

**ORDINANCE NO. 2018-04**

**AN ORDINANCE ENACTING PROVISIONS REGARDING THE INSTALLATION OF SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAYS CONTROLLED BY ALPINE CITY**

**Whereas**, the City finds that the rights-of-way within the city:

Are critical to the travel and transport of persons and property in the business and social life of the city;

Are intended for public uses and must be managed and controlled consistent with that intent;

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

Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities construction, placement, relocation, and maintenance in the rights-of-way; and

**Whereas**, the city 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 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 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; and.

**Whereas**, 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:

Fairly and reasonably compensates the city on a competitively neutral and nondiscriminatory basis as provided herein;

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

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

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

Otherwise protects the public interests in the development and use of the city's infrastructure;

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

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); and

**Whereas**, the Utah State Legislature has mandated that the City all the use of the City rights of way for small cell facilities and infrastructure and the legislature has limited and restricted how the City can regulate these facilities and the fees that can be charged for such use. .

**NOW THEREFORE BE IT ORDAINED BY THE ALPINE CITY COUNCIL AS FOLLOWS:**

I. 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 in the law and in accordance with Utah Code 54-21-101 et. seq. Alpine city does hereby adopt the following to be numbered and inserted within the Alpine City Code.

**SMALL WIRELESS FACILITIES DEPLOYMENT PROVISIONS**

**Section 1. Application.**

1. This Ordinance applies to the collocation of a Small Wireless Facility, as defined herein, in the City's right-of-way; the collocation of a Small Wireless Facility on a wireless support structure in a right-of-way; and the installation, modification, or replacement of a utility pole associated with a Small Wireless Facility in a right-of-way.
2. Except as provided in this ordinance, The City does not prohibit, regulate, or charge for the collocation of a Small Wireless Facility.

**Section 2. Scope.**

1. Nothing in this ordinance shall be interpreted to permit an entity to provide a service regulated under 47 U.S.C. Secs. 521 through 573, in a right-of-way without compliance with all applicable legal obligations; impose a new requirement on the activity of a cable provider in a right-of-way for a cable service provided in the City; govern: a pole that an electrical corporation owns or a wireless support structure that an electrical corporation owns; or the attachment of a Small Wireless Facility to a pole that an electrical corporation owns or to a wireless support structure that an electrical corporation owns; or confer on the City any new jurisdiction over an electrical corporation or apply to the operation, regulation, or collocation of wireless facilities that are do not meet the definition of Small Wireless Facility as defined below.

**Section 3. Definitions.**

1. As used in this ordinance:

**Antenna.** Communications equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of a wireless service.

**Applicant.** Means a wireless provider who submits an application.

**Application.** Means a request submitted by a wireless provider to The City for a permit to collocate a Small Wireless Facility in a right-of-way; or install, modify, or replace a utility pole or a wireless support structure.

**Authority.** Alpine City

**Authority Pole.** A utility pole owned, managed, or operated by, or on behalf of Alpine City.

**Collocate.** To install, mount, maintain, modify, operate, or replace a Small Wireless Facility: on a wireless support structure or utility pole; or for ground-mounted equipment, adjacent to a wireless support structure or utility pole.

**Communications Service.** A cable service, as defined in 47 U.S.C. Sec. 522(6); a telecommunications service, as defined in 47 U.S.C. Sec. 153(53); an information service, as defined in 47 U.S.C. Sec. 153(24); or a wireless service.

**Decorative Pole.** The City pole: that is specially designed and placed for an aesthetic purpose; and on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than: a Small Wireless Facility; a specialty designed informational or directional sign; or a temporary holiday or special event attachment; or on which no appurtenance or attachment has been placed, other than a Small Wireless Facility; a specialty designed informational or directional sign; or a temporary holiday or special event attachment.

**FCC.** The Federal Communications Commission of the United States.

**Fee.** A one-time, nonrecurring charge.

**Gross Revenue.** The same as gross receipts from telecommunications service is defined in Section 10-1-402 of the Utah Code.

**Nondiscriminatory.** Treating similarly situated entities the same absent a reasonable, and competitively neutral basis, for different treatment.

**Micro Wireless Facility.** A type of Small Wireless Facility: that, not including any antenna, is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; on which any exterior antenna is no longer than 11 inches; and that only provides Wi-Fi service.

**Permit.** A written authorization The City requires for a wireless provider to perform an action or initiate, continue, or complete a project.

**Rate.** A recurring charge.

**Right-of-way.** The area on, below, or above a public: roadway; highway; street; sidewalk; alley; or property similar to the property listed. "Right-of-way" does not include: the area on, below, or above a federal interstate highway; or a fixed guideway, as defined in Utah Code Section 59-12-102.

