



7505 South Holden Street  
Midvale, UT 84047  
(801) 567-7200  
www.midvalecity.org

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**MIDVALE CITY COUNCIL MEETING  
AGENDA  
January 16, 2018**

**PUBLIC NOTICE IS HEREBY GIVEN** that the **Midvale City Council** will hold a regular meeting on the **16<sup>th</sup> day of January 2018** at Midvale City Hall, 7505 South Holden Street, Midvale, Utah as follows:

**6:30 PM**

**INFORMATIONAL ITEMS**

**I. DEPARTMENT REPORTS**

**II. CITY MANAGER BUSINESS**

**7:00 PM**

**REGULAR MEETING**

**III. GENERAL BUSINESS**

- A. WELCOME AND PLEDGE OF ALLEGIANCE
- B. ROLL CALL
- C. Recognition of 100-Year Old residents of Midvale City,  
Enedina (Dena) Stubbs and Olive Gammel
- D. Update on Upcoming Legislative Session [*Representative Bruce Cutler*]

**IV. PUBLIC COMMENTS**

Any person wishing to comment on any item not otherwise on the Agenda may address the City Council at this point by stepping to the microphone and giving his or her name for the record. Comments should be limited to not more than three (3) minutes, unless additional time is authorized by the Governing Body. Citizen groups will be asked to appoint a spokesperson. This is the time and place for any person who wishes to comment on non-hearing, non-Agenda items. Items brought forward to the attention of the City Council will be turned over to staff to provide a response outside of the City Council meeting.

**V. COUNCIL REPORTS**

- A. Councilmember Paul Hunt
- B. Councilmember Dustin Gettel
- C. Councilmember Paul Glover
- D. Councilmember Quinn Sperry
- E. Councilmember Bryant Brown

**VI. MAYOR REPORT**

- A. Mayor Robert M. Hale

**VII. PUBLIC HEARINGS**

- A. Consider a 2-lot subdivision request from Intellectual Interest LLC located at 7860 South Holden Street [*Alex Murphy, Associate Planner*]

**ACTION: Consider approval of a 2-lot subdivision request from Intellectual Interest LLC located at 7860 South Holden Street**

**VIII. CONSENT AGENDA**

- A. Consider Minutes of January 2 & 9, 2018 [*Rori Andreason, H.R. Director/City Recorder*]

**IX. ACTION ITEMS**

- A. Consider Resolution No. 2018-R-07 Confirming the Reappointment of Colleen Costello to serve as a Full Time Member of the Planning Commission [*Lesley Burns, City Planner*]
- B. Consider Ordinance No. 2018-O-01 adopting Chapter 5.54 of the Midvale Municipal Code regarding Wireless Communications Services [*Lisa Garner, City Attorney & Garrett Wilcox, Deputy Attorney*]

**X. 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 days advance 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 posted in the City Hall Lobby, the 2<sup>nd</sup> Floor City Hall Lobby, on the City's website at [www.midvalecity.org](http://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:  
JANUARY 12, 2018**

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



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## MIDVALE CITY COUNCIL SUMMARY REPORT

**Meeting Date: January 16, 2018**

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### **SUBJECT:**

Public Hearing and Subdivision Plat Approval for 2 lot Isabel's Place Subdivision located at 7860 South Holden Street

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### **SUBMITTED BY:**

Alex Murphy, Associate Planner

### **SUMMARY:**

The proposed Isabel's Place Subdivision plat consists of two (2) proposed lots on a total of 0.37 acres located south of Center Street at the intersection of Holden and Lennox Streets and is being submitted by Mike Watson and Paul Poteet, Intellectual Interest LLC, on behalf of the property owners, Kenneth and Auria Harper, for the purpose of creating a second lot behind the existing single-family dwelling on the subject property.

The proposed subdivision plat was reviewed and approved by the City Engineer and Fire Marshall. As a minor subdivision request, this request is subject to and complies with the requirements of the Multifamily Residential Medium to High Density Zone (RM-25) and the subdivision ordinance (Title 16), subject to the recommended conditions below.

All subdivisions require a review and recommendation from the Planning Commission and approval from the City Council. Public hearings are required to be held by each body. The Planning Commission conducted a public hearing on this subdivision plat on December 13, 2017. Based on compliance with the City's zoning and subdivision requirements, the Planning Commission forwarded a positive recommendation to the City Council to approve the subdivision plat for the Isabel's Place Subdivision with the following conditions:

1. The applicant shall prepare a final subdivision plat to be reviewed and approved by the City Engineer and City Council.
2. The applicant shall demonstrate the existing fences and accessory buildings on Lot 1 comply with applicable development standards prior to recording the final plat.
3. A note shall be added to the plat indicating the existing fence on Lot 2 shall be reduced in height in the front yard prior to issuance of a certificate of occupancy.
4. A minimum of four (4) additional street trees are required to be planted along Holden and/or Lennox Streets. These trees shall be planted or guaranteed by a cash bond prior to recording of the final plat.
5. The applicant shall obtain duty to serve letters for water and sewer prior to the subdivision plat being recorded.
6. The applicant shall provide evidence that courtesy notices have been sent to Dominion Energy, Rocky Mountain Power, Comcast Cable, Utopia, and CenturyLink regarding the utility easements on the subdivision plat prior to final approval.

The applicant has prepared and submitted the final plat (see attached). The applicable note regarding the fence requirement on Lot 2 has been added.

The applicant has been in contact with Planning Staff regarding the fence height requirements for both of the proposed lots and will be resolving the issue as directed by the Planning Commission.

A duty to serve letter for water and sewer service has been provided by Midvale City. No evidence of courtesy letters to the other utility providers has been submitted.

**FISCAL IMPACT:** N/A

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**STAFF RECOMMENDATION:**

Staff recommends the City Council approve the subdivision plat for the Isabel’s Place Subdivision with the following conditions:

1. The applicant shall demonstrate the existing fences and accessory buildings on Lot 1 comply with applicable development standards prior to recording the final plat.
2. A minimum of four (4) additional street trees are required to be planted along Holden and/or Lennox Streets. These trees shall be planted or guaranteed by a cash bond prior to recording of the final plat.
3. The applicant shall provide evidence that courtesy notices have been sent to Dominion Energy, Rocky Mountain Power, Xfinity, Utopia, and CenturyLink regarding the utility easements on the subdivision plat prior to recording the final plat.
4. The applicant shall obtain all required signatures on the final subdivision plat Mylar.

**RECOMMENDED MOTION – APPROVAL:**

*“Based on demonstrated compliance with the requirements of Chapter 17-7-1, Single Family Residential zone with Duplex Overlay and Title 16, Subdivisions, I move that we approve the subdivision plat for the Isabel’s Place Subdivision with the following conditions:*

1. *The applicant shall demonstrate the existing fences and accessory buildings on Lot 1 comply with applicable development standards prior to recording the final plat.*
2. *A minimum of four (4) additional street trees are required to be planted along Holden and/or Lennox Streets. These trees shall be planted or guaranteed by a cash bond prior to recording of the final plat.*
3. *The applicant shall provide evidence that courtesy notices have been sent to Dominion Energy, Rocky Mountain Power, Xfinity, Utopia, and CenturyLink regarding the utility easements on the subdivision plat prior to recording the final plat.*
4. *The applicant shall obtain all required signatures on the final subdivision plat Mylar.”*

**RECOMMENDED MOTION – TABLE DECISION:**

*“I move that we table decision on the proposed subdivision to address the following questions/comments:*

1. ...
2. ... ”

