

Midway City Council
23 April 2019
Regular Meeting

Resolution 2019-09 /
Pending Ordinance Small Cell
Communications



RESOLUTION 2018-09

A RESOLUTION ADOPTING A NOTICE OF PENDING ORDINANCE AMENDING TITLE 16 OF THE MIDWAY CITY CODE WITH RESPECT TO SMALL WIRELESS FACILITIES IN MIDWAY, WASATCH COUNTY, UTAH.

WHEREAS, Section 10-9a-504 of the Utah Code Annotated, 1953, as amended, allows a municipality to enact an ordinance or resolution establishing a temporary land use regulation for any part or all of the area within a municipality; and

WHEREAS, such a resolution is required to specify the nature of the proposed ordinance and to direct the City Staff to prepare and complete such an ordinance; and

WHEREAS, such a resolution may take effect immediately, and shall be effective for no more than 180 days; and

WHEREAS, the Midway City Council intends to adopt an ordinance amending Title 16 of the Midway City Code; and

WHEREAS, the City Council finds that, unless the Pending Ordinance Doctrine is invoked, and a notice of pending ordinance is published, Small Wireless Facilities may be installed in the City in violation of the terms of the pending ordinance; and

WHEREAS, the City Council finds that publishing a notice of pending ordinance, and requiring all new applications for the installation of Small Wireless Facilities and related improvements to be bound by the terms and conditions of the new ordinance, will prevent unfair impacts imposed by the new ordinance; and

WHEREAS, the City Council finds that the Midway City Staff and the Mayor and Council have been and continue to work diligently on the Small Wireless Facility ordinance. This Notice of Pending Ordinances hereby adopted relates to the following pending ordinances:

1. A Code Text Amendment of Midway City's Land Use Code that would establish rules and regulations regarding the installation, maintenance, operation and use of Small Wireless Facilities and related improvements within the City.

WHEREAS, it is in the best interests of the City to complete the ordinance listed above, and to apply the terms and conditions of that ordinance to any new Small Wireless Facilities within the City; and

WHEREAS, the City Council has determined that it would be in the best interests of the health, safety and general welfare of the citizens of Midway City to invoke the pending ordinance doctrine to require that all future Small Wireless Facilities be subject to the terms of the pending ordinance described herein.

NOW THEREFORE, the City Council has determined that there is an important, compelling and countervailing public interest in completing the new ordinance before allowing significant new installation of Small Wireless Facilities to occur. Therefore, pursuant to Section 10-9a-504, *et seq.* of the Utah Code Annotated 1953, as amended, and for the reasons stated above, the City Council of the City of Midway, Wasatch County, Utah, hereby adopts, passes and publishes the following:

BE IT RESOLVED, by the City Council of Midway City, Wasatch County, State of Utah:

- 1. The Midway City Notice of Pending Ordinance, to be prepared by Midway City Staff, which is attached hereto and incorporated herein by this reference, is hereby approved and adopted by the City Council.*
- 2. No installation of Small Wireless Facilities within the City shall be allowed prior to the adoption and effective date of the above listed proposed Ordinance amending the Midway City Code.*
- 3. In order to protect public health, safety and welfare of the citizens of Midway, the City Council has determined that this Resolution shall take effect immediately upon publication as required by law and shall continue until the above listed ordinance is completed, adopted and becomes effective, or until the City Council votes negatively on the pending ordinance.*

This resolution shall be effective immediately upon passage. A copy of this resolution shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

PASSED AND ADOPTED by the Midway City Council on the day of 2018.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT



ORDINANCE 2019-07

AN ORDINANCE AMENDING PORTIONS OF SECTION 16.22 OF THE MIDWAY CITY CODE REGARDING SMALL WIRELESS COMMUNICATION FACILITIES WITHIN THE PUBLIC RIGHT OF WAY, AND RELATED MATTERS.

