

**ORDINANCE NO. 2018-12-54**

**AN ORDINANCE ENACTING A NEW CHAPTER OF THE AMERICAN FORK MUNICIPAL CODE GOVERNING SMALL CELL FACILITIES; ALSO PROVIDING AN EFFECTIVE DATE AND SAVINGS CLAUSE.**

**WHEREAS**, Title 10 Chapter 3 and §10-8-84 of the Utah Code authorizes the City Council to pass ordinances which are reasonably and appropriately related to the providing for the public health, safety, morals, convenience, order, prosperity, and general welfare of the City and its residents; and

**WHEREAS**, the City Council desires enact regulations pursuant to Utah Code §54-21-101, et. seq., governing small cell facilities constructed or maintained in City;

**NOW THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF AMERICAN FORK CITY, THAT CHAPTER 17.17 OF THE AMERICAN FORK MUNICIPAL CODE BE ENACTED AS FOLLOWS:

**WIRELESS COMMUNICATION SERVICES**

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

### **17.17.010 Findings regarding right-of-way.**

A. American Fork City finds that the right-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 right-of-way.

B. Finding Regarding Compensation. The City finds the right to occupy portions of the right-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 right-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 right-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 right-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 right-of-way;
4. Protects the police powers and right-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 right-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 Right-of-Way. The City adopts the wireless communication services ordinance codified in this chapter pursuant to its power to manage the right-of-way, pursuant to common law, the Utah Constitution and statutory authority, and to receive fair and reasonable compensation for the use of right-of-way by providers as expressly set forth by Section 253 of the Act.

**17.17.020 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 right-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 herein.

**17.17.030 Excluded activity.**

A. Cable TV. This chapter shall not apply to cable television operators or to open video system providers otherwise regulated.

B. Wireline Services. This chapter shall not apply to wireline service facilities.

**Article II. Defined Terms**

**17.17.040 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" is defined in Utah Code Ann. § 54-21-101(1), as amended.

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

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

"Applicant" is defined in Utah Code Ann. § 54-21-101(4), as amended.

"Application" is defined in Utah Code An.. § 54-21-101(5), as amended.

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

“City” means American Fork City, Utah.

“Collocate” is defined in Utah Code Ann. § 54-21-101(11), as amended. 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 28 cubic feet in volume of associated equipment, whether deployed on the ground or on the structure itself.

“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 35% of any provider (which person or group of persons is hereinafter referred to as “controlling person”). “Control” or “controlling interest” as used herein may be held simultaneously by more than one person or group of persons.

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

“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 right-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 right-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 right-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 utility poles and is not physically supported by any attachments to a base station, utility support structure, or tower. An in-strand antenna may not exceed 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 rights-of-way are exempt from the requirements of “telecommunications facilities”.

“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 right-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 3 cubic feet per antenna and typically cover large geographic areas with relatively high capacity and are capable of hosting multiple wireless service providers. For purposes of this chapter, a macrocell is 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”.

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

“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.

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

“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.

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

“Right-of-way” is defined in Utah Code Ann. § 54-21-101(24), as amended.

“Site” means the location in the right-of-way of a wireless communication facility, a utility pole, or their associated equipment.

“Small wireless facility” is defined in Utah Code Ann. § 54-21-101(35), as amended. Small wireless facilities in the rights-of-way are exempt from the requirements of “telecommunications facilities”.

“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.

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

“Substantial modification” is defined in Utah Code Ann. § 54-21-101(26), as amended.

“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 right-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services.

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

“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.

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

“Wireless facility” or “WCF” is defined in Utah Code Ann. § 54-21-101(29).

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

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

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

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

#### **17.17.050 Nonexclusive wireless franchise.**

The City is empowered and authorized to issue nonexclusive wireless franchises governing the installation, construction, operation, use and maintenance of wireless system in the City’s right-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.

**17.17.060 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 wireless service using the right-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 wireless services over the same system, must also obtain a wireless franchise.

**17.17.070 Nature of grant.**

A wireless franchise shall not convey title, equitable or legal, in the right-of-way. A wireless franchise is only the right to occupy right-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.

**17.17.080 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 90 days of the effective date of the ordinance codified in this chapter. If such request is made, the provider may continue providing service during the course of negotiations.

**17.17.090 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 right-of-way in order to provide services.

**17.17.100 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.

**17.17.110 Term.**

Each wireless franchise issued pursuant to this chapter shall have a term of 10 years and shall be granted in a nondiscriminatory manner.