**ATTACHMENTS:**

- Vicinity Map
- Final Subdivision Plat

Center St

# Vicinity Map

Le Page St

Cooper St

Main St

Price St

Private Driveway

Lennox St

Not Named

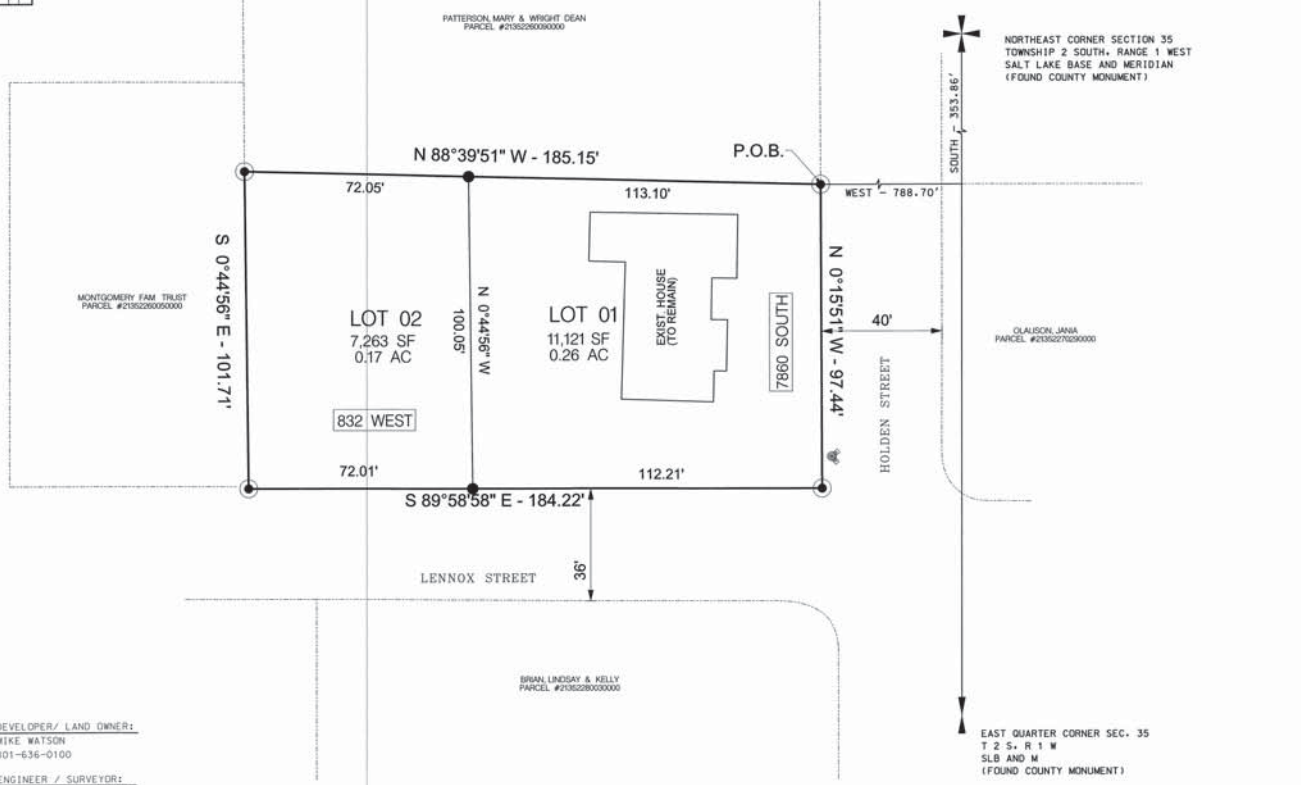
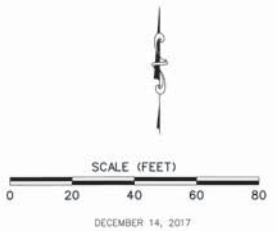
Holden St

Wasatch St





# ISABEL'S PLACE SUBDIVISION PLAT



- LEGEND**
- SUBDIVISION BOUNDARY
  - LOT LINES
  - FOUND SECTION CORNER
  - FOUND QUARTER CORNER
  - SET 5/8" REBAR AND CAP (BOUNDARY)
  - SET 5/8" REBAR AND CAP (LOT CORNERS)
  - EXIST. FIRE HYDRANT

**DEVELOPER / LAND OWNER:**  
MIKE WATSON  
801-636-0100

**ENGINEER / SURVEYOR:**  
M.W. BROWN ENGINEERING  
578 E. 770 N.  
DREXEL, UT 84097  
PHONE: 801-377-1790

**NOTE:**  
1- THE EXISTING FENCE ON LOT 2 SHALL BE REDUCED IN HEIGHT IN THE FRONT YARD PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

**SURVEYOR'S CERTIFICATE**  
I, BARRY ANDERSON, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD A LICENSE, CERTIFICATE NO. 59822, IN ACCORDANCE WITH THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT FOUND IN TITLE 38, CHAPTER 22 OF THE UTAH CODE. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW; HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS, STREETS, AND EASEMENTS; HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAT IN ACCORDANCE WITH UTAH CODE SECTION 17-23-17; HAVE VERIFIED ALL MEASUREMENTS; AND HAVE PLACED MONUMENTS AS REPRESENTED ON THE PLAT. I FURTHER CERTIFY THAT EVERY EXISTING RIGHT-OF-WAY AND EASEMENT GRANT OF RECORD FOR UNDERGROUND FACILITIES, AS DEFINED IN UTAH CODE SECTION 54-4a-2, AND FOR OTHER UTILITY FACILITIES, IS ACCURATELY DESCRIBED ON THIS PLAT, AND THAT THIS PLAT IS TRUE AND CORRECT. I ALSO CERTIFY THAT I HAVE FILED, OR WILL FILE WITHIN 90 DAYS OF THE RECORDATION OF THIS PLAT, A MAP OF THE SURVEY I HAVE COMPLETED WITH THE UTAH COUNTY SURVEYOR.

**BOUNDARY DESCRIPTION**  
Beginning at a point on an existing East-West chain link fence and the West Right of way of Holden street (805 west), said point being 353.86 feet south and 788.70 feet West from the Northeast Corner of Section 35, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence along the fence line North 88°39'51" West 185.15 feet to the intersection with an existing North-South chain link fence, thence South 0°44'56" East 101.71 feet along fence to the North ROW line of Lennox Street (780 South); thence along said North ROW South 89°58'58" East 184.22 feet to West ROW of Holden Street, thence along said West ROW North 0°15'51" West 97.44 feet to the POINT OF BEGINNING.  
parcel contains 0.422 acres (18,384.528 sq. ft.)

*Barry Anderson* Date Dec 15, 2017

**OWNERS DEDICATION**  
KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNER(S) OF THE ABOVE DESCRIBED TRACT OF LAND HAVING CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE HEREAFTER KNOWN AS:

**ISABEL'S PLACE**

DO HEREBY DEDICATE FOR PERPETUAL USE OF THE PUBLIC AND/OR CITY ALL PARCELS OF LAND, EASEMENTS, RIGHT OF WAY, AND PUBLIC AMENITIES SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC AND/OR CITY USE. THE OWNERS VOLUNTARILY DEFEND, INDEMNIFY, AND SAVE HARMLESS THE CITY AGAINST ANY EASEMENTS OR OTHER ENCUMBRANCE WHICH WILL INTERFERE WITH THE CITY'S USE, MAINTENANCE AND OPERATION OF THE EASEMENTS OR PUBLIC AMENITIES. THE OWNERS VOLUNTARILY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM AND DAMAGE CLAIMED BY PERSONS WITHIN OR WITHOUT THIS SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE, OR SURFACE OR SUB-SURFACE WATER FLOW WITHIN THIS SUBDIVISION OR BY ESTABLISHMENT OR CONSTRUCTION OF THE ROADS WITHIN THIS SUBDIVISION.