WHEREAS, Midway City desires to amend Title 16 of the Midway City Code regarding Small Wireless Communications Facilities within the Public Right of Way; and

WHEREAS, the proposed amendment would provide standards, policies and procedures relating to the siting, installation, operation and maintenance of Small Wireless Communications Facilities; and

WHEREAS, the City Council has determined that the amendment to the City Code as contained herein will be in the best interests of the City and its citizens.

NOW THEREFORE, for the reasons stated above, the City Council of the City of Midway, Wasatch County, Utah, hereby adopts, passes and publishes the following:

BE IT ORDAINED, by the City Council of Midway City, Wasatch County, State of Utah:

Section 16.22 of the Midway City Code is hereby amended, and the following sections are added thereto:

16.22.1a Small Wireless Facilities in the Public Right of Way

This section of the Midway City Code applies to Small Wireless Facilities in the City's public right-of-way. This section will regulate the installation, construction, operation, co-location, modification, maintenance and removal of Small Wireless Facilities in the City's right-of-way, balancing the benefit of wireless services with other established goals, objectives and values of the City, while promoting and protecting the public health, safety, and welfare of the citizens of Midway City and the general public.

16.22.2a Authority

In accordance with Federal and State law, the City may exercise zoning, land use, planning, placement and permitting authority with respect to wireless support structures and utility poles. To the fullest extent allowed under Federal and State law, rules and regulations, the City reserves the right to regulate zoning, land use, planning, placement and permitting related to wireless communication facilities.

16.22.3a Applicability

All references to Small Wireless Facilities in this Chapter shall refer only to Small Wireless Facilities in the Right-of-Way. No person shall install, construct, modify, or otherwise place any Small Wireless Facility within the public Right-of-Way in violation of the provisions of this Chapter. In the interest of the health, safety and welfare of the City, its citizens, and the general public, no Small Wireless Facilities shall be co-located on any power, traffic or directional poles within the City. The definitions used in this Chapter only apply to this Chapter.

16.22.4a Definitions

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

Applicant – A wireless provider who submits an application.

Application – A request submitted by a wireless provider to the City for a permit to collocate a Small Wireless Facility in the Right-of-Way or install, modify, or replace a Utility Pole or Wireless Support Structure.

Authority Pole – A Utility Pole owned, managed, or operated by, or on behalf of the City.

Collocate – To install, mount, maintain, modify, operate, or replace a Small Wireless Facility on a Wireless Support Structure or Utility Pole, or, ground-mounted equipment, adjacent to a Wireless Support Structure or Utility Pole.

Decorative Pole – An Authority Pole that is specially designed and placed for an aesthetic purpose and on which attachments are prohibited (other than Small Wireless Facilities, informal or directional signs, or temporary holiday or special event attachments.)

Design District – An area that is zoned or otherwise designated by the City as an area of historic or other significance for which the City maintains and enforces unique design and standards. Those areas designated as Design Districts include Midway City Main Street, and other areas so designated.

Gross Revenue – Means the same as gross receipts from telecommunications services as defined in Utah Code Ann. § 10-1-402.

Historic District – A group of buildings, properties, or sites that are listed in the National Historic Register of Historic Places, formally determined eligible for listing in the National

Register of Historic Places by the Keeper of the National Register, or in an historic district or area created under Utah Code Ann. § 10-9a-503.

Master License Agreement – An agreement between a provider and the City that sets forth general terms and conditions pursuant to which the provider may install and operate Small Wireless Facilities in the Right-of-Way.

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 only provides Wi-Fi service.

Permit – Written authorization required by the City and issued under this Chapter for construction, excavation or other work in, or obstruction of, the public Right-of-Way allowing a wireless provider to perform an action or initiate, continue, or complete a project, subject to the terms of this Chapter and a Master License Agreement.

Right-of-Way – Includes the areas on, below or above all public highways, roadways, streets, roads, sidewalks, alleys, dedicated Rights-of-Way, owned by or dedicated for public use or dedicated to the City. It does not include utility or other easements not located within the above described areas.