**Article IV. Compensation and Other Payments**

**17.17.120 Compensation.**

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

A. **Application Fees.** A provider shall pay the following application fees for the respective applications in accordance with Utah Code Ann. § 54-21-503, as amended:

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

B. **Right-of-Way Rate.** A provider shall pay a right-of-way rate of the greater of 3.5% of all gross revenues related to the provider's use of the City's right-of-way for small wireless facilities or \$250 annually for each small wireless facility in accordance with Utah Code Ann. §54-21-502(2). A provider does not have to pay this rate if it is subject to the municipal telecommunications license tax under Title 10, Part 4, Municipal Telecommunications License Tax Act.

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

D. **Authority Pole Collocation Rate.** The City adopts the authority pole collocation rate of \$50.00 per year, as established in Utah Code Ann. § 54-21-504, as amended.

**17.17.130 Timing.**

Unless otherwise agreed to in the wireless franchise agreement, all right-of-way rates shall be paid in accordance with Utah Code Ann. § 54-21-502, as amended.

**17.17.140 Fee statement and certification.**

Provider may request a statement showing the manner in which the fee was calculated.

**17.17.150 Future costs.**

A provider shall pay to the City the reasonable costs and reasonable expenses that the City incurs for services (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.

**17.17.160 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 right-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.

**17.17.170 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. Nonpayment shall also constitute grounds to terminate a franchise agreement.

**17.17.180 No accord and satisfaction.**

Acceptance by the City of any rate or fee shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

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

A rate or fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees are not waived and remain applicable.

**17.17.200 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.

**17.17.210 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**

**17.17.220 Wireless franchise application.**

To obtain a wireless franchise to construct, own, maintain or provide services through any wireless system within the City's right-of-way, or 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, an application must be filed with City.

**17.17.230 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 twenty-five thousand dollars to compensate the City for any damage caused by the provider to the City's right-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 copy of the provider's FCC license or registration, if applicable;
- D. An insurance certificate for the provider that lists the City as an additional insured and complies with the requirements of the franchise agreement;

**17.17.240 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 right-of-way, without competitive bidding.

**17.17.250 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**

**17.17.260 Franchise necessary.**

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

**17.17.265 Permit required.**

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

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

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

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

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

E. A permit is not transferrable or assignable.

**17.17.270 Site preference.**

When small wireless facilities are to be constructed in the rights-of-way above ground, if allowed, the City's order of preference to be followed by a provider, if feasible, is:

A. To install in-strand antennas;

B. To collocate on existing poles;

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

D. To collocate on new poles.

**17.17.280 Poles adjacent to residential properties.**

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

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

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

**17.17.290 Height and size restrictions.**

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

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

C. A small wireless facility and its associated equipment may need exceed the dimensions set forth in Utah Code Ann. § 54-21-101(25), as amended.

**17.17.300 Safety.**

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

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

**17.17.310 Equipment.**

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

- 1. Existing utility poles. If a WCF is collocated on an existing utility pole, the WCF's associated equipment may be installed in one of the following methods:
  - a. Within a pole. Any equipment installed within a pole may not protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.
  - b. On a pole. Any equipment enclosure installed on a pole must:
    - i. be flush with the pole;
    - ii. painted to reasonably match the color of the pole;
    - iii. may not exceed in width the diameter of the pole by more than 3 inches on either side;
    - iv. may not allow the furthest point of the enclosure to extend more than 18 inches from the pole; and
    - v. be installed flush with the grade or, alternatively, the lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.
  - c. Underground. Any equipment installed underground shall be located in a park strip within the City's right-of-way and shall be installed and maintained level with the surrounding grade.
  - d. Private property. Any equipment installed on private property must provide written permission from the property owner allowing the applicant to locate facilities on the property. If equipment is placed in an enclosure, the enclosure shall be designed to blend

in with existing surroundings, using architecturally compatible construction and colors, and landscaping and shall be located as unobtrusively as possible consistent with the proper functioning of the WCF. Equipment placed on private property may be subject to zoning requirements.

2. Replacement utility poles. If a WCF is collocated on a replacement utility pole, the WCF's associated equipment may be installed in the following manner:
  - a. To the extent technologically feasible, a provider must install the WCF's associated equipment within the replacement utility pole in accordance with 13.38.310(A)(1)(a).
  - b. If the installation of the WCF's equipment within the replacement utility pole is technologically infeasible, a provider may install the WCF's associated equipment in accordance with any of the methods established in 13.38.310(A)(1)(b) – (d).
3. New utility poles. If a WCF is collocated on a new utility pole, a provider must install the WCF's associated equipment within the pole in accordance with 13.38.310(A)(1)(a) or (d).

