B. The work authorized by the permit must be completed by the date listed on the permit, unless otherwise authorized by the City Engineer.

C. A person or entity with an approved permit remains obligated to receive any other required permissions or authorizations prior to performing the work approved by the permit. This may include, but is not limited to, an excavation permit or building permit.

D. A permit is not transferrable or assignable.

12.14.070 Siting.

A. Due to the limited size of the City's right-of-way, the siting of a structure is subject to the City Engineer's instructions and the following requirements:

1. A structure that is a utility pole may be placed in a park strip.
2. Structures associated with existing utility poles may be installed:
 - i. within the pole so that none of the structure protrudes from the pole except to the extent reasonably necessary to connect to power or a wireline;
 - ii. on the pole such that the structure (a) is flush with the pole, (b) is painted to reasonably match the color of the pole, (c) does not exceed the width of the diameter of the pole by more than 3 inches on either side, (d) does not have any part that extends more than 18 inches from the pole; and (e) is flush with the grade or, alternatively, the lowest point of the structure is not lower than 8 feet from the grade directly below the structure.
 - iii. underground in a park strip such that the structure is installed and maintained level with the surrounding grade.
3. Structures associated with a new utility pole may be installed in accordance with 12.14.060(A)(2)(i) or (iii).
4. Structures not associated with a utility pole must be installed in accordance with 12.14.060(A)(2)(iii).

B. The City Engineer may grant an exemption to this requirement if the applicant demonstrates a compelling need that otherwise complies with the requirements of this chapter

C. The City Engineer may not provide an exemption to these requirements when there is insufficient room in the right-of-way to place structures at ground-level and comply with ADA requirements, public safety concerns for pedestrians, cyclists, and motorists, or other articulable public safety concerns

12.14.080 Visual impact.

A structure must be sited and designed to minimize adverse visual impacts on the surrounding properties and the traveling public to the greatest extent reasonably possible. A structure must be integrated through location and design to blend in with the existing characteristics of the site.

12.14.090 Safety.

A structure may not:

- A. Materially interfere with the safe operation of traffic control equipment;
- B. Materially interfere with a sight line or clear zone for vehicular or pedestrian traffic;
- C. Materially interfere with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement;
- D. Create a public health or safety hazard;
- E. Obstruct or hinder the usual travel or public safety of the right-of-way; or
- F. Violate any applicable law or legal obligation.

12.14.100 Height restrictions.

A. A structure may not exceed the following height restrictions:

1. A utility pole may not exceed 50 feet tall.
2. Any other structure may not exceed four feet tall.

B. The City Engineer may grant an exemption to this requirement if the applicant demonstrates a compelling need that otherwise complies with the requirements of this chapter.

12.14.110 Size restrictions.

A. A structure may not exceed 28 cubic feet in volume.

B. The City Engineer may grant an exemption to this requirement if the applicant demonstrates a compelling need that otherwise complies with the requirements of this chapter.

12.14.120 Noise restrictions.

A structure may not generate noise in excess of that allowed for a Type A receiving property use in Table 1a of the Salt Lake Valley Health Department Health Regulation #21, as amended.

12.14.130 Speculation prohibited.

Due to the limited nature of the right-of-way and the importance of the using the right-of-way for the benefit of the residents of Midvale, speculation is prohibited. An application may not be approved for any structure that will not provide service upon operation. Any structure that is owned by a person or entity that is not authorized to provide the service for which the structure is intended must provide the City evidence at the time an application is submitted that the structure will be used by an entity with the authorization to provide the service for which the structure is intended.

12.14.140 Undergrounding.

A. A person or entity must comply with the utility burying requirements found in Title 17.

B. A person or entity must bury conduit absent any requirements in Title 17 if:

1. existing conduit at the site is buried; and
2. there are no existing overhead facilities in which to attach conduit.

12.14.150 Protection, damage, and restoration.

A. A person or entity performing work under an approved permit must, at its sole cost and expense, protect any and all existing structures and conduit.

B. If a person's or entity's activity causes damage to a City-owned structure, conduit, or right-of-way, the provider must repair the damage in accordance with the standards established by the City Engineer.

C. If the person or entity fails to complete a repair within a reasonable time after written notice, the City may make the required repair and charge the person or entity the reasonable, documented, actual cost for the repair.

D. If the person's or entity's damage causes an urgent safety hazard, the City may immediately make the necessary repair and charge the person or entity the reasonable, documented, actual cost for the repair.

E. The person or entity must pay the City the entire amount of the repair within 30 days of receiving the City's invoice.

12.14.160 Limitation of City liability.

A. The person or entity is solely responsible for the liability of installing, maintaining, and operating a structure approved by a permit. The City is not liable or responsible for any damages, injuries, or claims that arise from work performed under the permit or the permitted structure including, but not limited to, any inspection, approval of work, or permit issued under this chapter.

B. As a condition of approving an application and issuing a permit, a person or entity agrees to defend, indemnify, and hold harmless the City and its officials, officers, employees, volunteers, and agents from all loss, damages, or claims of whatever nature, including attorney's fees, that arise out of any act or omission of the person or entity or its agents, employees, or invitees in connection with any work performed under a permit or the permitted structure.

C. The acceptance of a permit under this chapter constitutes acceptance of the requirements of this section by a person or entity.