IN WITNESS WHEREOF, I HAVE HERETO SET THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_

PRINT \_\_\_\_\_ SIGNED \_\_\_\_\_  
PRINT \_\_\_\_\_ SIGNED \_\_\_\_\_  
PRINT \_\_\_\_\_ SIGNED \_\_\_\_\_

**CORPORATE ACKNOWLEDGEMENT**

STATE OF UTAH  
COUNTY OF SALT LAKE

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_, PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY OF SALT LAKE, IN THE STATE OF UTAH, WHO AFTER BEING DULY SWORN, ACKNOWLEDGED TO ME THAT \_\_\_\_\_ A CORPORATION, THAT \_\_\_\_\_ SIGNED THE OWNERS DEDICATION FREELY AND VOLUNTARILY FOR AND IN BEHALF OF THE CORPORATION FOR THE PURPOSES THEREIN MENTIONED AND THAT THE CORPORATION EXECUTED THE SAME.

MY COMMISSION EXPIRES: \_\_\_\_\_ NOTARY PUBLIC  
NOTARY PUBLIC RESIDING AT \_\_\_\_\_

**CITY COUNCIL APPROVAL**

PRESENTED TO THE MIDVALE CITY COUNCIL  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT WHICH TIME  
THE SUBDIVISION WAS APPROVED AND ACCEPTED.

ATTEST: MIDVALE CITY RECORDER \_\_\_\_\_  
MAYOR: \_\_\_\_\_

**ISABEL'S PLACE**

LOCATED WITHIN THE NORTH EAST QUARTER OF SECTION 35, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MIDVALE CITY, SALT LAKE COUNTY, UTAH

SALT LAKE COUNTY, UTAH  
SCALE 1"=20'

**MW BROWN ENGINEERING, INC**  
Office: (801) 377-1790 Fax: (801) 377-1789  
578 East 770 North, Orem UT 84097

**BOARD OF HEALTH APPROVAL**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE BOARD OF HEALTH.

SALT LAKE COUNTY HEALTH DEPT. \_\_\_\_\_

**CITY PLANNING**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE MIDVALE CITY PLANNING.

CHAIRMAN, PLANNING COMMISSION \_\_\_\_\_

**CITY ENGINEERING DEPARTMENT**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE MIDVALE CITY ENGINEERING.

MIDVALE CITY ENGINEER \_\_\_\_\_

**APPROVAL AS TO FORM**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE MIDVALE CITY ATTORNEY.

MIDVALE CITY ATTORNEY \_\_\_\_\_

**SALT LAKE COUNTY RECORDER**

STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ BOOK: \_\_\_\_\_ PAGE: \_\_\_\_\_

FEE: \_\_\_\_\_ DEPUTY SALT LAKE COUNTY RECORDER \_\_\_\_\_

NOTARY PUBLIC SEAL: \_\_\_\_\_  
SURVEYOR'S SEAL: *Barry Anderson*  
CITY ENGINEER'S SEAL: \_\_\_\_\_  
CLERK-RECORDER SEAL: \_\_\_\_\_



**COUNCIL MEETING**  
*Minutes*

**Tuesday January 2, 2018**  
**Council Chambers**  
**7505 South Holden Street**  
**Midvale, Utah 84047**

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**MAYOR:** Mayor Robert M. Hale

**COUNCIL MEMBERS:** Council Member Quinn Sperry  
Council Member Paul Glover  
Council Member Paul Hunt  
Council Member Bryant Brown  
Council Member Dustin Gettel

**STAFF:** Kane Loader, City Manager; Phillip Hill, Asst. City Manager/CD Director; Laurie Harvey, Asst. City Manager/Admin. Services Director; Rori Andreason, H.R. Director/City Recorder; Lisa Garner, City Attorney; Larry Wright, Public Works Director; Matt Dahl, Redevelopment Agency Director; Chief Randy Thomas, UPD; Bard Larson, UFA; and Matthew Pierce, IT Manager.

Mayor Hale called the meeting to order at 6:33 p.m.

**I. INFORMATIONAL ITEMS**  
**A. DEPARTMENT REPORTS**

Chief Randy Thomas reported on recent incidents. He discussed a couple of changes in the department. Kane Loader asked Chief Thomas to have some officers watch for speeders on Fort Union and 700 East.

Chief Brad Larson said firefighters sent to California returned home the day before Christmas Eve. There were no injuries to the team.

Laurie Harvey reported on the closing of the RDA refunding bonds on November 28<sup>th</sup>, with a 3.05%. The value savings of the bonds was 3.37%. It was a successful transaction. The savings was about \$60,000 per year.

Phillip Hill reported reminded the Council of the upcoming Steering Committee meeting for the small area plans with Councilmember Hunt in the Dahl Room of City Hall at 6:00 p.m. On January 30<sup>th</sup> and 31<sup>st</sup>, is a public open house on the small area plans. Staff will take what they heard from the public and get their feedback. They will then bring the recommendations back for adoption.

Councilmember Gettel asked if there was a timeframe for the crosswalk at Bingham Junction and Tuscany View Road.



Matt Dahl said he is working with Salt Lake County to install the lights. The intent is to have this done by the end of the budget year.

Rori Andreason informed the Council on the ULCT Local Officials Day on January 24, 2018 at the Salt Palace Convention Center.

## **II. CITY MANAGER'S REPORT**

Kane Loader reported on the newly elected official's orientation meeting held with the newly elected officials and staff. He expressed his appreciation for their participation. The legislature is starting up in a few weeks. He spoke with Representative Eliason about the need for another homeless shelter. He said he would work with the legislature on this issue.

## **III. GENERAL BUSINESS**

### **A. Welcome and Pledge of Allegiance**

**B. Roll Call** – Council Members Quinn Sperry, Paul Glover, Paul Hunt, Bryant Brown and Dustin Gettel were present at roll call.

## **IV. PUBLIC COMMENTS**

Mayor JoAnn B. Seghini said she is so pleased to see the new Mayor and Council for the City. She said she wanted them to know they have an excellent staff. Laura Magness was hired for communications to help save a lot of time for city staff. She said as we grow as a city, we will have an opportunity for growth and development. She congratulated the new elected members.

## **V. COUNCIL REPORTS**

**A. Councilmember Paul Hunt** – said he is sad to see old friends go off the Council but excited for the new Council. It was a great swearing-in ceremony. He looks forward to working with everyone.

**B. Councilmember Quinn Sperry** – said he is also excited to work with the new Council. He asked if garbage pickup schedule on Christmas day and New Year's Day could be put on website in future. He said he was asked to remind Public Works to watch the speed in the snow plows if it ever snows.

**C. Councilmember Bryant Brown** – thanked Wayne Sharp for his years and years of service. Over the years he has received some grief. He asked that if you see Councilmember Sharp to stop and shake his hand, I know he will continue to try to make Midvale a great place. The new townhomes on Center and Roosevelt Street are under construction. The residents don't want workers to be parking on Roosevelt. Phillip Hill said he would bring that issue up with them at the pre-construction meeting.

**D. Councilmember Dustin Gettel** – said the Community Council will be meeting tomorrow night and will be having elections for their Board. He thanked former Councilmember Stephen Brown for his service to the City. He was very kind to him during the election. He also thanked Mayor JoAnn Seghini for her years of service. She has been a role model to a lot of people and has been such a trailblazer for women. He appreciates the staff and for making his transition so easy.

**E. Councilmember Paul Glover** – said it was good to have all the newbies with us. He appreciates Mayor Seghini and the former Council members Brown and Sharp and the great job they did.

**VI. MAYOR REPORT**

**Mayor Robert M. Hale** – said his office has been repainted, dusted, & stocked with office supplies. He thanked his mentor Mayor Seghini for her years of service. He will participate and be a voice for Midvale City. He will make sure that Midvale City is known.