Small Wireless Facility – A 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, not including any electric meter, concealment element, telecommunications demarcation box, 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. If more than one Small Wireless Facility is collocated on a structure, the facilities together shall collectively not exceed the total size dimensions described herein.

Substantial Modification – A proposed modification or replacement to an existing Wireless Support Structure that will substantially change the physical dimensions of the wireless support structure under the substantial change standard established in 47 C.F.R. Sec. 1.40001(7) or a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part 1, Appendix C, Sec. III.B.

Utility Pole – A pole or similar structure that is in the Right-of-Way and is or may be used for: wireline communications, electric distribution, lighting, or the collocation of a Small Wireless Facility. Utility Pole does not include traffic control signs, street signs, a Wireless Support Structure, a structure that supports electric transmission lines, or electric power poles owned by the City.

Wireless Facility – Equipment at a fixed location that enables wireless communication between user equipment and a communications network, including equipment associated with wireless communications regardless of the technological configuration, a radio transceiver, and antenna, a coaxial or fiber-optic cable, a regular or back up power supply, or comparable equipment. A 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: (i) between wireless structures or utility poles; (ii) not immediately adjacent to or directly associated with a particular antenna; or (iii) a wireline backhaul facility.

Wireless Provider – A wireless infrastructure provider or 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 Support Structure – An existing or proposed structure that is in the 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. A Wireless Support Structure does not include: a structure designed solely for the collocation of a Small Wireless Facility, utility pole, City owned structure that supports electric lines used for the provision of municipality electric service, or structure owned by the City that uses electric lines that are used for the provision of electrical service.

16.22.5a Orders, Rules and Regulations

In addition to the requirements set forth in this Chapter, the City may adopt orders, rules and regulations, forms and policies which are reasonably necessary to accomplish the purposes of and are consistent with this Chapter.

16.22.6a Master License Agreement Required

(A) A Wireless Provider may not install, repair, maintain, remove and /or replace Wireless Facilities in the Right-of-Way without first entering into a Master License Agreement with the City.

(B) The City is empowered and authorized to grant nonexclusive Master License Agreement on a nondiscriminatory basis, governing the installation, operation, use and maintenance of Wireless Facilities in the City’s Rights-of-Way that are consistent with the provisions of this Chapter.

(C) The City may negotiate additional or different terms with the different Wireless Providers, in the exercise of City’s reasonable discretion and pursuant to the City’s police powers and proprietary rights in the Right-of-Way.

(D) The City shall grant a Master License Agreement to a Wireless Provider pursuant to ordinance authorizing the negotiation and execution of a Master License Agreement. Acceptance of the Master License shall occur by the Wireless Provider executing the authorized Master License Agreement within thirty (30) days of recordation of the authorizing ordinance for that Agreement. Any amendment or extension thereof will also require City Council approval.

(E) The term of a Master License Agreement may be renewed if the Wireless Provider is in compliance with the Master License Agreement and all applicable laws, rules, and regulations,

including this Chapter. At the expiration of the term of the Master License Agreement, the Wireless Provider shall remove its Wireless Facilities from the Right-of-Way.

(F) If a Wireless Provider has telecommunications systems that may be used for multiple purposes, such as a wireline backhaul facility or video services system, then such provider shall obtain a franchise or other relevant agreement from the City for each permitted purpose.

(G) Before offering or providing any Wireless Services pursuant to the Master Licensing Agreement, a Wireless Provider shall obtain all other regulatory approvals, permits, authorizations or licenses for the offering or providing of such services from the Federal, State, and local authorities, if required, and shall submit to the City evidence of the same. If such regulatory approvals, permits, authorizations or licenses cannot be obtained until after a permit is issued from the City, Provider shall inform the City in writing and such regulatory approvals, permits, authorizations or licenses may be waived until after issuance of the permit from the City. If any such approval, permit, authorization or license is waived, Provider shall still be required to provide proof of regulatory approvals, permits, authorizations, or licenses after a permit is issued by the City.