**Small Wireless Facility.** A type of wireless facility: on which each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and for which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, grounding equipment; power transfer switch; cut-off switch; vertical cable run for the connection of power or other service; wireless provider antenna; or coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

**Technically Feasible.** By virtue of engineering or spectrum usage, the proposed placement for a Small Wireless Facility, or the Small Wireless Facility's design or site location, can be implemented without a significant reduction or impairment to the functionality of the Small Wireless Facility.

**Utility Pole.** A pole or similar structure that: is in a right-of-way; and is or may be used, in whole or in part, for: wireline communications; electric distribution; lighting; traffic control; signage; a similar function to a function described; or the collocation of a Small Wireless Facility.

**Utility Pole.** Does not include: a wireless support structure; a structure that supports electric transmission lines.

**Wireless Facility.** Means equipment at a fixed location that enables wireless communication between user equipment and a communications network, including: equipment associated with wireless communications; and regardless of the technological configuration, a radio transceiver, an antenna, a coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

**Wireless Facility.** Does not include: the structure or an improvement on, under, or within which the equipment is collocated; or a coaxial or fiber-optic cable that is: between wireless structures or utility poles; not immediately adjacent to or directly associated with a particular antenna; or a wireline backhaul facility.

**Wireless Infrastructure Provider.** A person that builds or installs wireless communication transmission equipment, a wireless facility, or a wireless support structure. "Wireless infrastructure provider" includes a person authorized to provide a telecommunications service in the state. "Wireless infrastructure provider" does not include a wireless service provider.

**Wireless Provider.** A wireless infrastructure provider or a wireless service provider.

**Wireless Service.** Any service using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public using a wireless facility. "Wireless service" includes the use of Wi-Fi.

**Wireless Service Provider.** A person who provides a wireless service.

**Wireless Support Structure.** An existing or proposed structure that is: in a right-of-way; and designed to support or capable of supporting a wireless facility, including a: monopole;

tower, either guyed or self-supporting; billboard; or building. “Wireless support structure” does not include a structure designed solely for the collocation of a Small Wireless Facility; or a utility pole;

**Wireline Backhaul Facility.** A facility used to transport communications by wire from a wireless facility to a communications network.

**Written or In Writing.** A tangible or electronic record of a communication or representation. “Written” or “in writing” includes a communication or representation that is handwritten, typewritten, printed, photostated, photographed, or electronic.

#### **Section 4. Wireless Provider Right of Access and Limitations.**

1. Except as limited and regulated below it is a permitted use under the City’s zoning regulations and subject only to administrative review, and approval of the City, for a wireless provider to along, across, upon, or under a right-of-way:
  - a. collocate a Small Wireless Facility;
  - b. or install, operate, modify, maintain, or replace a utility pole associated with the wireless provider’s collocation of a Small Wireless Facility; or equipment as described in this ordinance and in Utah Code Subsections 54-21-101(25)(b)(i) through (ix) required for a wireless provider’s collocation of a Small Wireless Facility.
2. Small Wireless Facility or utility pole may not:
  - a. obstruct or hinder the usual travel or public safety on a right-of-way; or
  - b. obstruct, damage, or interfere with:
    - i. another utility facility in a right-of-way; or
    - ii. a utility’s use of the utility’s facility in a right-of-way.
3. A wireless provider’s construction and maintenance must comply with:
  - a. all applicable legal obligations for the protection of underground and overhead utility facilities.
  - b. Subject only to this Ordinance, the provisions of chapter 21 of Title 54 of the Utah Code, and applicable federal law, all applications for Small Cell Wireless Facilities must comply with all Alpine City zoning, land use, planning, and permitting codes and regulations applicable in the City at the time of the application for the Small Cell Wireless Facilities permit, including such regulations with respect to wireless support structures and utility poles.
4. All Small Cell Wireless Facilities shall comply with the Development and Construction Standards and Specifications as adopted by the Alpine City Council for construction,

maintenance, repair of the public rights of way applicable to other users of the public rights of way and also shall comply with:

- a. industry standard pole load analysis be completed and submitted to the City as part of the permit application, indicating that the utility pole, to which the Small Wireless Facility is to be attached, will safely support the load; or
  - b. Small Wireless Facility equipment, on new and existing utility poles, be placed higher than eight feet above ground level.
5. No wireless provider shall install a new utility pole in a public right-of-way, if the public right-of-way is adjacent to a street or thoroughfare that is:
- a. not more than 60 feet wide, as depicted in the official plat records; and
  - b. adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions.
6. A new or modified utility pole that has a collocated Small Wireless Facility, and that is installed in a right-of-way, may not exceed 50 feet above ground level.
7. An antenna of a Small Wireless Facility may not extend more than 10 feet above the top of a utility pole existing on or before September 1, 2018.
8. If necessary to collocate a Small Wireless Facility on a decorative pole, a wireless provider may replace a decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the displaced decorative pole.
9. Pursuant to Alpine City Code a wireless provider shall install all equipment underground whenever possible. This requirement does not prohibit the replacement of a City pole in the designated area; and the wireless provider may seek a waiver, that will be administered in a nondiscriminatory manner, of the undergrounding requirement for the placement of a new utility pole to support a Small Wireless Facility.
10. When Small Cell Facilities are to be constructed in the right-of-way, the City's order of preference for a provider is as follows:
- a. To use existing poles;
  - b. To construct replacement poles in the same or nearly the same location and with such height limitations as provided in this ordinance or in the franchise;
  - c. To construct new poles.

11. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land.
12. Due to the limited size of the city's rights-of-way, applicants shall be required to install any Small Wireless Facility equipment according to the following requirements to the extent operationally and technically feasible and to the extent permitted by law. Small Wireless Facility equipment shall be installed either:
  - a. On or within the pole. If the equipment is installed on the pole, the equipment enclosure must be flush with the pole, painted to reasonably match the color of the pole, may not exceed in width the diameter of the pole by more than three inches on either side, the furthest point may not exceed eighteen inches from the pole, and the base must be flush with the grade or, alternatively, the lowest point may not be lower than eight and one-half feet from the grade directly below the equipment enclosure. If the equipment is installed within the pole, no equipment may protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.
  - b. 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.
  - c. 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 Small Wireless Facility.
13. As required for the operation of a Small Wireless Facility 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.
14. 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 specifically identified public safety concerns.

15. All Small Wireless Facilities shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible within one hundred feet of a site and consistent with the proper functioning of the Small Wireless Facility. Such Small Wireless Facilities and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such small wireless facilities 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.
16. 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 Small Wireless Facility is visually unobtrusive. Stealth design requires screening Small Wireless Facilities 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 eighteen inches from the pole or support structure except if the pole owner requires use of a standoff to comply with federal, state, or local rules, regulations, or laws. Any required standoff may not defeat stealth design and concealment techniques. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the state.
17. No facilities may bear any signage or advertisement except as permitted herein.

**Section 5. Damage and Repair.**

1. If a wireless provider's activity causes damage to a right-of-way, the wireless provider shall repair the right-of-way to substantially the same condition as before the damage.
2. If a wireless provider fails to make a repair required by The City under within 15 days after written notice, the City may make the required repair; and charge the wireless provider the reasonable, documented, actual cost for the repair.
3. If the damage causes an urgent safety hazard, The City may: immediately make the necessary repair without notice to the provider; and charge the wireless provider the reasonable, documented, actual cost for the repair.

**Section 6. City Right of Way Franchise Agreement Required.**

1. No one may collocate a Small Wireless Facility in a right-of-way; or install a new, modified, or replacement utility pole associated with a Small Wireless Facility in a right-of-way, as provided in Section 54-21-204 of Utah Code without first obtaining from the City a right of way use franchise from the City as well as a site permit for each site intended for a Small Wireless Facility.

**Section 7. Right of Way Use Franchise Application.**

1. To obtain a franchise to use the City's rights-of-way, or to obtain the City approval of a transfer of an existing franchise, an Applicant shall be provided to the City with at a minimum the following information:
  - a. A copy of the order from the PSC granting a certificate of convenience and necessity, if any is necessary for provider's offering of wireless communication services within the state of Utah;
  - b. An annually renewed performance bond or letter of credit from a Utah-licensed financial institution in the amount of twenty-five thousand dollars to compensate the city 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 equipment or facilities 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 ordinance;
  - 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 City's franchise agreement form;
  - 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.
  - g. A clear and complete description of the applicant's general approach to minimizing the visual impact of its small cell wireless facilities within the city. The approach should account for the standards established under this ordinance including finished colors, stealth, camouflage, and design standards.

**Section 8. Incomplete Application.**

1. 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 thirty days of the notice.