**VII. CONSENT AGENDA**

**A. CONSIDER MINUTES OF DECEMBER 12, 2017**

**MOTION:** Councilmember Paul Glover **MOVED** to approve the consent agenda. The motion was **SECONDED** by Councilmember Quinn Sperry. Mayor Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:

Council member Quinn Sperry	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Councilmember Bryant Brown	Aye
Council member Dustin Gettel	Aye

The motion passed unanimously.

**VIII. ACTION ITEM**

**A. CONSIDER RESOLUTION NO'S 2018-R-01 THROUGH 2018-R-06 CONFIRMING THE APPOINTMENTS TO BOARDS AND COMMITTEES**

Kane Loader stated he discussed with the newly elected City Council and Mayor a few weeks ago about the need to make board appointments due to the change in the Council and Mayor positions. He recommended these appointments be made by resolution.

**MOTION:** Councilmember Paul Hunt **MOVED** to approve 2018-R-01 confirming appointment of members to serve on various committees and boards for the city. The motion was **SECONDED** by Councilmember Paul Glover. Mayor Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:

Council member Quinn Sperry	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Council member Bryant Brown	Aye
Council member Dustin Gettel	Aye

The motion passed unanimously.

**MOTION:** Councilmember Quinn Sperry **MOVED** to approve 2018-R-02 appointed Kane Loader and alternative Larry Wright on the Trans Jordan Landfill Board. The motion was **SECONDED** by Councilmember Paul Hunt. Mayor

Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:

Council member Quinn Sperry	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Council member Bryant Brown	Aye
Council member Dustin Gettel	Aye

The motion passed unanimously.

**MOTION:** Councilmember Quinn Sperry MOVED to approve 2018-R-03 appointing Kane Loader and alternative Bryant Brown to serve on the Utah Telecommunications Open Infrastructure Agency, also known as UTOPIA Board. The motion was SECONDED by Councilmember Paul Glover. Mayor Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:

Council member Quinn Sperry	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Council member Bryant Brown	Aye
Council member Dustin Gettel	Aye

The motion passed unanimously.

**MOTION:** Councilmember Quinn Sperry MOVED to approve 2018-R-04 a resolution of the City Council of Midvale City pertaining to the appointment of a City representative to the Unified Fire Service Area and Unified Fire Authority Boards. The motion was SECONDED by Councilmember Paul Hunt. Mayor Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:

Council member Quinn Sperry	Aye
Council member Paul Glover	Aye
Council member Paul Hunt	Aye
Council member Bryant Brown	Aye
Council member Dustin Gettel	Aye

The motion passed unanimously.

**MOTION:** Councilmember Quinn Sperry MOVED to approve 2018-R-05 a resolution of the City Council of Midvale City pertaining to the appointment of a City representative and alternate to the Unified Police Department Governing Board with Mayor Hale and alternative Councilmember Paul Glover. The motion was SECONDED by Councilmember Dustin Gettel. Mayor Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:

Council member Quinn Sperry	Aye
Council member Paul Glover	Aye

**Council member Paul Hunt           Aye**  
**Council member Bryant Brown       Aye**  
**Council member Dustin Gettel       Aye**

**The motion passed unanimously.**

**MOTION: Councilmember Bryant Brown MOVED to approve 2018-R-06 a resolution confirming the appointment of Paul Glover as the Midvale City representative on the Board of Trustees of the South Salt Lake Valley Mosquito Abatement District. The motion was SECONDED by Councilmember Paul Hunt. Mayor Hale called for discussion on the motion. There being none the he called for a roll call vote. The voting was as follows:**

**Council member Quinn Sperry       Aye**  
**Council member Paul Glover        Aye**  
**Council member Paul Hunt           Aye**  
**Council member Bryant Brown       Aye**  
**Council member Dustin Gettel       Aye**

**The motion passed unanimously.**

**IX. ADJOURN**

**MOTION: Councilmember Paul Glover MOVED to adjourn the meeting. Councilmember Paul Hunt SECONDED the motion. Mayor Hale called for discussion on the motion. There being none, he called for a vote. The motion passed unanimously.**

The meeting adjourned at 7:35 p.m.

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**Rori L. Andreason, MMC**  
**H.R. DIRECTOR/CITY RECORDER**

Approved this 16<sup>th</sup> day of January 2018.



**MIDVALE CITY  
CITY COUNCIL WORKSHOP MEETING**  
*Minutes*

**Tuesday, January 9, 2018  
Council Chambers  
7505 S. Holden Street  
Midvale, Utah 84047**

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**MAYOR:** Robert Hale

**COUNCIL MEMBERS:** Council Member Quinn Sperry  
Council Member Paul Glover  
Council Member Paul Hunt  
Council Member Bryant Brown  
Council Member Dustin Gettel

**STAFF:** Kane Loader, City Manager; Phillip Hill, Asst. City Manager/Community Development Director; Laurie Harvey, Asst. City Manager/Admin. Services Director; Rori Andreason, H.R. Director/City Recorder; Matt Dahl, Redevelopment Agency Director; Lisa Garner, City Attorney; Larry Wright, Public Works Director; Christopher Butte, Economic Development Director; Laura Magness, Communications Specialist; Annaliese Eichelberger, RDA Project Manager; Lesley Burns, City Planner; and Juan Rosario, IT Technician.

Mayor Hale called the meeting to order at 6:42 p.m.

**I. DISCUSSION ITEMS**

**A. DISCUSS BULKY WASTE PROGRAM**

Dawn Bagley discussed the new bulky waste program. The green waste and bulk waste will be picked up at the same time once a week, once a month. She said they are actually going through the streets twice each time, so nothing should be missed.

Larry Wright discussed the costs associated with this program. The semi-annual bulky waste program and annual leaf bag program combined costs \$47,100 per year (\$7.50 per household). Replacing these programs with a monthly bulk waste program would cost \$90,400 per year (\$14.40 per household). The increase is \$43,300 per year (\$6.90 per household).

The additional cost for FY 2018 is only \$5,600, beginning monthly bulky waste on April 1, with the elimination of the semiannual spring bulky waste cost, it can be easily absorbed in the FY 2018 budget.

Without the change in the bulky waste program, staff was recommending a 5% increase in garbage rates for the FY 2019 budget due to the increase in tipping fees at TransJordan and the decline in

fund balance. The last rate increase for garbage was in 2013. This would take the monthly rate from \$10.66 to \$11.19, or about \$6.40 per household per year.

With the change in the bulky waste program, staff recommended 10% increase for FY 2019. The monthly rate would go from \$10.66 to \$11.73, or about \$12.80. The new bulky waste program would cost about 57 cents per month per household.

Dawn Bagley reviewed the regulations for the bulky waste program. She said the piles shouldn't be as big when it is picked up more frequently.

## **B. DISCUSS UTOPIA BUILDOUT OPTIONS**

Kane Loader discussed the following:

### **UTOPIA/UIA CURRENT OVERVIEW**

- Financial Status
- Service Providers

The UIA revenue is exceeding the debt service and bond payments. There are currently 10 residential and 30+ business class service providers on the network. Customer satisfaction is the highest in the state of Utah. Speeds available on UTOPIA Fiber are the following:

#### Residential

- 250 Mbps
- 1 Gbps

#### Commercial

- 1 Gbps
- 10 Gbps
- 100 Gbps

This is the fastest internet service in the state. All connections are dedicated and symmetrical. He reviewed the latest take rate numbers.

He discussed four buildout models:

#### Status Quo Model

- Buildout network as the subscriber base and recurring revenues increase.
- City currently pays \$850K/year or \$71K/month which is approximately \$6/property for Phase I construction.
- As revenues continue to grow, UIA takes additional revenue backed bonds to fund incremental expansion. Buildout completed in 5-7 years.

#### Fiberhood Model

- Neighborhoods are organized using volunteer advocates to promote the network.
- Network is built in selected neighborhood/areas where the subscriber base meets a minimum 25% take rate.