(H) The grant of a Master License Agreement does not excuse the Wireless Provider from obtaining (i) any permit or other authorization required to engage in or carry on any business within the City as required by the laws, rules and regulations of the City, (ii) any other permit, agreement or authorization required in connection with the use of property or facilities owned by third parties, or (iii) any other permit or authorization required in connection with excavating or performing other work in or along the Right-of-Way.

(I) Any Wireless Provider acting without a valid Master Licensing Agreement on the effective date of the ordinance codified in this Chapter shall request the issuance of a Master License Agreement from the City within ninety (90) days of the effective date of this Ordinance. If such a request is made, the Wireless Provider may continue to provide services during the course of the negotiations. If a timely request is not made, or if a Master License Agreement is not granted, the Wireless Provider shall remove its equipment from the Right-of-Way within thirty (30) days notice from the City.

(J) A Master License Agreement shall not convey title, equitable or legal, in the Right-of-Way. A Master License Agreement is the right to non-exclusively occupy the Right-of-Way for the limited purposes and time period state in the agreement.

(K) A Master License Agreement granted pursuant to this Chapter shall contain appropriate provisions for enforcement, compensation, and protection of the public, consisted with the other provisions of this Chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund, and rights of termination or revocation.

(L) In the event a Wireless Provider continues to operate all or any of its Wireless Facilities after the terms of the Master License Agreement have expired, such Wireless Provider shall continue to comply with all applicable provisions of this Chapter and the Master License Agreement, including, without limitation, all compensation provisions; provided, that any such continued operations shall in no way be construed as a renewal or other extension of the Master License Agreement, nor as a limitation on the remedies available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

16.22.7a Use of Right-of-Way for Small Wireless Facilities and Utility Poles

(A) Subject to the provisions of this Chapter and the issuance of a permit, a Wireless Provider may:

1. Collocate a Small Wireless Facility.
2. Install, operate, modify, maintain or replace:
 - (a) A Utility Pole associated with the Wireless Provider's collection of Small Wireless Facilities;
 - (b) Equipment required for a Wireless Provider's Collocation of Small Wireless Facilities; or
 - (c) An Authority Pole with the Wireless Provider's collection of Small Wireless Facilities.
3. Except, an Applicant may not install a new Utility Pole in a Right-of-Way without the City's discretionary, nondiscriminatory, and written consent, if the Right-of-Way is adjacent to a street or thoroughfare that is:
 - (a) Not more than sixty (6) feet wide, as depicted in the official plat records;
 - (b) Adjacent to single-family residential lots, other multifamily residential lots, other multifamily residences or undeveloped land that is designated for residential use by master plan, zoning or deed restrictions.

(B) Small Wireless Facilities and new, modified and replacement Utility Poles, Authority Poles and Wireless Support Structures in the Right-of-Way shall be allowed in any zoning district after staff review and approval in accordance with the standards set forth in this Chapter.

(C) A Small Wireless Facility, Utility Pole, or Authority Pole, may not:

1. Obstruct or hinder the usual travel or public safety on a Right-of-Way;
2. Obstruct, damage or interfere with another utility facility in a Right-of-Way or a utility's use of the utility's facility in a Right-of-Way or the clear view area of any public or private driveway or drive approach.

16.22.8a Design Standards

(A) **Integrated Design.** The design and location of a Small Wireless Facility, Utility Pole, Authority Pole and/or Wireless Support Structure shall comply with all standards adopted by the City. Small Wireless Facilities shall be architecturally integrated into the Wireless Support Structure and shall be installed in a manner that prioritizes and minimizes the visual impact. Small Wireless Facilities should not be readily noticed. Exposed cabling is prohibited, except for Collations on existing structures where internal cable routing is not feasible (e.g., on a wooden pole). To the extent reasonably feasible from an engineering, construction and design perspective, the Application shall consider the surrounding colors, materials, and architectural features to ensure that the design of the new Small Wireless Facility is compatible with the surrounding area and the goals of the City.

