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 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 and 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.

Co-locate – 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 by this ordinance.

Directional Pole – A street sign, traffic control sign or other pole giving directions to vehicular or other traffic that is 1) owned by the City; and 2) upon which Small Wireless Facilities could be physically attached or mounted.

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.

Small Cell Wireless Franchise 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 wireless 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 Small Cell Wireless Franchise 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. This term shall be referred to in this ordinance as "SWF".

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 Small Cell Wireless Franchise 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 Small Cell Wireless Franchise Agreement with the City.

(B) The City is empowered and authorized to grant nonexclusive Small Cell Wireless Franchise Agreements 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 Small Cell Wireless Franchise Agreement to a Wireless Provider pursuant to ordinance authorizing the negotiation and execution of a Small Cell Wireless Franchise Agreement. Acceptance of the Franchise Agreement shall occur by the Wireless Provider executing the authorized Small Cell Wireless Franchise 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 Small Cell Wireless Franchise Agreement may be renewed if the Wireless Provider is in compliance with the Small Cell Wireless Franchise Agreement and all applicable laws, rules, and regulations, including this Chapter. At the expiration of the term of the Small Cell Wireless Franchise 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 Franchise 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 Small Cell Wireless Franchise 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 Franchise Agreement on the effective date of the ordinance codified in this Chapter shall request the issuance of a Small Cell Wireless Franchise 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 Small Cell Wireless Franchise 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 Small Cell Wireless Franchise Agreement shall not convey title, equitable or legal, in the Right-of-Way. A Small Cell Wireless Franchise 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 Small Cell Wireless Franchise 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 Small Cell Wireless Franchise Agreement have expired, such Wireless Provider shall continue to comply with all applicable provisions of this Chapter and the Small

Cell Wireless Franchise 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 Small Cell Wireless Franchise 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. Co-locate 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 Co-location 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 (60) 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 Development Standards

Standards for SWF's are as follows:

(A) General Standards

1. Architectural Integration: All SWFs shall be architecturally integrated into the Wireless Support Structure and shall be installed in a manner that prioritizes and minimizes the visual impact. Placement of support equipment shall be placed at the base of the pole, buried beside the pole, or covered with a bench. Small

Wireless Facilities should not be readily noticed. Exposed cabling is prohibited, except for Co-locations 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 SWF is compatible with the surrounding area and the goals of the City.

2. Co-Location and Application for New Monopoles: The City encourages the installation of new SWFs in the public rights-of-way be accomplished by co-location with existing utility poles. Co-location is required whenever an existing pole is located within three hundred feet (300') of the proposed installation location. Where new monopoles are necessary, the City strongly encourages designs which facilitate the co-location of future, additional SWFs.
3. Installation at Street Corners and Intersections: SWFs shall, where feasible, be located at the corner of street intersections.
4. New Poles Constructed of Metal: New monopoles and replacement utility poles proposed to be constructed for SWFs under the provisions of this chapter shall be constructed of metal or other structurally similar material which can be painted or finished to appear to be metal. No new wood poles shall be installed or constructed to act as wireless support structures.
5. Spacing: All new monopoles shall be spaced from another monopole a distance of not less than the standard street light spacing for the area, as outlined in the City Standards and Specifications.
6. Concealment: All SWFs shall be concealed and match the color and design of the structure to which it is attached.
7. Obstruction of Other Facilities: An SWF allowed under this chapter may not obstruct or hinder travel and public safety in the public rights-of-way or damage, obstruct or interfere with the facilities of another utility or another utility's use in the public rights-of-way.
8. Construction and maintenance of an SWF by the wireless provider shall comply with all legal obligations for the protection of underground and overhead utility facilities.
9. Decorative Poles. If necessary to Co-locate 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, and is approved by the City. This includes all decorative poles within Design Districts, as well as within planned unit developments, resorts, or other communities that have matching decorative poles.
10. Damage and Repair: If a wireless provider's activities of installation or maintenance to an SWF causes damage to a public right-of-way, the wireless provider shall repair the public right-of-way to the prior condition. The City shall notify the wireless provider of the need for repairs in writing.

    (a) If a wireless provider fails to make a repair required by the City under this section within a reasonable time after written notice, the City may make the repairs or cause the repairs to be made and charge the wireless provider for the cost of the repairs.

(b) If the damage described in this subsection causes an urgent safety hazard, the City may make the necessary repairs without notification or time period for response from the wireless provider and may charge the wireless provider for the cost of the repairs.