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 right-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 to comply with ADA requirements, public safety concerns for pedestrians, cyclists, and motorists, or other articulable public safety concerns.

#### **17.17.320 Undergrounding.**

A provider must underground its equipment in conformity with cable and utilities as provided for in City ordinances and Utah Code Ann. §54-21-207, as amended.

#### **17.17.330 Visual impact.**

A. Minimization. All WCFs shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible within 100 feet of a site and consistent with the proper functioning of the WCF.

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

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

D. Small wireless facility antennas should be concealed by a shroud.

E. When a freestanding power shut-off or power meter is required and cannot be integrated into the pole, the structure must be enclosed in a cabinet or pedestal.

F. Design/Historic Districts. Subject to Utah Code Ann. § 54-21-208, a provider's design and location must be approved prior to collocating a new small wireless facility or installing a new utility pole in the following zones:

1. Historic districts and any neighboring areas within a ¼ mile
2. State Street Design Corridor
3. Transit-Oriented Development Zone (TOD)

**17.17.340 Stealth design/technology.**

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

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

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

D. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the state.

**17.17.350 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.

**17.17.360 Signage.**

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

**17.17.370 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 right-of-way. Therefore, the WCF and supporting equipment shall be installed so as to best camouflage, disguise them, or conceal them, to make the

WCF more closely compatible with and blend into the setting or host structure, to minimize the visual impact of the WCF, supporting equipment, and equipment enclosures on neighboring properties, or to interfere less with pedestrians, cyclists, motorists, and other users of the rights-of-way upon approval by the City.

**17.17.380 General requirements.**

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

**17.17.390 Application review process.**

A. Review for completeness. Upon receiving an application for the collocation of a small wireless facility or a new, modified, or replacement utility pole, the City will determine within 30 days if the application is complete. The City shall notify the applicant whether the application is complete.

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

1. the City will specifically identify the missing information in the written notification to the applicant; and
2. the review deadline is tolled from the day that the City sends the applicant written notice of the missing information.

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

1. 30 days for the installation of an in-strand antenna;
2. 60 days for the collocation of a small wireless facility; or
3. 105 days for a new, modified, or replacement utility pole.

D. Extension. The City may extend the deadlines above for an additional 10 business days if the City notifies the applicant before the day in which the deadline expires.

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

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

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

**17.17.400 Application consolidation and submission limit.**

A. Consolidated application. An applicant may file a consolidated application for either:

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

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

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

**17.17.410 Expired application.**

An application expires if the City has notified the applicant that the application is incomplete and the applicant fails to respond within 90 days of the City's notification.

**17.17.420 Site permit approval.**

Upon approval of a site permit, a provider:

- A. must complete the work approved within the permit and make the small wireless facility operational within 270 days after the day on which the authority issues the permit, unless the lack of commercial power or communications facilities at the site delays completion.
- B. is authorized to operate and maintain any small wireless facility or utility pole covered by the permit for a period of 10 years from the date of approval.
- C. is not authorized to provide communications service within the right-of-way or to install, place, or operate any other facility or structure in the right-of-way.

**17.17.430 Site permit renewal.**

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

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

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

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

**17.17.440 Exemptions.**

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

1. routine maintenance;
2. the replacement of a small wireless facility with a small wireless facility that is substantially similar or smaller in size; or
3. the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles in compliance with the National Electrical Safety Code.

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

C. A provider must provide the City with 14 days prior, written notice with sufficient supporting documentation of any of the activities described in 17.17.440(A). For example, the notice of the replacement of a small wireless facility that is substantially similar to an existing small wireless facility must include documentation that demonstrates that the replacement small wireless facility meets the requirements of being substantially similar.

**17.17.450 Exceptions to standards.**

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

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

C. An application for a WCF exception shall include:

1. A written statement demonstrating how the exception would meet the criteria.
2. A site plan that includes:
  - a. Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
  - b. Elevations showing all components of the WCF, as it would appear with and without the exception.
  - c. Color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
  - d. An explanation that demonstrates the following:
    - i. For macrocells, a significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service

network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

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

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

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

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

D. An application for a WCF exception shall be reviewed for consistency with the purpose of the standard for which the exception is sought.