- All financing and construction will be done incrementally based on pre-signups and projected take rates.
- Could be built a little faster than Status Quo Model but also could mean some areas could take a long time to have the service.

#### Utility Fee Model

- City would assess a fee on every property to build the base network. (est. \$6/month)
  - o More than likely the City would like to buy in from the residents (public opinion poll)
- City would issue bonds to cover construction
- Connection to the network is voluntary and the cost for connection could be covered in a monthly base fee.
- Base network is built within two years.

#### Expedited City Buildout

- City pledges Franchise Fee revenues to backstop the bonds specifically for completion of Midvale City network.
- UIA issues the bonds and completes construction of the network.
- Revenues are shared back to the City.

#### **35% Take Rate Example**

- Assumptions
  - Target take rates
    - Residential – 35%
    - Business – 20%
- Remaining Project Build Cost – \$12,550,959 (including 2yr cap interest)
- Monthly debt service on 30yr bond – \$59,919
- Monthly infrastructure revenue - \$69,060
- Monthly transport revenue – \$10,500
- Monthly churn replacement - \$9,000
- Net Monthly Debt Relief to City - \$10,641

\* Numbers expected to improve as UTOPIA completes feasibility including new revenues from existing areas

#### **45% Take Rate Example**

- Assumptions
  - Target take rates
    - Residential – 45%
    - Business – 20%
- Remaining Project Build Cost– \$13,150,959 (including 2yr cap interest)
- Monthly debt service on 30yr term – \$62,783
- Monthly infrastructure revenue - \$87,060
- Monthly transport revenue – \$13,500
- Monthly churn replacement - \$11,250
- Net Monthly debt relief to City - \$26,527

\*Numbers expected to improve as UTOPIA completes feasibility including new revenues from existing areas

The Council discussed this issue at length. The Fiberhood Model was favored but more information is needed from UTOPIA on identifying neighborhoods. Kane Loader suggested an opinion poll. He said he would look into this further and bring it back to the Council.

**C. DISCUSS PASSING A RESOLUTION IN SUPPORT OF THE STATEWIDE INITIATIVE TO LEGALIZE MEDICAL MARIJUANA**

Councilmember Dustin Gettel said there aren't any other cities that have passed a resolution of support yet. A recent news article indicated that 75% of Utah voters are supportive or somewhat supportive of medical cannabis. He said 80% of the needed signatures have been received in order to place this issue on the ballot. There are three options available: 1-do nothing; 2-say we support and 3- pass a resolution of support to have this initiative on the ballot in November.

Summary of the Utah medical cannabis ballot initiative include:

- Protect terminally and seriously ill patients with specific debilitating medical conditions from arrest and prosecution if using medical cannabis pursuant to their doctor's recommendation.
- Maintain prohibitions on the public use of cannabis, driving under the influence of cannabis, and smoking cannabis.

He said he would like to support it.

Councilmember Glover said he supports putting it on the ballot for citizens to vote however they want to. He does not think it's proper for the Council to tell anyone how to vote.

Councilmember Hunt said he would rather leave it to the state legislature and the individuals to vote on.

Councilmember Gettel said we have residents in the Midvale City who are suffering and require the medical cannabis. They currently having to go out of state to get it. He said his goal isn't to tell anyone how to vote, but rather as a city to be progressive in saying we support putting it on the ballot to vote.

Councilmember Sperry said he feels the studies that are out there are not properly researched. They really need to be classified. He asked what the Council's goal is in dealing with these types of resolutions. He felt the Council should have a discussion on how they want to deal with these types of resolutions in the future. Midvale has its own issues to deal with, and the state should be dealing with issues such as this. He agreed with Councilmember Hunt, to let the state deal with this issue.

Councilmember Hunt said if the issues are for the city directly rather than state wide, then the Council should look at those issues.



Councilmember Brown suggested a further discussion on how to deal with these types of issues and resolutions in the future.

Councilmember Hunt, Councilmember Glover, and Councilmember Sperry said they would rather let the state deal with this issue and did not want to discuss it further.

**D. DISCUSS THE EFFECT OF RIGHTS-OF-WAY ON RESIDENTIAL BUFFER SETBACKS**

Phillip Hill discussed the effect of rights-of-way on residential buffer setbacks.

TOD Residential Buffer

Current Text

- Single Family Setback. The minimum setback from the property line, when adjacent to a single family residential zone, is fifteen feet, subject to the following exceptions.
- a. Three-story structures must be set back thirty-seven feet; four-story structures must be set back sixty-six feet; five-story structures must be set back eighty-three feet; six-story structures must be set back one hundred feet; and seven-story structures must be set back one hundred sixteen feet.
- b. Projections. Sills, cornices, chimneys, flues, eaves, and ornamental features may project into the setback up to two and one-half feet.
- c. Stairs and Landings. Outside stairways and landings required by building code for exterior doorways may project into the setback up to three feet.

The Council and staff discussed this issue at length. Phillip Hill said he will bring something back for Council's consideration.

Mr. Hill updated the Council on the parking issue with the new townhome project. The developer has strict instructions not to park in the neighborhood and not park on the sidewalk. Councilmember Brown asked about the crosswalk with this same development. Mr. Hill said they just received the traffic study and will review that and bring it back to the Council.

**II. ADJOURN**

Mayor Hale adjourned the meeting at approximately 8:55 p.m.

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**Rori L. Andreason, MMC**  
**H.R. DIRECTORY/CITY RECORDER**

Approved this 16<sup>th</sup> day of January 2018



## MIDVALE CITY COUNCIL SUMMARY REPORT

JANUARY 16, 2018

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**SUBJECT:** Planning Commission Re-Appointment of Colleen Costello to continue serving on the Planning Commission as a full time member (Resolution No. 2018-R-07)

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**SUBMITTED BY:** Lesley Burns, City Planner

**SUMMARY:**

Members of the Midvale City Planning Commission are appointed to serve four year terms or to finish the unexpired terms of past members. Members can serve a maximum of two full consecutive terms. Colleen Costello will be finishing her first four-year term at the end of January. Ms. Costello has expressed a desire to continue serving a new full term. If re-appointed, Ms. Costello's second term would end in January 2022.

It is the desire of the Mayor to re-appoint Colleen Costello so she can continue to serve as a full time member on the Planning Commission. The Mayor is requesting the Council's consent for this appointment. A resolution has been prepared for the City Council's consideration of this re-appointment.

**FISCAL IMPACT:** N/A

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**STAFF RECOMMENDATION:**

Staff recommends that the City Council adopts Resolution No. 2018-R-07, re-appointing Colleen Costello to serve on the Planning Commission for another four-year term.

**RECOMMENDED MOTION:**

*"I move that we adopt Resolution No. 2018-R-07, re-appointing Colleen Costello to the Planning Commission as a full time member with her term expiring January 2022."*

**Attachment:**

- Resolution No. 2018-R-07

**MIDVALE CITY, UTAH  
RESOLUTION NO. 2018-R-07**

**A RESOLUTION CONFIRMING THE RE-APPOINTMENT OF COLLEEN  
COSTELLO TO CONTINUE SERVING ON THE PLANNING COMMISSION AS  
A FULL TIME MEMBER**

**WHEREAS**, in accordance with Section 17-4-1 of the Midvale Municipal Code, the Planning Commission is comprised of five members and two alternates to serve four-year terms for a maximum of two full consecutive terms; and

**WHEREAS**, Colleen Costello has been serving on the Planning Commission as a full time member for four years with the term expiring in January 2018; and

**WHEREAS**, the Mayor desires to re-appoint Colleen Costello to serve another four-year term on the Planning Commission with this term expiring in January 2022; and

**WHEREAS**, Colleen Costello has expressed a desire to continue serving on the Planning Commission; and

**WHEREAS**, the City Council consents to this appointment;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Midvale City, Utah:

**SECTION 1.** The City Council hereby confirms the Mayor's re-appointment of Colleen Costello to serve another full term on the Planning Commission as a full time member with this term expiring in January 2022.

