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 it 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: [Signature]

Mayor Robert M. Hale

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 31st day of Aug, 2018.
Chapter 12.14

INSTALLATIONS WITHIN CITY RIGHTS-OF-WAY

Sections:
12.14.040 Application requirements.
12.14.050 Application fee.
12.14.100 Height restrictions.
12.14.120 Noise restrictions.
12.14.130 Speculation prohibited.
12.14.180 Relocation
12.14.190 Maintenance
12.14.200 Removal or abandonment of a structure.
12.14.240 Failure to comply.
12.14.250 Appeal of suspension, revocation, or stop work order.

"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.

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.

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.

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.

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).


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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.
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.

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.