(B) Height Limitations. A new or modified Utility Pole or Authority Pole that has a collocated Small Wireless Facility may not exceed thirty (30) feet above ground level. An antenna of a Small Wireless Facility that is being attached to an existing Utility Pole may not extend more than ten (10) feet above the top of the Utility Pole.

(C) Decorative Poles. If necessary to Collocate a Small Wireless Facility, a Wireless Provider may replace a Decorative Pole, if the replacement pole reasonably conforms to the design aesthetic of the displaced Decorative Pole.

(D) Historic and Design Districts.

1. A Wireless Provider shall participate in a pre-application meeting with the City's Planning Staff and obtain design approval from the City before Collocating a new Small Wireless Facility or installing a new Utility Pole in an area that is zoned or otherwise designated as a Historic District or Design District. The pre-application meeting shall be included in any time frames set forth for review of the Application by the City.
2. All Small Wireless Facilities in Historic or Design Districts shall, to the extent possible, use design techniques including, but not limited to, the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the Small Wireless Facilities with the surrounding natural setting and built environment. Design, materials and colors of Small Wireless Facilities shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located in the Right-of-Way and on adjacent parcels.
3. Should the City Council determine that such design meets the intent of this Chapter, and the community is better served thereby, the design may include the use of man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and which camouflage or conceal the presence of Antennas or Poles so as to make them architecturally compatible with the surrounding are pursuant to this Chapter.
4. All visible exterior surfaces on all Small Wireless Facilities shall be constructed out of or finished with non-reflective materials.
5. Subject to the permit process set forth in this Chapter, the City may require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design or concealment measure in an Historic District or Design District, unless the Facility is excluded from evaluation for effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).

(E) Aesthetics. Small Wireless Facilities shall not be lighted or marked unless required by an applicable governmental authority. Signs located on Small Wireless Facilities shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by an applicable governmental authority. Commercial advertising is strictly prohibited.

(F) **Undergrounding.** All new fiber backhaul lines, electrical distribution lines, wires, cable, or other facilities serving Small Wireless Facilities must be located underground, however, antennas or other Facilities required to remain above ground in order to be functional are permitted as approved by the City.

16.22.9a Additional Requirements

(A) **Insuring and Bonding.** A Wireless Provider will be responsible for carrying and maintaining insurance and bonds as may be required in the Master License Agreement and in connection with obtaining a permit.

(B) **Indemnity.** A Wireless Provider shall indemnify, save harmless, and defend City, its officers, agents and employees, from and against all losses, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorneys' fees, arising out of or in connection with such Provider's Wireless Facilities or use of the Right-of-Way, unless and to the extent caused by the City's negligence.

(C) **Electrical Service.** A Wireless Provider will be solely responsible for establishing electrical power services for and to each of its Wireless Facilities and for the payment of all electrical utility charges to the City.

(D) **Inspections.** All Wireless Facilities and Wireless Provider-owned structures shall be maintained by the Wireless Provider in a clean and good condition, free of graffiti, and free of rust, excessive dirt, and peeling paint. The City shall have the authority to conduct inspections of the Wireless Facilities and Structures at any time to determine whether such Facilities and structures comply with the requirements of this Chapter. The City shall notify Provider in writing of any failed inspections and provide thirty (30) days to Provider to remedy to any failed inspection. If Provider fails to remedy and failed inspection, the City may remedy and defect and Provider shall pay to City the actual costs incurred by the City along with any administrative penalties set forth by the City.

(E) **Compliance with law.** All Small Wireless Facilities must at all times comply with all applicable Federal, State, and local building codes and safety codes and regulations. All Small Wireless Facilities and structures shall be constructed and installed to manufacturer's specifications.