**SECTION 2.** This Resolution shall take effect immediately.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Robert M. Hale, Mayor

ATTEST:

\_\_\_\_\_  
Rori Andreason, MMC  
City Recorder

Voting by City Council	"Aye"	"Nay"
Bryant Brown	_____	_____
Dustin Gettel	_____	_____
Paul Glover	_____	_____
Paul Hunt	_____	_____
Quinn Sperry	_____	_____



## MIDVALE CITY COUNCIL SUMMARY REPORT

January 16, 2018

**SUBJECT:** Consider adopting Midvale City Ordinance No. 2018-O-1 creating Midvale Municipal Code Chapter 5.54 Wireless Communication Services.

**SUBMITTED BY:** Lisa Garner, City Attorney

**SUMMARY:** On December 12, 2017, the City Council discussed the introduction of wireless communication facilities to the City's rights-of-way and the standstill agreement between the City and Crown Castle. The City Council recognized the value of these facilities to residents, businesses, and visitors to the City. The City Council and staff discussed the public nature of rights-of-way, the limited space within the rights-of-way, and the significant impact these facilities would have on visual makeup of the City. The City Council gave staff the instruction to continue drafting an ordinance that would attempt to minimize these impacts. Since that time the City staff has had ongoing communication with our outside counsel, Thomas Duchen of River Oaks Communications Corporation, and a number of representatives of various providers and infrastructure providers to achieve these goals.

With the standstill agreement with Crown Castle expiring at the end of this month, the staff presents the proposed ordinance as partial fulfillment of its agreement with Crown Castle. The proposed ordinance allows the City to grant a nonexclusive franchise to an entity to install wireless communication facilities into the City's rights-of-way conditional on their compliance with the City's requirements. In order to receive a franchise, a provider must agree to follow the City's ordinance and must demonstrate that it possesses adequate means to protect the City and the City's rights-of-way from any damage that the entity may cause.

The proposed ordinance attempts to incentivize providers to install less-intrusive facilities in the rights-of-way. To this end, this ordinance allows facilities defined as 'small cells' to bypass zoning requirements. Small cells are further incentivized by the method in which they are installed in the rights-of-way. The City's priority is for providers to install facilities according to the following order of preference: (1) operate in-strand antennas; (2) collocate on existing poles; (3) replace existing poles; and (4) construct new poles. The City's level of scrutiny increases as its preference decreases.

Under the proposed ordinance, providers will be required to get a pole design approved by the City if they are installing a new pole or a replacement pole of a different material than the pole being replaced. By doing so, the City would like to ensure that designs are appropriate and somewhat standardized across providers for neighborhoods.

Regardless of the method of installation, the proposed ordinance also places certain requirements on all installed facilities. Wireless communication facilities may not exceed a height of 50'. Facilities are required to be located at a site within 100' radius of a provider's chosen site that provides the least intrusive visual impact. Equipment is required to be installed within or on the

pole, underground, or on private property inside a building or an appropriately screened enclosure. Any macrocell must comply with the requirements of this chapter as well as with zoning requirements.

**FISCAL IMPACT: Currently the City has spent and continues to spend general funds in drafting the attached ordinance and its associated franchise agreement. The City should recoup its costs to review site, building, and roadcut permit applications through their respective application fees. The City should receive compensation from providers and infrastructure providers for City's management of its rights-of-way.**

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**RECOMMENDED MOTIONS:**

Finding that there has been thoughtful consideration of the comments and information provided during those meetings, I move that we approve Ordinance No. 2018-O-1 creating Chapter Midvale Municipal Code 5.54 Wireless Communication Services as presented.

**Attachments: Proposed Ordinance 2018-O-1 creating Chapter 5.54  
"Wireless Communications Services."**

**MIDVALE CITY**

**ORDINANCE NO. 2018-O-1**

**AN ORDINANCE CREATING MIDVALE MUNICIPAL CODE  
CHAPTER 5.54 WIRELESS COMMUNICATIONS 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 ("Act") (P.L. No. 96-104);

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

**Section 1.** The City Council desires to adopt Midvale Municipal Code Chapter 5.54 Wireless Communications Services as set forth in Exhibit A.

**Section 2.** This Ordinance shall be effective upon date of first publication.

**PASSED AND APPROVED** this \_\_ day of \_\_\_\_\_, 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:**

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Rori L. Andreason, MMC  
City Recorder

Published this \_\_\_ day of \_\_\_\_, 2018.



## **Chapter 5.54**

### **WIRELESS COMMUNICATION SERVICES**

Sections:

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

- 5.54.010 Findings regarding rights-of-way.
- 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.

#### **Article IV. Compensation and Other Payments**

- 5.54.120 Compensation.
- 5.54.130 Timing.
- 5.54.140 Fee statement and certification.
- 5.54.150 Future costs.
- 5.54.160 Taxes and assessments.
- 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.
- 5.54.200 Continuing obligation and holdover.
- 5.54.210 Costs of publication.

#### **Article V. Wireless Franchise Applications**

- 5.54.220 Wireless franchise application.
- 5.54.230 Application criteria.
- 5.54.240 Wireless franchise determination.
- 5.54.250 Incomplete application.

#### **Article VI. Site Applications**

- 5.54.260 Franchise necessary.
- 5.54.270 Site preference.
- 5.54.280 Height and size restrictions.
- 5.54.290 Sidewalks and paths.
- 5.54.300 Equipment.
- 5.54.310 Visual impact.
- 5.54.320 Stealth design/technology.
- 5.54.330 Lighting
- 5.54.340 Signage
- 5.54.350 Site design flexibility.

- 5.54.360 General requirements.
- 5.54.370 Application to install an in-strand antenna.
- 5.54.380 Application to collocate on an existing pole.
- 5.54.390 Application to replace a pole.
- 5.54.400 Application to construct a new pole.
- 5.54.410 Application for an eligible facilities request.
- 5.54.420 Application submission limit.
- 5.54.430 Incomplete application.
- 5.54.440 Exceptions to standards.
- 5.54.450 Accessory uses.

#### **Article VII. Construction and Technical Requirements**

- 5.54.460 General requirement.
- 5.54.470 Quality.
- 5.54.480 Licenses and permits.
- 5.54.490 Relocation of the system.
- 5.54.500 Protect structures.
- 5.54.510 No obstruction.
- 5.54.520 Safety precautions.
- 5.54.530 Repair.

#### **Article VIII. Provider Responsibilities**

- 5.54.540 System maintenance.
- 5.54.550 Trimming of trees.
- 5.54.560 Inventory of existing sites.

#### **Article IX. Wireless Franchise and License Transferability**

- 5.54.570 Notification of sale.
- 5.54.580 Events of sale.

#### **Article X. Oversight and Regulation**

- 5.54.590 Insurance, indemnity, and security.
- 5.54.600 Oversight.
- 5.54.610 Maintain records.
- 5.54.620 Confidentiality.
- 5.54.630 Provider's expense.
- 5.54.640 Right of inspection.

#### **Article XI. Rights of City**

- 5.54.650 Enforcement and remedies.
- 5.54.660 Force majeure.
- 5.54.670 Extended operation and continuity of services.
- 5.54.680 Removal or abandonment of wireless franchise property.

#### **Article XII. Obligation to Notify**

- 5.54.690 Publicizing work.

#### **Article XIII. General Provisions**

- 5.54.700 Conflicts.
- 5.54.710 Severability.

- 5.54.720 New developments.
- 5.54.730 Notices.
- 5.54.740 Exercise of police power.