**17.17.460 Application to install a macrocell or nonpermitted utility pole.**

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

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

C. Application Review for nonpermitted macrocells and utility poles.

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

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

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

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

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

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

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

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

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

1. The manufacturer's recommended installation, if any;
2. A written affirmation for the applicant that the macrocell or utility pole meets or exceeds all applicable codes, applicable standards, and federal, state, and local requirements, laws, regulations, and policies;
3. A map that indicates the type and separation distance of other WCFs owned or operated by the same wireless provider from the proposed WCF.
4. A visual analysis including to-scale photo and visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least two angles, together with a map that shows the location of each view including all equipment and ground wires. Such visual analysis must include a description, drawing, and elevations with the finished color, method of camouflage, and any illumination;
5. A detailed explanation justifying why the WCF is required in the right-of-way. The applicant must demonstrate in a clear and complete written alternative sites analysis that multiple alternatives in the geographic range of the service coverage objectives of the applicant were considered. This includes, but is not limited to, explaining why the installation of permitted small wireless facilities and the installation of a macrocell on private property are insufficient. This analysis must include a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.
  - i. A complete alternative sites analysis provided under this subsection may not include less than 5 alternative sites unless the applicant provides a factually detailed rationale for why it could not identify at least 5 potentially available sites.
  - ii. For purposes of disqualifying potential alternative sites for the failure to meet the applicant's service coverage objectives the applicant must provide (a) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency or technology; (b) detailed technical maps or other exhibits with clear and

concise RF data to illustrate that the objective is not met using the alternative; and (c) a description of why the alternative does not meet the objective.

6. An explanation that demonstrates the following:
  - i. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
  - ii. The gap can only be filled through an exception to one or more of the standards herein; and
  - iii. The exception is narrowly tailored to fill the service gap such that WCF conforms to these standards to the greatest extent possible.
  - iv. The manner in which the applicant proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.
7. A noise study for the proposed WCF and all associated equipment. The application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a qualified Utah-license Professional Engineer that demonstrates that the WCF will comply with intent and goals of this chapter.
8. The proposed WCF may not be closer than the average distance between existing poles that are within one mile of the proposed site. If no poles exist within one mile of proposed pole site, then all subsequently placed poles must be at least 250' from each other.
9. The design of a new pole must comply with the requirements of this chapter and be approved by the City.
10. An affidavit certifying that the applicant has posted or mailed notices to property owners within 300' of the proposed WCF site.
  - i. This requirement is not required to be met at the time application is submitted, but is required to be completed prior to approval of a permit.
  - ii. The notice shall provide the following information:
    - 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:

American Fork City  
ATTN: City Engineer  
275 East 200 North  
American Fork, Utah 84003

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

### **17.17.470 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. No antenna, small wireless facility, or other equipment may be added to City poles where the City poles are not able to structurally accommodate the antenna, small wireless facility, or other equipment. All antenna, small wireless facility, or other equipment permitted herein may be added to City poles only pursuant to a pole attachment agreement with the City.

C. WCFs that lawfully existed prior to the adoption of this chapter shall be allowed to continue their use as they presently exist. This code does not make lawful any WCF that is not fully approved on the date the ordinance codified in this chapter is adopted and those pending WCFs will be required to meet the requirements of this code.

D. The applicant must comply with all federal (such as the Americans with Disabilities Act), state, and local laws, city codes 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 rights-of-way, care must be taken to install in such a way that does not damage, interfere with, or disturb any other utility or entity that may already be located in the area. Any damage done to another utility’s or entity’s property must be immediately reported to both the 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 rights-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. All WCFs and utility poles must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate WCFs and utility poles including, but not limited to, RF emissions. If such standards and regulations are changed, and if WCF equipment is added either through collocation or replacement, then the owners of the WCFs and utility poles governed by this chapter shall bring such WCFs and utility poles into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring WCFs and utility poles into compliance with such revised standards and regulations shall constitute grounds for the removal of the WCF or utility pole at the owner's expense.

G. All structures shall be constructed and installed to manufacturer's specifications, and constructed to withstand a minimum 100-mile per hour (mph) wind.

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

1. All landscaping shall be maintained at all times.
2. All WCF sites shall be kept clean, neat, and free of litter.
3. A WCF shall be 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.

I. 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 applicable codes and applicable standards.
2. The City reserves the right to conduct such inspections at any time. In the event such inspection results in a determination that violation of applicable standards set forth by the City has occurred, the City will notify the provider of the violation.
3. Upon receipt of a notice of violation, the provider will have 30 days from the date of violation to correct the violation. If the provider fails to correct the violation within the 30-day period, the City may remove the violating WCF or utility pole at the provider's sole expense.
4. The City may recover all of its costs incurred in processing and removing the violation.

**17.17.480 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.

**17.17.490 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 right-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.

**17.17.500 Relocation of the system.**

A. Generally. The City may require a provider to relocate or adjust a small wireless facility or utility pole in a right-of-way in a timely manner and without cost to the City.

B. 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 right-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.

C. 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.

**17.17.510 Protect structures.**

A. 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.

B. 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 right-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.

C. 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 right-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.

**17.17.520 No obstruction.**

In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the right-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.

**17.17.530 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.

**17.17.540 Damage and Repair.**

- A. If a provider's activity causes damage to a right-of-way, the provider must repair the right-of-way to substantially the same condition as before the damage.
  
- B. If the provider fails to make a repair required by the City within a reasonable time after written notice, the City may make the required repair and charge the provider the reasonable, documented, actual cost for the repair.
  
- C. If the provider's damage causes an urgent safety hazard, the City may immediately make the necessary repair and charge the provider the reasonable, documented, actual cost for the repair.
  
- D. The provider shall pay to the City the entire amount of the repair within 30 days of receiving of the City's invoice.

**Article VIII. Provider Responsibilities**

**17.17.550 System maintenance.**

A provider shall:

- A. Install and maintain all parts of its wireless communication system in a good 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 with all applicable codes and all applicable standards.
  
- C. At all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the right-of-way.

**17.17.560 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 right-of-way so as to prevent the branches of such trees from coming in contact with its wireless communication system. A provider must provide the City with written notice at least 14 days before performing such work.

**17.17.570 Inventory of existing sites.**

A provider shall provide every July 1st 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 WCF and utility pole. 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**

**17.17.580 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.

**17.17.590 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**

### **17.17.600 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 or utility pole located within the right-of-way or 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 or utility pole.

### **17.17.610 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.

### **17.17.620 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 right-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 right-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 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.

B. Throughout the term of the wireless franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the 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.

**17.17.630 Confidentiality.**

If the information required to be submitted is proprietary in nature or may be kept confidential under federal, state or local law, the provider may make such a request in writing in accordance with the Utah Government Records Access and Management Act, Title 63G Chapter 2 of the Utah Code Ann., as amended (“GRAMA”). A provider recognizes that the City, as a governmental entity under GRAMA, cannot guarantee the confidentiality of any information in the City’s possession, and the provider submits such information at its own risk.

**17.17.640 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.

**17.17.650 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 30 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**

**17.17.660 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 or suspend 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.

**17.17.670 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.

**17.17.680 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.

**17.17.690 Removal or abandonment of wireless franchise property.**

A provider is subject to the removal and abandonment requirements of Chapter 12.14.

**Article XII. Obligation to Notify**

**17.17.700 Publicizing work.**

Before entering onto any private property, a provider shall notify the property owners in advance and describe the work to be performed.

**Article XIII. General Provisions**

**17.17.710 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.

**17.17.720 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 30 days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

**17.17.730 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.

**17.17.740 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.

**17.17.750 Exercise of police power.**

To the full extent permitted by applicable law either now or in the future, the City reserves the right to amend this chapter and/or to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers and its power to manage the right-of-way.

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

**17.17.760 Construction.**

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

**17.17.770 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.

**17.17.780 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.

**17.17.790 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.

**17.17.800 Construed according to Utah law.**

This chapter and any wireless franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state of Utah. Specifically, in the event of any conflict between this chapter with the Small Wireless Facilities Deployment Act, Title 54 Chapter 21 of the Utah Code Ann., as amended, the Small Wireless Facilities Deployment Act shall control.

**SEVERABILITY**

If any provision or clause of this chapter or its application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications which can be implemented without the invalid provision, clause, or application. To this end, the provisions of this chapter are declared to be severable.

**EFFECTIVE DATE**

This amendment to the ordinance shall become effective on the date passed by the City Council of American Fork.

PASSED AND ADOPTED THIS 11 DAY OF December, 2018.

MAYOR OF AMERICAN FORK:

  
BRADLEY FROST

ATTEST:

  
CITY RECORDER