(F) **Hazardous materials.** Provider shall not possess, use, generate, release, discharge, store, dispose of, or transport any hazardous materials on, under, in, above, to, or from any Right-of-Way except in compliance with all applicable environmental laws and as pre-approved by City. Wireless Provider shall promptly reimburse the City for any fines or penalties levied against City because of Wireless Provider's failure to comply with environmental laws.

(G) **Provider shall follow all City ordinances, policies and resolutions regarding insurance, bonding, and any other requirement applicable to other entities utilizing the Right-of-Way.**

(H) **Additional requirements.** Wireless Facilities will be subject to any additional requirements set forth in the applicable Master Licensing Agreement and Permit.

16.22-10a Permitting, Application and Review Process

(A) All Applicants shall be required to obtain a permit to Collocate a Small Wireless Facility in a Right-of-Way or to install a new, modified, or replacement Utility Pole, Authority Pole or Wireless Support Structure associated with a Small Wireless Facility in a Right-of-Way.

(B) City staff is authorized and empowered to create any necessary forms, rules, regulations and requirements consistent with this Chapter that are necessary to assist the City in the permitting, application and review process.

(C) All Applications shall contain the following:

1. Application form signed by the Applicant or authorized representative;
2. Zoning and construction drawings;
3. Application fee;
4. An industry-standard pole load analysis indicating that the structures on which the Wireless Facilities will be mounted will safely support the load. If a Small Wireless Facility cannot be safely installed on the respective structure, Applicant shall either replace the structure with a compliant structure of the same type or propose a new location.
5. A photograph of each proposed location showing the condition of the location before construction and installation;
6. Proof or evidence of insurance as required by applicable City Ordinance or the Master License Agreement or any other agreement with the City; and
7. An affidavit that the installation or Collocation of the Small Wireless Facility shall be completed within two-hundred seventy (270) days after the day on which the City issues the permit.

(D) **Application Fees.** 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. The application fee to install, modify, or replace a Utility Pole associated with a Small Wireless Facility shall be \$250 per application. Application fees are non-refundable, whether the permit is granted or not.

(E) **Procedure for Review of Applications.**

1. Within thirty (30) days of the receipt of an Application for review of the Collocation of a Small Wireless Facility or new, modified or replacement Utility Pole or Authority Pole, the City shall determine whether the Application is complete and notify the Applicant in writing.
2. If the City determines that the Application is incomplete, the City shall specifically identify the missing information in the written notification. The processing deadline shall be 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 for a mutually agreeable period of time as identified in a written agreement between the Applicant and the City.

3. Expiration of Application. An Application for a Small Wireless Facility expires if the City notifies the Wireless Provider that the Wireless Provider's Application is incomplete, in accordance with subsection 2 and the Wireless Provider fails to respond within ninety (90) days after the day on which the City notifies the Wireless Provider.

(F) Decision. The City shall approve or deny an Application for the Collocation of a Small Wireless Facility, within sixty (60) days after the day on which the City receives the complete Application and for a new, modified, or replacement Utility Pole, within one hundred five (105) days after the day on which the City receives the complete Application. If the City fails to approve or deny the Application within the applicable time period the Application is deemed approved.

(G) Denial of Application.

1. The City may deny an Application to Collocate a Small Wireless Facility or to install, modify, or replace a Utility Pole, 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 view area 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 the requirements set forth in this Chapter;
 - (e) creates a public health or safety hazard;
 - (f) obstructs or hinders the usual travel or public safety of the Right-of-Way; or
 - (g) does not meet the aesthetic or design standards of the City, or the requirements of this Chapter.

(H) If the City denies an Application, the City shall document the basis for the denial, including any specific law on which the denial is based and send written notification informing the Applicant of the denial, including the basis for the denial.

(I) Resubmission of Application. Within thirty (30) days after the day on which the City denies an Application, the Applicant may, without paying an additional application fee, cure any deficiency the City identifies in the Applicant's Application and resubmit the Application. The City shall approve or deny a revised Application within thirty (30) days after the day on which the City receives the revised Application.