8. Height of Attached Equipment: SWF equipment on new monopoles, and replacement and existing utility poles, shall be placed higher than eight feet (8') above ground level.
9. Undergrounding. All supporting equipment shall be placed underground and within the park strip of the public right of way.
10. Grounding Rods and Pull Boxes: The grounding rod may not extend above the top of a sidewalk and must be placed in a pull box. The ground wire between a pole and ground rod must be inside an underground conduit. All pull boxes must be vehicle load bearing and comply with any applicable Utah Department of Transportation standards. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps or sidewalks.
11. Wiring: No exposed wiring is permitted. Above the electric meter and disconnect switch, all wiring shall be located inside the pole or covered by conduit.
12. Additional Clearance Requirements: Wireless provider shall comply with the National Electric Safety Code regarding clearances from existing power lines, and shall adhere to a twenty five percent (25%) adder to the existing clearance table.
13. Noise: Noise generated by SWF's shall not exceed levels permitted by the City or the Wasatch County Health Department.
14. Relocation: In accordance with § 54-21-603 of the Utah Code, the City may require a provider to relocate or adjust an SWF in a public right-of-way in a timely manner and without cost to the City.

(B) Design District. For purposes of SWFs, the design district is comprised of all Residential, Commercial, and Mixed Use Zones.

(C) Design Standards. The following design standards shall apply to all SWFs located within the Design District.

1. SWF and supporting equipment may be integrated into street furnishings when undergrounding of equipment may not be feasible or in lieu of a new pole. Furnishings may include, but are not limited to, benches, trashcans, etc., but shall require design approval before installation.
2. Integrated Design Consideration Required: SWFs shall be integrated harmoniously into the wireless support structure and generally shall be installed in a manner minimizing or eliminating the visual impact. Such SWFs should not be readily noticed. To the maximum extent possible, the application shall consider the surrounding colors, materials, and architectural features to ensure that the design of the new facility is in harmony with the surrounding area. These treatments shall apply to all new equipment, extensions of height to accommodate equipment, and to new monopoles.

3. Height And Dimension Of New Monopoles And Replacement Utility Poles: Where allowed by this section, the height of new monopoles and replacement utility poles and the antenna they support in the public rights-of-way shall not exceed twenty feet (20') above ground level along local streets, and twenty five feet (25') above ground level on major and minor collector streets and major and minor arterial streets as identified by the City in the Transportation Master Plan. New monopoles and replacement utility poles for SWFs under this section shall not be greater than two feet (2') in diameter. The two foot diameter base of the monopole or replacement utility pole may not extend more than five feet (5') above the surface of the ground before tapering to a smaller diameter. The antenna of an SWF may not extend more than ten feet (10') above the top of a utility pole existing on or before September 1, 2018.
4. Power Supply: Power to the equipment for SWFs in the right-of-way must come through the base of the pole or infrastructure acting as the wireless support structure. Installation shall be accomplished in a manner that reduces visibility to the maximum extent possible

(D) Third Party Utility Standards. Any SWF attached to a third party utility pole shall be mounted in accordance with the standards of the third party utility and the requirements of this Ordinance, with the exception that all supporting equipment shall be placed underground. In the event that a third party utility has standards that are less stringent than the City Standards, or does not have a standard for SWFs, the City Standards shall apply.

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 Small Cell Wireless Franchise 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 any 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-ow-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 co-locate an SWF in a Right-of-Way or to install a new, modified, or replacement Utility Pole, Authority Pole or Wireless Support Structure associated with an SWF 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 Small Cell Wireless Franchise Agreement or any other agreement with the City; and

7. An affidavit that the installation or Co-location 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 any SWF shall be as set by the State of Utah in accordance with applicable statutes. 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 Co-location of an SWF 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 prosed 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 Small Cell Wireless Franchise 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 Small Cell Wireless Franchise Agreement or Permit. Failure of City to require performance of any term in this Chapter of the Small Cell Wireless Franchise 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 Small Cell Wireless Franchise 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 3rd day of September 2019.

	AYE	NAY
Council Member Jeff Drury	X	
Council Member Lisa Orme	Excused from the Meeting	
Council Member Bob Probst	X	
Council Member JC Simonsen	X	
Council Member Ken Van Wagoner	X	

APPROVED:

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM:

Corbin Gordon, City Attorney

(SEAL)