## **Section 9. Applications for Site Permits**

1. Prior to approving a site permit, the applicant must have a valid franchise agreement granted by applicable law.
2. All wireless communication facilities shall be required to obtain a site permit and shall be subject to the site development limitations and standards prescribed in this ordinance.
3. Every site permit application, regardless of type, shall contain the following information:
  - a. The location of the proposed Small Wireless Facility.
  - b. The specifications for each style of Small Wireless Facility and equipment. A Small Wireless Facility or piece of equipment will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.
  - c. Construction drawings showing the proposed method of installation.
  - d. The manufacturer's recommended installations, if any.
  - e. Identification of the entities providing the backhaul network for the Small Wireless Facilities described in the application and other cellular sites owned or operated by the applicant in the municipality.
  - f. For each style of Small Wireless Facility, a written affirmation from the provider that demonstrates the Small Wireless Facility's compliance with the RF emissions limits established by the FCC. A Small Wireless Facility will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.
  - g. For each style of Small Wireless Facility, 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 Small Wireless Facility and all associated equipment. The applicant shall provide a noise study prepared and sealed by a qualified Utah-licensed professional engineer that demonstrates that the Small Wireless Facility will comply with intent and goals of this ordinance. A Small Wireless Facility will be considered of the same style so long as the technical specifications, dimensions, and appearance are the same.
  - h. If the applicant is not using the proposed Small Wireless Facility to provide personal wireless services itself, a binding written commitment or executed

lease from a service provider to utilize or lease space on the Small Wireless Facility. Any speculative Small Wireless Facility shall be denied by the city.

- i. The applicant for any permit shall attest that the Small Wireless Facility will be operational for use by a wireless service provider within 270 days after the day on which the City issues the permit, except in the case that The City and the applicant agree to extend the 270-day period; or lack of commercial power or communications transport infrastructure to the site delays completion.

#### **Section 10. Approval Process.**

1. Within 30 days after the day on which the City receives an application for the collocation of a Small Wireless Facility or for a new, modified, or replacement utility pole; the City shall:
  - a. determine whether the application is complete; and
  - b. notify the applicant in writing of the City's determination of whether the application is complete.
2. If the City determines, within 30 days that an application is incomplete:
  - a. the City shall specifically identify the missing information in the written notification sent to the applicant; and
  - b. the processing deadline set out below is tolled from the day on which the City sends the applicant the written notice to the day on which the City receives the applicant's missing information; or as the City and The City agree.
3. An application for a Small Wireless Facility expires if:
  - a. the City notifies the wireless provider that the wireless provider's application is incomplete; and
  - b. the wireless provider fails to respond within 90 days after the day on which the City notifies the wireless provider.
4. The City shall:
  - a. process an application on a nondiscriminatory basis; and
  - b. approve or deny an application:
    - i) for the collocation of a Small Wireless Facility, within 60 days after the day on which The City receives the complete application; and

- ii) for a new, modified, or replacement utility pole, within 105 days after the day on which The City receives the complete application.
- 5. If The City fails to approve or deny an application within the applicable time period described above, the application is deemed approved.
- 6. The City may extend the applicable period described above for a single additional period of 10 business days, if The City notifies the applicant before the day on which approval or denial is originally due.
- 7. The City may deny an application to collocate a Small Wireless Facility or to install, modify, or replace a utility pole that meets the height limitations under Utah Code Section 54-21-205 and this Ordinance, only if the action requested in the application:
  - a. materially interferes with the safe operation of traffic control equipment;
  - b. materially interferes with a sight line or a clear zone for transportation or pedestrians;
  - c. materially interferes with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement;
  - d. fails to comply with applicable laws or legal obligations;
  - e. creates a public health or safety hazard; or
  - f. obstructs or hinders the usual travel or public safety of the right-of-way.
- 8. If the City denies an application the City shall:
  - a. document the basis for the denial, including any specific law on which the denial is based; and
  - b. send the documentation to the applicant on or before the day on which The City denies the application.
- 9. Within 30 days after the day on which The City denies an application, the applicant may, without paying an additional application fee:
  - a. cure any deficiency The City identifies in the applicant's application; and
  - b. resubmit the application.
- 10. The City shall approve or deny an application revised within 30 days after the day on which The City receives the revised application.