#### **Article XIV. Federal, State and City Jurisdiction**

- 5.54.750 Construction.
- 5.54.760 Chapter applicability.
- 5.54.770 Other applicable ordinances.
- 5.54.780 City failure to enforce.
- 5.54.790 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:
  - 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.
- B. Finding Regarding Compensation. The 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 and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the rights-of-way.
- C. Finding Regarding Local Concern. The 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 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 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 ("Act") (P.L. No. 96-104).

F. Power to Manage Rights-of-Way. The 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.

**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 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 5.54.760.

**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.
- C. Provisions Applicable. All of the requirements imposed by this chapter through the exercise of the City's police power and not preempted by other law shall be applicable.

**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 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.

"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.

"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.

“Backhaul network” means the lines that connect a provider’s towers 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.

“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 6 cubic feet in volume for antennas and antenna arrays, and no more than 17 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 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. Collocation 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 City 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 City. 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 City required by the ordinances and laws of the City; (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 City 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 City 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 and is not physically supported by any attachments to a base station, utility support structure, or tower. An in-strand antenna may not exceed 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 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 right-of-way are exempt from the requirements of “telecommunications facilities” found under Title 17 of the Midvale Municipal Code.

“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 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 anything other than a small 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 of the Midvale Municipal Code.

“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 City 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 City.

“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.

“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 wireless communication facilities and 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 cells” mean compact, low power wireless equipment which contain their own transceiver 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 3 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 3 cubic feet. Small cells may not have more than 6 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 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. Small cells in the right-of-way are exempt from the requirements of “telecommunications facilities” found under Title 17 of the Midvale Municipal Code.

“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 change” 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 10% 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 10% 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 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 10% 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 non-compliant only in a manner that would not exceed the thresholds identified in (1) through (4).

“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 City 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 City, 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.

“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” 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.



### **Article III. Wireless Franchise Required**

#### **5.54.050 Nonexclusive wireless franchise.**

The City is empowered and authorized to issue nonexclusive wireless franchises governing the installation, construction, operation, use and maintenance of systems in the 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 and provider.

#### **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.

#### **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 property. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.

#### **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 within ninety 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 5.54.670.

#### **5.54.090 Nature of wireless franchise.**

The wireless franchise granted by the 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 system on, over and under the rights-of-way in order to provide services.

#### **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 upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

#### **5.54.110 Term.**

No wireless franchise issued pursuant to this chapter shall have a term of less than five years or greater than fifteen years. Each wireless franchise shall be granted in a nondiscriminatory manner.

### **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 Fee. 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 (700) dollars as a one-time nonrefundable application fee. The application fee shall also be paid when an amendment is filed with the City.

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.

C. **Permit fees.** The provider shall also pay fees required for any permit necessary to install and maintain the proposed WCF.

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-strand 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 (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) 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 (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of the conclusions reached by the applicant; and (d) 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 (10) days of the City's request which shall not exceed \$1000 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 (30) days after the final permit is released or, if no final permit is released, within thirty (30) 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.

**5.54.130 Timing.**

Unless otherwise agreed to in the wireless franchise agreement, all wireless franchise fees shall be paid on a monthly basis within forty-five days of the close of each calendar month.

**5.54.140 Fee statement and certification.**

Unless a wireless franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

**5.54.150 Future costs.**

A provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the 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.

**5.54.160 Taxes and assessments.**

To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the 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.

**5.54.170 Interest on late payments.**

In the event that any payment is not actually received by the 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.

**5.54.180 No accord and satisfaction.**

No acceptance by the City of any fee shall 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 may have for additional sums payable.

**5.54.190 Not in lieu of other taxes or fees.**

The 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.

**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 as a result of such continued operation after the term, including, but not limited to, damages and restitution.

**5.54.210 Costs of publication.**

A provider shall assume any publication costs associated with its wireless franchise that may be required by law.

**Article V. Wireless Franchise Applications**

**5.54.220 Wireless franchise application.**

To obtain a wireless franchise to construct, own, maintain or provide services through any wireless system within the City's rights-of-way, to obtain a renewal of a wireless franchise granted pursuant to this chapter, or to obtain the City approval of a transfer of a wireless franchise, as provided in Section 5.54.570, granted pursuant to this chapter, an application must be filed with City.

**5.54.230 Application criteria.**

In making a determination as to an application filed pursuant to this chapter, the 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 \$25,000 to compensate the City for any damage caused by the provider to the 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.
- E. An insurance certificate for the provider that lists the 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 collocate 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 co-locate 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.

**5.54.240 Wireless franchise determination.**

The 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.

**5.54.250 Incomplete Application.**

The City may deny an applicant's wireless franchise 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 30 days of the notice.

**Article VI. Site Applications**

**5.54.260 Franchise necessary.**

Prior to approving a site permit, the applicant must have a valid franchise agreement granted by applicable law.

**5.54.270 Site preference.**

When WCFs are to be constructed in the right-of-way, the City's order of preference for a provider:

1. to use existing poles;
2. to construct replacement poles in the same or nearly the same location and with such heights as provided in this chapter or in the Franchise;
3. to construct new poles.

**5.54.280 Height and size restrictions.**

Any proposed pole shall not exceed 50' in height. 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 (10') in height, shall not be included within pole height. Each antenna or antenna array shall be located inside an enclosure of no more than 3 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 3 cubic feet. WCFs may not have more than 6 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 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.

**5.54.290 Sidewalks and paths.**

Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land.

**5.54.300 Equipment.**

A. 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 3” on either side, the furthest point may not exceed 18” from the pole, and the base must be flush with the grade or, alternatively, the lowest point may not be lower than 8.5’ 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.

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.

**5.54.310 Visual Impact.**

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 100’ 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.

**5.54.320 Stealth Design/Technology.**

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 right-of-way so the WCF is visually unobtrusive. 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. Antennas, antenna arrays, and 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 18” 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. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the State.

**5.54.330 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

**5.54.340 Signage.**

No facilities may bear any signage or advertisement except as permitted herein.

**5.54.350 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 right-of-way upon approval by the City.

**5.54.360 General requirements.**

All wireless communication facilities 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:

1. The location of the proposed WCF.
2. 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.
3. Construction drawings showing the proposed method of installation.
4. The manufacturer's recommended installations, if any.
5. 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.
6. 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.
7. 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-license 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.
8. 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.

**5.54.370 Application to install an in-strand antenna.**

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 timeframe is otherwise required under this chapter or by law, the following timeframes 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 90 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 90-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.

i. To toll the timeframe 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.

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

iii. 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 timeframe 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 timeframe 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 5.54.360, an in-strand antenna application must also include the following information:

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.

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

1. A scaled 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 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 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.

**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 timeframe is otherwise required under this chapter or by law, the following timeframes 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 90 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 90-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.

i. To toll the timeframe 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.

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

iii. 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 timeframe 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 timeframe 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 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 scaled 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 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 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.

**5.54.390 Application to replace a 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.

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 150 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 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.

i. To toll the timeframe 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.

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

iii. 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 timeframe 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 timeframe 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 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 scaled 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 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 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.

i. 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.

ii. If the adjacent property is a multi-family 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.

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

a. The height of the replacement pole, including all antennas, antenna arrays, and equipment, is not more than five (5) feet taller than the height of the existing pole;

b. The replacement pole meets all the requirements of this chapter; and

c. The replacement pole is not located more than two (2) feet from the location of the existing pole.

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

d. 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 (3) 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.

i. A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available collocation sites.

- ii. For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage objectives the applicant will 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 (whether it be collocation or a more preferred location); and (c) 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 300' of the proposed pole location. 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 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.
    - 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:

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ATTN: City Engineer  
7505 S. Holden Street  
Midvale, Utah 84047
    - v. In the event the applicant is subject to this requirement, compliance with this requirement is deemed to satisfy the notice requirement found under 5.54.390(C)(4).
  7. For macrocells, 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 the wireless communication facility 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.
  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-license 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.

**5.54.400 Application to construct a new 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.

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 150 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 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.

i. To toll the timeframe 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.

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

iii. 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 timeframe 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 timeframe 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 5.54.360, a new pole application must include the following information:

1. A scaled 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 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 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 (2) collocation and two (2) 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.

i. A complete alternative sites analysis provided under this subsection may include less than four (4) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least four (4) potentially available alternative sites.

ii. For purposes of disqualifying potential collocations or replacement poles for the failure to meet the applicant's service coverage objectives the applicant will 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 (whether it be collocation or a replacement pole); and (c) a description of why the alternative (collocation or replacement pole site) does not meet the objective.

5. For new poles that are thirty-five (35) feet in height or less, an affidavit certifying that the applicant has posted or mailed notices to property owners within 75' of the proposed pole location.

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:

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

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:

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

6. For new poles that are greater than thirty-five (35) feet in height, an affidavit certifying that the applicant has posted or mailed notices to property owners within 150' of the proposed pole location.

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:

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

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:

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7505 S. Holden Street  
Midvale, Utah 84047

7 For macrocells, 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 the wireless communication facility 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.

8. For macrocells, an affidavit certifying that the applicant has posted or mailed notices to property owners within 300’ of the proposed pole location.

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. In the event the applicant is subject to this requirement, compliance with this requirement is deemed to satisfy the notice requirement found under 5.54.400(C)(5) or (6).

iii. 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 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

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-license 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 250' from each other.

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

**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. § 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 60 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 60-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 timeframe for review is not tolled by a moratorium on the review of applications.

i. To toll the timeframe 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.

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

iii. Following a supplemental submission, the City will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe 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 timeframe 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) Collocation/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) Collocation/ 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) Collocation/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.

**5.54.420 Application submission limit.**

Applications may be submitted in batches of no more than ten (10) sites per application submittal and no more frequently than once per every fifteen (15) days per batch. Where there is more than one (1) 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.

**5.54.430 Incomplete 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 180 days of the notice.

**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:
  - i. Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
  - ii. Elevations showing all components of the WCF, as it would appear with and without the exception.
  - iii. Color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
  - iv. An explanation that demonstrates the following:
    - A. 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;
    - B. The gap can only be filled through an exception to one or more of the standards herein; and
    - 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.



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.

v. 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.

**5.54.450 Accessory uses.**

A. Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.

B. 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.

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.

**Article VII. Construction and Technical Requirements**

**5.54.460 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 City or the wireless franchise, including requirements regarding colocation 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, no antenna or other equipment or facilities shall be added to City poles where the city poles are not able to structurally accommodate same 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 Code 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 requirements. This includes, but is not limited to, participating in Blue Stakes of Utah as required by Utah Code 54-8a-2 through 54-8a-13, as amended.

E. In the installation of any WCF within the right-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 City 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 City 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.

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.

G. All towers and antennas 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. 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 governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) 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 into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna 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. 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 (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) 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 100 mile per hour (mph) wind, or the minimum wind speed as required by the 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 3" on either side, the furthest point may not exceed 18" from the pole, and the base must be flush with the grade, or alternatively the lowest point may not be lower than 8.5' 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.

N. 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.

O. Inspections.

1. The City or its agents shall have 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.
2. The City 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 City has occurred, remedy of the violation may include cost recovery for all costs incurred in conforming and processing the violation.

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 (200') of a residential zone or in the rights-of-way within two hundred feet (200') 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 (30) 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.

**5.54.470 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.

**5.54.480 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 the wireless communication system, including but not limited to any necessary approvals from persons, entities, the City, 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.

**5.54.490 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.

B. The City Authority to Move System in Case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the wireless communication system and appurtenances on, over or under the rights-of-way of the City, in which event the City shall not be liable therefor to a provider. The City 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 section. Notice shall be given as provided in Section 5.54.730.

C. A Provider Required to Temporarily Move System for Third Party. A provider shall, upon prior reasonable written notice by the City 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 City 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.

**5.54.500 Protect structures.**

In connection with the construction, maintenance, repair, upgrade or removal of 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. A provider shall obtain the prior written consent of the 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 required because of the presence of the system. Such consent may be given at the sole discretion of the City. Any such alteration shall be made by the City or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City any

municipal structure or any other rights-of-way of the City involved in the construction, maintenance, repair, upgrade or removal of the 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.

**5.54.510 No obstruction.**

In connection with the construction, maintenance, upgrade, repair or removal of the 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 without the prior consent of the appropriate authorities.

**5.54.520 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.

**5.54.530 Repair.**

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.

**Article VIII. Provider Responsibilities**

**5.54.540 System maintenance.**

A provider shall:

- A. Install and maintain all parts of its wireless communication system in a non-dangerous condition throughout the entire period of its wireless franchise.
- B. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- C. At all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the rights-of-way.

**5.54.550 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.

**5.54.560 Inventory of existing sites.**

A provider shall provide every July 1 to the City an inventory of its existing WCFs or sites approved for WCFs, that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The City 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 City, provided, however that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

**Article IX. Wireless Franchise and License Transferability**

**5.54.570 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 City 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 City designee shall, if it approves such transfer, send notice affirming the transfer of the wireless franchise to the successor entity. If the City 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 section, and the City 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.

**5.54.580 Events of sale.**

The following events shall be deemed to be a sale, assignment or other transfer of the wireless franchise requiring City 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.

**Article X. Oversight and Regulation**

**5.54.590 Insurance, indemnity, and security.**

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

B. Each permit issued for a WCF located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City 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.

**5.54.600 Oversight.**

The City 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 City 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.

**5.54.610 Maintain records.**

A provider shall at all times maintain:

A. On file with the City, 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 City'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 days of completion of work or within thirty 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 City at all times to determine whether a provider is in compliance with the wireless franchise. Should the City 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. 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.

**5.54.620 Confidentiality.**

If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a provider, such information shall be classified as a protected record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), 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.

**5.54.630 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.

**5.54.640 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 City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided, that the City shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the City 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 City for the period of such audit. In the event the accounting rendered to the City by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty calendar days of written notice, it being agreed that the City may accept any amount offered by the provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

**Article XI. Rights of City**

**5.54.650 Enforcement and remedies.**

A. The City is responsible for enforcing and administering this chapter, and the City 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 City will notify the violating party of the violation and provide 30 days for the party to cure the violation.

C. If the violation is not cured within 30 days, the City may:

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

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

E. The violating entity may appeal the City's notice of violation within 10 days in accordance with Chapter 7.02.

**5.54.660 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, 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.

**5.54.670 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 City 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.

**5.54.680 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 (12) 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 (90) days of giving notice to the City of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) 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.

#### **Article XII. Obligation to Notify**

##### **5.54.690 Publicizing work.**

Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

#### **Article XIII. General Provisions**

##### **5.54.700 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.

##### **5.54.710 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 City and the provider; provided, that the City shall give the provider thirty 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.

##### **5.54.720 New developments.**

It shall be the policy of the City 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.

##### **5.54.730 Notices.**

All notices from a provider to the City 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 City. A provider shall immediately notify the City of any change in its name, address, or telephone number.

##### **5.54.740 Exercise of police power.**

To the full extent permitted by applicable law either now or in the future, the City reserves the right 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.

#### **Article XIV. Federal, State and City Jurisdiction**

##### **5.54.750 Construction.**

This chapter shall be construed in a manner consistent with all applicable federal and state statutes.

##### **5.54.760 Chapter applicability.**

This chapter shall apply to all wireless franchises granted or renewed after the effective date of the ordinance codified in this chapter. 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.

**5.54.770 Other applicable ordinances.**

A provider's rights are subject to the police powers of the City 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 City pursuant to its police powers. In particular, all providers shall comply with the City zoning and other land use requirements.

**5.54.780 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 City to enforce prompt compliance.

**5.54.790 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.