12.14.170 Insurance.

A person or entity must comply with the insurance and bonding requirement established within this Code or their franchise agreement, whichever is most restrictive.

12.14.180 Relocation.

The City may direct the owner of a structure to alter, modify, or relocate such structure in a timely manner as the City Engineer requires in accordance with Section 12.12.090.

12.14.190 Maintenance.

A. The owner of a structure must keep the structure clean, painted, and in good condition at all times. A rusting, dirty, or peeling structure is prohibited.

B. The owner of structure may not unreasonably obstruct the use of right-of-way by pedestrians or vehicles while completing maintenance without the prior authorization of the City.

12.14.200 Removal or Abandonment of a Structure.

A. The owner of an abandoned structure is required to notify the City of the abandoned structure. If the owner of a structure does not notify the City, the City may also send written notice to the last known address for the owner notifying the owner that the structure appears to be abandoned. If the structure is not abandoned, the owner must notify the City within 30 days of receipt of the City's notice that the structure is not abandoned and provide supporting documentation to show the structure's use in the last 12 months. The City may consider the structure abandoned if the owner does not respond within 30 days or the owner is unable to document the use of said structure.

B. The owner of an abandoned structure is required to remove the structure and restore the site in accordance with the City's standards within 90 days of abandonment. The liability, indemnity and insurance provisions of this chapter and any security fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by an owner with the terms and conditions of this section. The City shall have the right to inspect and approve the condition of site prior to and after removal.

C. If the owner fails to remove abandoned structure within 90 days, the City may remove the abandoned structure at the owner's expense, including all costs and attorneys' fees. The City is also authorized to draw on an owner's security or security fund to cover the above costs.

D. The City, upon such terms as it may impose, may give an owner written permission to abandon, without removing, any structure, or portion thereof. The City is not obligated or required to give such permission and does so at its own discretion. Unless such permission is granted, the owner shall comply with the requirements of 12.14.200(C).

E. If the City gives permission to the owner to abandon a structure, the City may require the owner of the abandoned structure to transfer the ownership of the abandoned structure to the City in a written instrument, satisfactory in form to the City.

F. Upon the expiration, revocation, or termination of a permit or franchise and the permit and franchise is otherwise not renewed, extended, or transferred, the City may require the owner of structure to remove, at the owner's expense, all structures and the system authorized by said permit or franchise within a reasonable period of time, which shall not be less than 180 days. If the owner of a structure is the incumbent local exchange carrier, the owner will not be required to remove its structures and the system, but must negotiate a renewal in good faith.

12.14.210 Inventory of structures.

A. A person or entity who owns a structure must maintain a current inventory of all structures that includes the location, type, and purpose of each structure.

B. The City may request the person or entity to provide a copy of its inventory to the City for the City's review within 30 days of the City's written request.

12.14.220 Records.

A. A person or entity who owns a structure must maintain:

1. the approved application;
2. the permit; and
3. "as built" set of plans and maps.

B. The City may request the person or entity to provide the above records to the City for the City's review within 30 days of the City's written request.

12.14.230 Compliance with laws.

A. A structure must comply with all applicable federal, state, and local laws, regulations, standards, and policies.

B. Any work performed under this chapter must comply with all applicable federal, state, and local laws, regulations, standards, and policies.

12.14.240 Failure to comply.

A. The City may issue a stop work order to any person or entity performing work under this chapter without a permit or owning, operating, or maintaining a structure without a permit. The person or entity is required to submit an application for the structure and must pay twice the application fee. If a permit is not granted, the person or entity is required to remove the structure and restore the affected site.

B. The City may issue a stop work order or suspend or revoke a permit by written notice for:

1. any violation of a condition of the permit, bond, or any provision of this chapter;
2. any violation of any provision of the Midvale Municipal Code relating to the work; or
3. the existence of any condition or the doing of any act which may constitute or cause a condition endangering health or property.

C. The City may issue a stop work order, suspend or revoke a permit, or order removal or replacement of the structure if the structure fails to conform to design standards and regulations.

12.14.250 Appeal of suspension, revocation or stop work order.

Any suspension, revocation, or stop work order by the City Engineer may be appealed by the person or entity to the City Manager by filing an appeal within 10 days of the action of the City Engineer. The City Manager or his/her designee will hear such appeal, if the written request is timely filed, within 10 business days and render his/her decision within a reasonable time following the notice of appeal.

12.14.260 Conflict with governing provisions.

Should there be a conflict between the provisions of this chapter and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a public way, the more restrictive provisions shall apply.

12.14.270 Penalties.

A. Unless otherwise specified in this chapter, the City may fine a person or entity \$100 per day per every violation of any provision of this chapter or failure to comply with an order of suspension, revocation or stop work. Each day the violation exists is a separate offence. The total fine may not exceed \$3,000.

B. Unless otherwise specified in this chapter, it is a class B misdemeanor to violate any provision of this chapter or fail to comply with an order of suspension, revocation or stop work. Each day the violation exists is a separate offense.

C. If the City chooses to file criminal charges, no civil fees may be assessed for the same violation.

D. A criminal conviction or payment of a civil fine does not excuse the person or entity from otherwise complying with the provisions of this chapter.

E. The City may not grant any other permit to a person or entity if that person or entity is in violation any provision of this chapter or is failing to comply with an order of suspension, revocation or stop work.