11. A review of an application revised in accordance with is limited to the deficiencies documented as the basis for denial unless the applicant has changed another portion of the application.
12. If an applicant seeks to:
  - a. collocate multiple small wireless facilities within the City, the City shall allow the applicant, at the applicant's discretion, to file a consolidated application for the collocation of up to 25 small wireless facilities, if all of the small wireless facilities in the consolidated application are:
    - i) substantially the same type; and
    - ii) proposed for collocation on substantially the same types of structures; or
    - iii) install, modify, or replace multiple utility poles within a single authority, The City shall allow the applicant, at the applicant's discretion, to file a consolidated application for the installation, modification, or replacement of up to 25 utility poles.
13. An applicant may not file within a 30-day period more than one consolidated application; or multiple applications that collectively seek permits for a combined total of more than 25 small wireless facilities and utility poles.
14. A consolidated application may not combine applications solely for collocation of small wireless facilities on existing utility poles with applications for the installation, modification, or replacement of a utility pole.
15. If The City denies the application for one or more utility poles, or one or more small wireless facilities, in a consolidated application, The City may not use the denial as a basis to delay the application process of any other utility pole or Small Wireless Facility in the same consolidated application.
16. A wireless provider shall complete the installation or collocation for which a permit is granted under this part within 270 days after the day on which The City issues the permit, unless:
  - a. The City and the applicant agree to extend the one-year period; or
  - b. lack of commercial power or communications facilities at the site delays completion.
17. Approval of an application authorizes the applicant to:

- a. collocate or install a Small Wireless Facility or utility pole, as requested in the application; and
  - b. subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain for a period no more than 10 years;
  - c. any Small Wireless Facility covered by the permit; and
  - d. any utility pole covered by the permit.
18. If there is no basis for denial, The City shall grant the renewal of an application under this section for an equivalent duration.
19. The approval of the installation, placement, maintenance, or operation of a Small Wireless Facility, in accordance with this ordinance, does not authorize:
- a. the provision of a communications service in the right-of-way; or
  - b. the installation, placement, or operation of a facility, other than the approved Small Wireless Facility, in the right-of-way.

**Section 11. Exceptions to Permitting.**

1. The City may not require a wireless provider to submit an application, obtain a permit, or pay a rate for:
  - a. routine maintenance;
  - b. the replacement of a Small Wireless Facility with a Small Wireless Facility that is substantially similar or smaller in size; or
  - c. the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles, in compliance with the National Electrical Safety Code.
2. The City may require advance notice of an activity described above.
3. A wireless provider may replace or upgrade a utility pole only with the approval of the utility pole's owner.
4. This section does not exempt the provider from being required to obtain a road cut permit in accordance with Utah Code Section 72-7-102 of the Utah Code and City ordinances for work that requires excavation or closing of sidewalks or vehicular lanes in a public right-of-way.
5. The City shall process and approve the road cut permit within the same time period The City processes and approves a permit for all other types of entities.

**Section 12. Application Fees.**

1. The City hereby charges an application fees as follows:
  - a. The application fee for the collocation of a small wireless facility on an existing or replacement utility pole shall be \$100 for each small wireless facility on the same application.
  - b. The application fee for a permitted activity described in Utah Code Section 54-21-204 shall be \$250 per application to install, modify, or replace a utility pole associated with a small wireless facility.
  - c. The application fee for any proposed activity that is not a permitted use described in Utah Code Section 54-21-204 shall be \$1,000 per application to: install, modify, or replace a utility pole; or install, modify, or replace a new utility pole associated with a small wireless facility

**Section 13. Right-of-Way Rates.**

1. A wireless provider shall pay for the right to use or occupy a right-of-way for the collocation of a small wireless facility on a utility pole in the right-of-way; or for the installation, operation, modification, maintenance, or replacement of a utility pole in the right-of-way a fee in the amount of the greater of:
  - a. 3.5% of all gross revenue related to the wireless provider's use of the right-of-way for small wireless facilities; or
  - b. \$250 annually for each small wireless facility.
2. A wireless provider subject to a rate under this Subsection shall remit payments to the City on a monthly basis.
3. This fee shall not be applicable to any provider that is subject to the municipal telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

**Section 14. City Pole Collocation Rate.**

1. All providers shall pay to the City for collocation on any City pole \$50 per year, per City pole. All payments shall be made on a monthly basis

**Section 15. Relocation.**

1. When necessary for work on or redevelopment of any public right of way and notwithstanding any provision to the contrary, The City may require a wireless provider to relocate or adjust a Small Wireless Facility in a public right-of-way in a timely manner; and without cost to The City. The reimbursement obligations under Utah Code Section 72-6-116(3)(b) do not apply to the relocation of a Small Wireless Facility.

II. The City Recorder may appropriately renumber, and title and place this adopted Part in the City Code as appropriate.

III. This ordinance shall take effect upon posting in accordance with state law.

PASSED this 28<sup>th</sup> day of August, 2018.

  
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Mayor

ATTEST:

  
\_\_\_\_\_

City Recorder