1. Review of a revised Application is limited to the deficiencies documented as the basis for denial unless the Applicant has changed other portions of the Application.

(J) Consolidated Applications. If an Applicant seeks to 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 ten (10) Small Wireless Facilities, if all of the Small Wireless Facilities in the consolidated Application are substantially the same type and

proposed for Collocation on substantially the same types of structures. Similarly, the City shall allow the Applicant, at the Applicant's discretion, to file a consolidated Application to install, modify, or replace up to five (5) Utility Poles within the City, as long as the Utility Poles and Small Wireless Facilities proposed to be placed thereon are substantially similar in nature.

1. A consolidated Application may not combine Applications for Collocation of Small Wireless Facilities on existing Utility Poles with Applications for the installation, modification, or replacement of a Utility Pole.
2. 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.
3. An Applicant may not file within a thirty (30) day period more than one consolidated Application or multiple Applications that collectively seek permits for a combined total of more than fifteen (15) Small Wireless Facilities and Utility Poles.

(I) Exceptions to Permitting. Except as otherwise provided herein or in a Master License Agreement, Applications for Permits are not required for routine maintenance of the Small Wireless Facility or support structures for the Small Wireless Facility unless it interferes with pedestrian or vehicular traffic, or affects the health, safety or welfare of the City or its residents.

16.22.11a Damage and Repair

If a Wireless Provider's activities in the Right-of-Way causes damage to a pole or the Right-of-Way, the Wireless Provider shall repair the pole or Right-of-Way to substantially the same condition as before the damage. If a Wireless 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 Wireless Provider the reasonable, documented, actual cost for the repair. If the damage causes an urgent safety hazard, the City may immediately make the necessary repair and charge the Wireless Provider the reasonable, documented cost for the repair.

16.22.12a Enforcement and Remedies; Abandonment and/or Removal

(A) Enforcement. The City is responsible for enforcing and administering this Chapter. The City or its designee is authorized to give any notice required by law or under any Master License Agreement or Permit. Failure of City to require performance of any term in this Chapter of the Master License Agreement, or the waiver by either party of breach of either, shall not prevent subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

(B) Abandonment and/or Removal of Wireless Facilities.

1. In the event (a) the use of a Wireless Facility is discontinued for a continuous period of twelve (12) months, (b) the term of the applicable Master License Agreement has expired, or (c) any Wireless Facility or structure has been installed

in the Right-of-Way without complying with the requirements of this Chapter, and the respective Wireless Facilities have not been removed by the Wireless Provider within thirty (30) days of any such event, such Wireless Provider shall be deemed to have abandoned such Wireless Facility.

2. If any Wireless Facility is deemed abandoned or installed without complying with the requirements of this Chapter, the Wireless Provider shall remove its Wireless Facilities and structures within sixty (60) days of the City’s notice of such abandonment and shall repair and restore the Right-of-Way to a similar or better condition than at the time of the installation. Failure to do so may result in the City’s removal of the Facilities and structures at the Wireless Provider’s cost. The City shall have the right to inspect and approve the condition of the Right-of-Way, Wireless Facilities, and structures prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and any security required of a Wireless Provider shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Chapter and the Master License Agreement.

(C) **Transfer and/or Acknowledgment of Abandoned System.** Upon abandonment of any system of Wireless Facilities, a Provider, if required by the City, shall submit to the City a written instrument, in a form satisfactory to the City, transferring to the City the ownership of the abandoned system, or, as the City may request, acknowledging abandonment of the system.

This ordinance shall be effective immediately upon passage. A copy of this ordinance shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
 this _____ day of _____, 20____.

	AYE	NAY
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Bob Probst	_____	_____
Council Member JC Simonsen	_____	_____
Council Member Ken Van Wagoner	_____	_____

APPROVED:

