

ORDINANCE 18-28

AN ORDINANCE AMENDING TITLE 15A OF THE REVISED ORDINANCES OF SANDY CITY (THE LAND DEVELOPMENT CODE), 2008, CHAPTER 11, "SPECIAL USE STANDARDS", AND CHAPTER 37, "DEFINITIONS" TO ADD A NEW SECTION TO CREATE NEW STANDARDS FOR REGULATION AND IMPLEMENTATION OF SMALL CELL ANTENNAS IN SANDY CITY; ALSO PROVIDING A SAVING CLAUSE AND EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, a request has been made to amend Title 15A of the Revised Ordinances of Sandy City (the Land Development Code), 2008, Chapter 11, "Special Use standards" and Chapter 37, "Definitions" by adding a new section to create new standards for regulation and implementation of small cell antennas in Sandy City; and

WHEREAS, the Planning Commission held a public hearing on September 6, 2018 which meeting was preceded by notice by publication in the Salt Lake Tribune on August 23, 2018, and by posting in Sandy City Hall, the Sandy City Parks & Recreation Building, Salt Lake County Library-Sandy, and the Utah Public Notice Website - <http://pmn.utah.gov> on August 18, 2018; and

WHEREAS, following the public hearing before the Planning Commission, the Commission recommended the amendment to the City Council; and

WHEREAS, a public meeting was held by the Sandy City Council on September 11, 2018 to consider adoption of the proposed amendment, which meeting was preceded by publication in the Salt Lake Tribune, on August 23, 2018, and by posting in Sandy City Hall, the Sandy City Parks & Recreation Building, Salt Lake County Library-Sandy, on the Sandy City Website - <http://www.sandy.utah.gov>, and the Utah Public Notice Website - <http://pmn.utah.gov>, on August 18, 2018; and

WHEREAS, the City Council has been given specific authority in Title 10, Chapter 9a, Utah Code Ann. to adopt a zoning plan, including an ordinance and map which divide the municipality into districts or zones, and within such districts to regulate the erection, construction, reconstruction, alteration, repair and uses of buildings and structures, and the uses of land; and

WHEREAS, the State legislature has granted general welfare power to the City Council, independent, apart from, and in addition to, its specific grants of legislative authority, which enables the City to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare; and

WHEREAS, the foregoing legitimate governmental objectives are achieved by reasonable means, in that any adverse impact on private property value or use has been carefully balanced against the corresponding gain to the public; and the regulations have been calculated, on recommendation of City planning staff to permit property owners to beneficially use their properties for the practical purposes to which the property is reasonably adaptable; and procedures have been established by the Land Development Code and Utah Code Ann. whereby appeals can be heard and decided if it is alleged that there is legislative or administrative error, or where a special exception or variance to the ordinance is required.

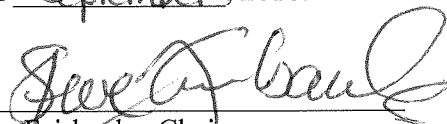
NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City, State of Utah, as follows:

Section 1. Amendment. Title 15A is amended as shown on **Exhibit "A"**, which is attached hereto and by this reference made a part hereof.

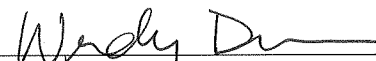
Section 2. Severable. If any part of this ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined in its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.

Section 3. Effective. This ordinance shall become effective upon publication of a summary thereof.

PASSED AND APPROVED this 11 day of September, 2018.


Steve Fairbanks, Chairman
Sandy City Council

ATTEST:


City Recorder, Deputy

PRESENTED to the Mayor of Sandy City for his approval this 17TH day of SEPTEMBER, 2018.

APPROVED this 17TH day of SEPTEMBER, 2018.


Kurt Bradburn, Mayor

ATTEST:


City Recorder, Deputy

PUBLISHED this 20 day of September, 2018.

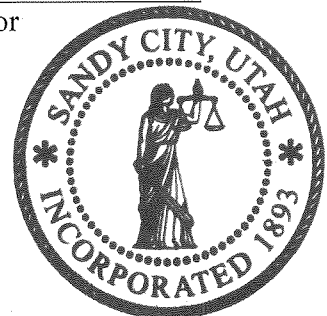


Exhibit A

15A-11-25 Wireless Communications Facilities in the Public Right-of-Way

A. General Scope. This section and not Section 15A-11-24 shall apply to the construction, modification, removal and operation of small wireless communications facilities (SWFs) installed in the public right-of-way (ROW). All references to SWFs in this chapter shall refer only to SWFs in the ROW and not SWFs located anywhere outside of the ROW. No person shall install, construct, modify, or otherwise place any SWF within the public right-of-way except pursuant to the provisions of this chapter. The definitions used in this chapter are found in Chapter 15A-37.

B. Purpose. The purpose of this section is to reasonably regulate, to the extent permitted by Utah and federal law, the installation, operation, collocation, modification and removal of SWFs in the City of Sandy in a manner that protects and promotes public health, safety and welfare, and balances the benefits that flow from robust personal wireless services with the unique and historic character, aesthetics and local values of the City. This section is intended to meet the following goals, to the extent not inconsistent with applicable federal and State law:

1. Promote and protect the public health, safety, and welfare by reducing the visibility of SWFs to the fullest extent possible, including, but not limited to the following method: camouflage or stealth concealment, design techniques and placing SWFs and related accessory equipment, which is not placed on or in the utility pole underground, except equipment which cannot be placed underground if the SWF is to function properly.
2. Provide for the managed development and installation, maintenance, modification, and removal of wireless communication infrastructure in the City with the fewest number of SWFs needed to provide cell service, in a nondiscriminatory manner.
3. Encourage the deployment of smaller, less intrusive SWFs to supplement existing larger macro-cell sites.
4. Encourage the deployment of SWFs primarily along major and minor arterials, and major and minor collectors, and limit the deployment of new Utility Poles along local streets and residential districts where the streets are 60 feet wide or narrower, and new poles and SWFs in historic districts, and design districts where they are discouraged or not allowed.
5. Encourage the location of SWFs in non-residential areas, in a manner that minimizes the total number of SWF support poles needed throughout the City.
6. Encourage the location of SWFs to utilize existing Right-of-Way corridors, and encourage SWFs to be installed at street intersections. Encourage collocation of SWFs on new and existing sites.
7. Encourage the location of SWFs, to the extent economically and technically feasible, at places and in areas where the adverse visual impact on the community is minimized.

8. Enhance the ability of Wireless Service Providers to provide services to the community quickly, effectively, and efficiently.
9. Effectively manage SWFs in the ROW.
10. Nothing herein is intended to waive or limit the City's right to enforce or condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to public health and safety.
11. Provide for the nondiscriminatory use of the Right-of-Way.

This section does not intend, and shall not be interpreted or applied to:

1. Prohibit or effectively prohibit personal wireless services; or
2. Unreasonably discriminate among Wireless Service Providers of functionally equivalent personal wireless services; or
3. Regulate the installation, operation, collocation, modification or removal of SWFs on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or
4. Prohibit or effectively prohibit any collocation or modification that the City may not deny under Utah or federal law; or
5. Preempt or conflict with any applicable Utah or federal law.

C. Applicant, Permit. Any person seeking to locate or modify a SWF or Utility Pole in the ROW shall, except as otherwise provided herein, first submit an application, and in historic and design districts, obtain a permit under this section, and shall provide to the City on an application form provided by or acceptable to the City information sufficient, in the City's reasonable discretion, to enable the City to make an informed determination regarding such permit. Fees for permits will be established by the Sandy City Council.

1. **Exceptions to Permitting.** Wireless Service Providers are not required to submit an application, obtain a permit, or pay a fee for the following activities, but shall provide not less than 10 days' notice to the City Public Works and Public Utilities Departments of such activities: routine maintenance; the replacement of a small wireless facility with a small wireless facility that is substantially similar or smaller in size; 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; or any other installation or activity otherwise allowed by superseding law

A Wireless Service Provider shall obtain a permit for work that requires excavation or cutting of any road, sidewalk or other surface or closing of sidewalks or vehicular lanes in the Right-of-Way. The City shall process and approve the permit within the same time period the City processes and approves a permit for all other types of entities.

2. Lessees to comply with this section. Applicants who enter into lease or license agreements with the City to locate, modify or collocate SWFs on City-owned light, sign, traffic signal or other poles shall be required in those instruments to comply with the provisions of this section, except as specifically negotiated and clearly stated in the written instrument otherwise.

Compliance. All persons subject to this section shall: At all times comply with all applicable statutes, laws, ordinances, and policies; upon reasonable request, timely provide written confirmation sufficient for customary land survey purposes concerning location of SWFs; upon reasonable request, timely provide the City with accurate as-built maps and plans certifying location of SWFs in paper copies and GIS-layer ESRI format (shape file or geographic database) with data about the physical aspects of each SWF required by the City, including but not limited to height of the SWF, range of transmission, type of transmission (cellular, voice, data, wi-fi, etc.), nature of the pole or support, permittee of the pole or support, and similar information; upon request, timely make available to the City, books, records, maps and other documents maintained with respect to SWFs for inspection at reasonable times and places; pay all applicable fees required by the City. Subject to Superseding Federal and State Law. The provisions of this section shall be subject to and superseded by conflicting applicable federal or State law now in force or hereafter enacted.

D. Operational Standards.

1. Federal and State Requirements. All SWFs shall meet the current standards and regulations of the United States Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the federal and Utah State governments with the authority to regulate SWFs. If such standards and regulations are changed, then the permittees shall bring such facilities into compliance with such revised standards and regulations within the time period mandated by the controlling federal or State agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the SWF facility at the permittee's expense.
2. Radio Frequency Standards. If concerns or complaints regarding compliance with radio frequency emissions standards for a SWF have been communicated to the City, the City may request that the permittee provide information demonstrating compliance which the permittee shall promptly provide. If such information is not sufficient, in the reasonable discretion of the City, to demonstrate compliance, the City may request, and the permittee of the SWF shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, the City finds that the SWF does not meet federal standards, the City may require corrective action within a reasonable period of time, and if not corrected, may require removal of the SWF at the permittee's expense. Any reasonable costs incurred by the City, including reasonable consulting costs needed in the Director's discretion, to verify compliance with these requirements, shall be paid by the permittee.

3. Signal Interference. All SWFs shall be designed and sited so as not to cause interference with the normal operation of radio, television, telephone, other SWFs, and other communication services utilized by nearby residential and non-residential properties. SWFs shall not interfere with any public safety communications except with the written approval of the public safety agency whose communications are so affected. The applicant shall provide a written statement from a qualified radio frequency engineer certifying that a technical evaluation of existing and proposed SWFs indicates no potential interference problems with the communications referred to just above. The permittee of the SWF shall allow the City to monitor interference levels with public safety communications during this process. In addition, the permittee of a SWF shall notify the City at least fourteen (14) calendar days prior to the introduction of new personal wireless service of changes in existing personal wireless service, and shall allow the City to monitor interference levels with public safety or other communications during the testing process. The permittee shall not begin new service or change service of the SWF until the City has notified the permittee that the SWF is acceptable, or the expiration of the fourteen (14) days, whichever occurs first.
4. Operation and Maintenance. To ensure the structural integrity of SWFs and the support poles on which they are mounted, the permittee of a SWF shall ensure that it is maintained in compliance with standards contained in applicable local building and safety codes, State of Utah Blue-Stakes laws, and with the City's Standard Specifications and Details for Municipal Construction as most recently promulgated. If upon inspection, or upon other reliable evidence, the City concludes that a SWF support pole or SWF fails to comply with such codes or constitutes a danger to persons or property, then, upon written notice being provided to the permittee of the SWF, the permittee shall have thirty (30) days from the date of notice to demonstrate that the SWF or support pole is structurally sound and safe, or to bring such SWF into compliance. Upon good cause shown by the permittee, the City may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the permittee fails to bring such SWF into compliance within said time period, and fails to remove the SWF, then the City may remove such SWF at the permittee's expense. The City may, in its discretion require an industry-standard pole load analysis be completed and submitted to an authority indicating that the Utility Pole, to which the SWF is to be attached, will safely support the load.
5. Abandonment and Removal. If a SWF has not been in use for a period of three (3) months, the permittee of the SWF shall notify the City of the non-use, and shall indicate whether re-use is expected within the ensuing three (3) months. Any SWF that is not operated for a continuous period of six (6) months shall be considered abandoned. The City, in its sole discretion, may require that an abandoned SWF be removed. The permittee of such SWF shall remove the same within thirty (30) days of receipt of written notice from the City. If such SWF is not removed within said thirty (30) days, the City may remove it at the permittee's expense, and any approved permits for the SWF shall be deemed to have expired.

6. Hazardous Materials.

- a. No permittee and no agent or subcontractor of a permittee shall use, store or release hazardous materials in, on, about or from any SWFs or any property on which any SWF is located, except those necessary for the operations of the SWF, and only in accordance with all applicable laws governing such materials. No permittee and no agent or subcontractor of a permittee shall store, generate, release or dispose of hazardous materials in or on any SWFs or any City property without the prior signed written consent of the City's mayor or chief administrative officer, and only if such writing clearly allows such storage, generation, release or disposal of hazardous materials.
- b. If a permittee discovers that any spill, leak or release of any quantity of hazardous materials has occurred on, in or under any SWF, the permittee shall promptly notify all appropriate governmental agencies and the City. In the event such release is caused by the permittee, a lessee or permittee, their officers, employees agents or subcontractors, the permittee shall (or shall cause others to) unless otherwise directed by the City, promptly and fully investigate, cleanup, remediate and remove all such hazardous materials as may remain and so much of any portion of the environment as shall have become contaminated, all in accordance with applicable government requirements, and a plan approved by the City, and shall replace any removed portion of the environment (such as soil) with uncontaminated material of the same or better character as existed prior to contamination.

E. Applications and Submissions. No SWF shall be collocated, and no new, modified, or replacement SWF support pole associated with a SWF may be placed in the right-of-way, and no initial location, collocation, or modification constituting a substantial change to any SWF may occur except upon the issuance of a permit after submission of a written application from an applicant, reviewed and approved by the City in accordance with this section. Permits issued hereunder shall be of general applicability. A SWF on a wire strung between poles does not require a permit or application. All SWFs shall be reviewed pursuant to the following procedures:

1. Pre-submittal Meeting. Before first application submittal, applicants shall schedule and attend a pre-submittal consultation meeting with City staff for all facilities intended for installation in the public Right-of-Way, unless waived by the Director or his designee because the City determines that it already has sufficient information about an applicant's proposed facilities, or because the proposed facilities are expected to have little impact on the City. City staff will endeavor to provide applicants an appointment within fifteen (15) working days after a written request for an appointment is received.
2. Twenty-Five Permits Per Application. A consolidated application may be submitted for the collocation of no more than twenty-five (25) SWFs if all of the SWFs are substantially of the same type and proposed for collocation on substantially the same type of structures, or at the applicant's discretion, an applicant may file a consolidated application for the installation, modification or replacement of up to twenty-five (25) Utility Poles in the ROW. An applicant may file no more than three (3) consolidated

applications within any 30-day period or multiple applications for more than seventy five (75) Utility Poles or SWFs within any 30-day period. A consolidated application may not combine applications solely for collocation of SWFs on existing Utility Poles with applications for the installation, modification, or replacement of a Utility Pole. If the City denies the application for one (1) or more Utility Poles or SWFs 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. Submittal Requirements. In addition to an application form signed by an authorized official or employee of an applicant, signal interference letter, and required submittal fees, each applicant shall submit the following documents in a form acceptable to the City:
 - a. An accurately scaled site plan of all of applicant's SWFs and wireless facility support poles within one mile of the facility to be installed; such site plan shall be submitted in paper and GIS-layer ESRI format (shape file or geographic database) with data about the physical aspects of each SWF required by the City, including but not limited to height and dimensions of the SWF, range of transmission, type of transmission (cellular, voice, data, wi-fi, etc.), nature of the pole or support, permittee, owner and operator of the pole or support, and similar information;
 - b. Accurate photo simulation of all proposed above-ground SWFs, collocations, and modifications of existing SWFs;
 - c. A scaled elevation view and other supporting accurate drawings, calculations, and other documentation of the proposed SWF and support pole for it;
 - d. If required by the City, documentation showing the financial and technical ability and legal capacity of the applicant to perform the work requested, and to operate and maintain the SWFs for longer than one year;
 - e. Letters, agreements, or other documents showing permissions to locate SWFs on the poles or in facilities of the City or other permittees, and if an applicant places SWFs or related accessory equipment on City poles, then it shall have an executed signed master license agreement with the City, and a pole attachment permit or agreement from the City for each City pole;
 - f. Letters, reports or memoranda signed by appropriate qualified professionals where required by the City, showing the location and dimension of all improvements, including information concerning topography, radio frequency coverage, pole height, setbacks, drives, parking, fencing, landscaping, adjacent uses, drainage, and other information deemed by the Director to be necessary to assess compliance with this section;
 - g. Submission of evidence of required licenses and registrations from federal and State regulatory bodies, including the Federal Communications Commission, necessary for the services to be provided; and

- h. A franchise from the City allowing the wireless provider to operate in the Right-of-Way if it does not already have a fiber-optic franchise from the City.
4. Other Information. Each applicant for a SWF permit or for the erection of a Utility Pole in the ROW shall provide to the Director, unless waived by the Director, the following information and documents:
- a. The business form of the person making the application.
 - b. If the applicant is a partnership or limited partnership, the names and addresses of all such partners and their respective interests; if a corporation, the names and addresses of the officers and directors of the corporation and the names of any persons holding more than ten percent of the common and preferred stock of the company, together with their proportionate interests indicated.
 - c. A proposed plan for the installation, operation and maintenance of the applicant's communications system indicating methods of construction, including specifications for design, installation, technical capacity and maintenance, and arrangements with any other company or person for use of poles or other facilities.
 - d. The most current financial statement of the applicant.
 - e. The applicant's experience in the field of service it plans to provide in the City.
 - f. The applicant's capability to provide cellular service, if reasonably in question.
 - g. The applicant's agreement to pay the fees and rates for use of the Right-of-Way provided in this section.
 - h. An attestation by an authorized officer of the applicant that the SWF will be operational for use by a Wireless Service Provider within 270 days after the day on which the City issues the permit except in the case that the lack of commercial power or communications transport infrastructure to the site delays completion, or for other good cause reasonably beyond the control of the provider approved by the Director.

The Community Development Department may share information on the location of SWFs and wireless communication support poles with other applicants applying for administrative approvals or permits under this section, or other organizations seeking to locate SWFs within the City, provided that doing so does not violate any records confidentiality requirements of Utah Code Section 63G-2-305, and provided however, that the Community Development Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable, or that the information provided by an applicant is correct.

5. Applications for New and Modified or Replacement Poles. Each application to erect a new, modified or replacement wireless communications pole in the Right-of-Way shall be reviewed by the Director or his designee for conformance to this section and the Land Development Code using the Site Plan review procedures set forth in the Land

Development Code. Should the Director determine that the proposed pole or SWF will have a significant adverse visual impact, (e.g., due to proximity to historic or aesthetically significant structures, views, and/or community features) or otherwise be incompatible with the surrounding area the Director may deny the application or refer the application to the Telecommunications Review Group for a recommendation. A Wireless Service Provider may replace or upgrade a Utility Pole only with the written approval of the Utility Pole's owner.

6. Power and Fiber-Optic Connections. With all applications for SWFs, each applicant shall provide written documentation from the wireless communications pole or SWF permittee affirming that an agreement has been reached with the applicant to allow for legal access to and from the pole or facility. The City may require evidence that agreement has been reached for the legal provision of needed services with Rocky Mountain Power or other lawful electricity provider for electricity and other providers of facilities (such as fiber-optic service) needed to operate and maintain the SWF.

F. Time Frame for Review.

1. Subject to the tolling provisions of subparagraph (2) next below, within thirty (30) days of the date on which an applicant submits an application seeking collocation of a SWF or for a new, modified, or replacement Utility Pole, the City shall: determine whether the application is complete; and notify the applicant that the City's determination of whether the application is complete.
2. If the City determines, within the applicable time period described in Subsection (1) next above, that an application is incomplete: the City shall specifically identify the missing information in the written notification sent to the applicant; and the processing deadline for the application is tolled: from the day on which the City sends the applicant the written notice to the day on which the City receives the applicant's missing information; or as the applicant and the City agree.
3. An application for a SWF expires if: the City notifies the Wireless Service Provider that the Wireless Provider's application is incomplete, in accordance with this section; and the Wireless Service Provider fails to respond within 90 days after the day on which the City notifies the Wireless Service Provider under this section.
4. The City shall: process an application on a nondiscriminatory basis; and approve or deny an application: for the collocation of a SWF, 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 and five (105) days after the day on which the City receives the complete application. If the City fails to approve or deny an application within the applicable time period described in Subsection (4), the application is approved. Notwithstanding Subsections (4), the City may extend the applicable period described in Subsection (4) for a single additional period of ten (10) business days, if the City notifies the applicant before the day on which approval or denial is originally due.

If the City denies an application it shall document the basis for the denial, including any specific law on which the denial is based; and shall send such documentation to the applicant on or before the day on which the City denies the application.

G. Compliance with Applicable Law.

1. Notwithstanding the approval of an application for Collocation or non-substantial modification as described herein, all work done pursuant to permits issued hereunder must be completed in accordance with all applicable building and safety requirements as set forth in the Revised Ordinances of Sandy City Utah, 1978 (Rev. Ord. of Sandy), the Land Development Code, the site plan approval (if applicable), and all other applicable regulations. In addition, all SWFs shall be operated and maintained in compliance with the following requirements:
 - a. They shall comply with all applicable permits or licenses issued by a local, State or federal government agency with jurisdiction over the SWF;
 - b. They shall comply with license or lease agreements, easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
 - c. They shall be maintained in good working condition and to the standards established at the time of application approval, or as required by then-current federal or State law; and
 - d. They and the areas around them shall remain free from trash, debris, litter, graffiti, and other forms of waste and vandalism. Any graffiti shall be promptly removed or painted over, and any damage shall be repaired as soon as practicable after a permit is granted by the City, when required, and in no instance more than ten (10) calendar days from the time of notification by the City or after discovery by the permittee of the SWF.
2. Compliance Report. Upon request by the City, the applicant shall provide a compliance report within forty five (45) days after installation of a SWF, demonstrating that as installed and in operation, the SWF complies with all conditions of approval, applicable City ordinances and applicable regulations.

H. Permit and Renewal Term. Any validly issued permit for a SWF or Utility Pole will automatically expire at 12:01 a.m. local time exactly ten (10) years and one (1) day from the issuance date. If there is no basis for denial, an authority shall grant the renewal of an application under this section for an equivalent duration. No renewal shall be valid unless all of a wireless provider's SWFs and related wireless communication facilities fully comply with this section, Utah State Code, and City ordinances.

I. Siting, Design, Stealth Implementation.

1. Siting and Design. SWFs and related facilities shall meet the requirements of this section unless the applicant can clearly show and the Director finds that such requirements are not technically and economically feasible for the applicant.

2. **Stealth Implementation.** Construction of SWFs must utilize stealth implementation meeting the provisions of this section if such camouflage measures are technically and economically feasible consistent with Utah law. A SWF or a supporting pole employ stealth design or implementation when it: (1) is integrated harmoniously into an outdoor fixture such as a light pole, in a manner which minimizes or eliminates visual impact, avoids notice, or is not readily apparent; or (2) uses design which mimics and is consistent with the nearby natural or architectural features or replaces existing facilities so that the presence of the SWF is not readily apparent. Stealth Implementation includes the following methods of implementation, which shall be required of all SWFs and related facilities which are placed in the Right-of-Way. All SWFs and supporting poles on which they are mounted shall comply with the following requirements, subject to the exceptions in this section, or Technical Necessity Exceptions found in the Special Uses chapter of the Sandy City Land Development Code.
3. **Height of the Combined Pole and Antenna.** For all new facilities and substantial modifications to existing facilities, height of the combined pole and Antenna, including after a change or collocation under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 1996, except as otherwise required by Section 6409(a), as measured from the base of the pole at ground level (including any concrete or other support) will, except in respect to poles legally erected before the effective date of this section, be limited to 50 feet in height for City streets which are not residential streets, and major and minor arterial streets, although the City encourages poles no higher than thirty (30) feet on major and minor arterials, and not more than twenty (20) feet on local streets. An Antenna associated with a SWF may not extend more than ten (10) feet above the top of a Utility Pole existing on or before September 1, 2018. The height restrictions may be exceeded only with a technical necessity exception provided and paid for by the applicant. The height will be reviewed by the Telecommunications Review Group and approved or denied by the Director. SWFs shall be located no closer to the nearest building than the combined height of the pole and Antenna.
4. **Antennas.** No Antenna shall be taller than ten (ten) feet above the top of the wireless communications pole or pole extender on which it is mounted except as otherwise allowed by Utah Code Section 54-21-602.
5. **Power to Pole.** Power to the SWF support pole must come through the base of the pole.
6. **Use Existing Poles.** Wireless Service Providers of SWFs are encouraged, to the extent practicable, to use existing Utility Poles and other infrastructure, including street signs, light poles, traffic lights, and other similar infrastructure.
7. **Invisibility of Seams, Bolts, Wires, Cables, Assemblies.** Seams, bolts/screws, Antennas, wires, cables, and conduits and shroud assembly shall be fabricated and installed in a manner so as to reduce visibility. Wires and cables which cannot be placed inside a pole shall be placed in conduits which are as inconspicuous as is commercially feasible.
8. **Wireless Facility Poles – Construction and Finish.** To the extent technically and economically feasible, wireless facility poles installed by a Wireless Service Provider

shall be constructed of metal or a material, which when painted or otherwise finished, looks like metal, such as fiberglass, and shall match nearby existing City light poles in appearance. New wood poles will not be allowed. Antennas and all related accessory equipment, including mounting mechanisms, must be painted and repainted to match the pole.

9. Decorative poles. If necessary to collocate a SWF, a Wireless Service Provider may replace a Decorative Pole, if the replacement pole reasonably conforms to the appearance of the replaced Decorative Pole.
10. Sharing of Poles Encouraged. Sharing of wireless communication poles and Utility Poles is encouraged for all SWFs where feasible.
11. Street Intersection Preference. Wireless Service Providers are encouraged to locate SWFs where feasible at or near the corners of street intersections.
12. No Extension into Traveled ROW. Except for a traffic signal pole, City light pole or City light fixture, no portion of any SWF or its supporting pole shall extend into portion of the Right-Of-Way or any public sidewalk intended for travel by vehicles or pedestrians, nor shall any SWF be placed in the median of any street.
13. New and Replacement Poles – Designed for Collocation. New and replacement wireless communication poles shall match nearby existing City light poles, and shall be designed and constructed to permit the pole or other support facility to accommodate SWFs from at least two (2) Wireless Service Providers on the same pole, unless the Director approves an alternative design, or unless the applicant clearly demonstrates that doing so is not practically feasible. Collocation of SWFs shall be allowed by the permittees of SWFs except where impracticable or otherwise illegal. A permittee which installs a new pole or a pole replacing a City-owned pole shall be responsible for the maintenance of the pole at its expense, but the City shall be allowed to maintain any lights, traffic semaphores, or other-City-owned equipment on the pole at the City's expense. City will own the new pole.
14. Pole Extender. A pole extender may be used instead of replacing an existing pole, provided the pole extender is safe, structurally sound and can otherwise meet the requirements of this section, unless a further height increase is required and confirmed in writing by the pole owner, and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities and does not extend the total height of the pole, with the pole extender, more than fifty (50) feet. The pole extender shall be painted or finished to substantially match the color of the pole and the diameter of the pole measured at the top of the pole. A "pole extender" as used herein is a structure affixed between the Utility Pole and the Antenna for the purpose of increasing the height of the Antenna above the pole.
15. Pole-Mounted Equipment. All pole-mounted equipment and Antennas must: be installed as close to the pole horizontally as technically and economically feasible and enclosed in a container approved by the Director as technically and economically feasible, but no

larger than six (6) cubic feet in volume for an Antenna, and no larger than twenty eight (28) cubic feet for all wireless equipment, including the Antenna, ground and pole-mounted equipment; to minimize impacts to the visual profile, painted flat and non-reflective colors to match the supporting pole, placed behind existing signs, and oriented away from prominent views; all required or permitted signage in the Right-of-Way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures; and all conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible. To the extent reasonably feasible, each SWF shall be consistent with the size and shape of the pole-mounted equipment installed by communications companies on Utility Poles on the same pole and near the proposed SWF.

16. Aesthetic Impacts. Each SWF shall be sited and maintained to minimize the negative aesthetic impacts to the Right-of-Way.
17. Traffic Signals. Each SWF shall be designed such that antenna installations on traffic signal poles are placed in a manner so that the size and appearance, of the signal will not be significantly altered, and so that there be no alteration in the function of the signal.
18. Visual Clutter. To the extent technically and economically feasible each SWF shall be designed and maintained such that all Antennas, mast arms, related accessory equipment, and other facilities and elements are sized to minimize visual clutter.
19. Newly Installed Equipment boxes and underground equipment. All newly installed equipment boxes and related accessory equipment shall be located in a manner that poses no significant risk to public safety and such that boxes and equipment meet the aesthetic requirements of this section, and if such equipment is not installed on or in a pole, then it shall be installed in a flush-to-grade or underground equipment vault whenever all cable and utility facilities, other than City poles and attachments, are so placed.
20. Interference of SWFs. No SWF shall alter vehicular circulation, usual travel, public safety or parking within the Right-of-Way or impede vehicular, bicycle, or pedestrian access or visibility along the Right-of-Way. No SWF may be located or maintained in a manner that causes unreasonable interference. "Unreasonable interference" means any use of the Right-of-Way that disrupts or interferes with its use by the City or operation of City improvements, use by the general public, or other person authorized to use or be present upon the Right-of-Way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right -of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare. In addition, no SWF or Utility Pole may 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.
21. Relocation. Wireless Service Providers are encouraged to locate or relocate SWFs and wireless communication poles concurrently with other users of the Right-of-Way in order to minimize disruption. Wires and communication cables serving SWFs shall be installed within existing underground ducts or conduit where feasible.

22. Relocation at City Request. After adequate written notice to a Service Wireless Provider, the Public Works Director may require a Wireless Service Provider, at the Wireless Service Provider's sole expense and in accordance with the standards in this chapter applicable to such facility, to relocate a facility in the Right-of-Way in a timely manner as the City deems necessary to maintain or reconfigure the Right-of-Way for other public projects or take any actions necessary to protect public health, safety and welfare.
23. Signs, Advertising. No SWF may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every SWF shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number and street address to contact the facility owner's operations center. Such identifying signs shall be less than three (3) by five (5) inches in size with letters between ten (10) and fourteen (14) points in size, and shall be clearly visible and readable.
24. Historic and Design Districts. An applicant shall obtain a permit before collocating a pole or a SWF in a historic or design district. Such poles and SWFs shall meet the pole-height and stealth requirements of this section, and shall match, as closely as economically and technically feasible, the closest City light poles in the zone where located.

J. Technical Necessity Exceptions. If an applicant cannot meet the requirements of stealth design in this section because of engineering or technological incapability or substantial implacability ("technical reasons"), an applicant may apply for a technical necessity exception, which may be granted by the Director after receiving a recommendation from the Telecommunications Facilities Group, provided that even where a technical necessity exception is allowed, the applicant shall, to the extent it can, meet the requirements of this section of the code. If an applicant cannot or will not meet those standards for reasons other than technical reasons, the use is not allowed.

1. New Poles and SWFs in Residential Districts. No new Utility Poles or SWFs shall be permitted in a public Right-of-way which is not more than sixty (60) feet wide as depicted in the official plat records and adjacent to single family residential lots, other multi-family residences, or undeveloped land that is designated for residential use by zoning or deed restrictions unless the applicant demonstrates to the reasonable satisfaction of the City's Director or Telecommunications Review Group that without such Utility Pole the applicant will be unable to will not meet the applicant's reasonable wireless communication needs and qualifies for a technical necessity exception under this chapter. Evidence submitted with the application for the technical necessity exception may consist of, but shall not be limited to, the following things:
 - a. No existing poles with a suitable height are located within the geographic area required to meet the applicant's engineering requirements even if applicant increases the number of existing poles and antennas it uses;

- b. Existing poles do not have sufficient structural strength to support applicant's proposed SWF;
- c. The applicant's proposed SWFs would cause electromagnetic interference with the SWFs on the existing SWFs or the existing SWF would cause interference with the applicant's proposed SWF;
- d. The applicant demonstrates that there are other limiting factors that render existing poles, cabinets and other SWFs on or in which applicant might collocate unsuitable for collocation; and
- e. Any poles erected anywhere other than at the intersections of streets shall be centered between trees where practicable, but shall be no closer than ten (10) feet from any tree in the ROW.

2. Independent Consultant Review

- a. The City Council authorizes the Community Development Director to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the Community Development Director in connection with any permit application.
- b. The Community Development Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to: Permit application completeness or accuracy; planned compliance with applicable RF exposure standards; whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity; whether technically feasible and potentially available alternative locations and designs exist; the applicability, reliability and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and any other issue that requires expert or specialized knowledge identified by the Community Development Director.
- c. The applicant must pay for the cost of such review and for the technical consultant's initial testimony as requested by the Director, and must provide a reasonable advance deposit of the estimated cost of such review with the City prior to the commencement of any work by the technical consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the Community Development Director. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the Director shall invoice the applicant who shall pay the invoice in full within ten (10) calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee. The Director has the discretion to hold a public hearing in deciding matters under this section.

K. Performance Bonds. Each Wireless Service Provider shall provide to the City and shall maintain for the period it has SWFs in the City's ROW a bond to assure the performance of its obligations under this section with a company with an A.M. Best's rating of B+ or better

in an amount of 140 percent of the City's reasonable estimated cost of removal of the facilities to be installed or constructed by applicant. The City may require that the amount of the surety bond be increased if the City reasonably believes that the amount of the bond is insufficient to cover the City's cost of removal of a Wireless Service Provider's facilities or support poles, or if the Wireless Service Provider increases the number such poles or facilities. If the Wireless Service Provider fails to perform its obligations under this chapter in any respect, including making any payment to the City required by this Agreement or by applicable law for reimbursable costs incurred by the City, the City may, after thirty (30) days' written notice to the Wireless Service Provider, if the obligation is not performed by the Wireless Service Provider, withdraw or make a claim for that amount from the security fund.

L. Related Accessory Equipment. Related accessory equipment for all SWFs shall meet the following requirements: All shall be placed on or inside of poles where they meet stealth requirements, or placed underground or flush-mounted to ground level consistent with Utah Code Section 54-21-207. Cabinets and other accessory components which cannot feasibly be placed underground shall be grouped as closely as reasonably possible and camouflaged to the extent reasonably possible unless otherwise approved by the Director; the total footprint on or under the ground of the SWF shall not exceed six (6) square feet; and no SWF or related accessory equipment shall exceed thirty (30) feet in height, unless placed on or inside of poles.

1. **Lighting.** SWFs shall not be artificially lit, unless required by the FAA or other applicable governmental authority, except in cases in which the SWF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, it must be approved by the Director. The City may review the available lighting alternatives and approve the design that would cause the least disturbance to the nearby properties and surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences. No visible flashing indicator lights or similar devices will be allowed in the Right-Of-Way, unless part of existing light poles where lighting is an intended use, and unless such flashing lights or similar devices are part of the City's normal lighting program for such facilities, unless otherwise approved by the Director for good cause.

2. **Noise.** Noise generated at the site of a SWF must not exceed the levels permitted by City or Salt Lake County ordinances, except that a SWF permittee may, when necessary, exceed such standards for a reasonable period of time during installation, removal and repairs, not to exceed two (2) hours in any day without prior authorization from the City.

J. Pruning Trees and Shrubs. If a permittee or its contractor determines that trees and vegetation in the Right-of-Way interfere with the installation, maintenance, or removal of applicant's SWFs and need trimming, it shall request of the Public Works Department that such trimming or pruning be done with sufficient specificity for the City to assess the need to perform the work. If the trees or vegetation unreasonably interfere with the permittee's needed installation, removal or maintenance of such SWFs, and if the City has not trimmed or removed the vegetation within fifteen (15) days of such request, then the permittee may by

its own employees or by a contractor perform the needed work, provided (1) that it first give at least three (3) business days' written notice to the Public Works Department of the work it intends to do in detail with respect to each tree or shrub, and (2) provided the Public Works Department does not send a written objection before the end of the three (3) day period. The Public Works Department may allow such trimming and pruning on less notice when the need to trim a tree or vegetation is due to an emergency, or is urgently needed in order to repair a SWF which is seriously damaged or is not operating properly. All pruning and trimming performed by or for a permittee shall comply with City ordinances and the American National Standard for Tree Care Operation (ANSI A300) and Best Management Practices: Utility Pruning of Trees and be conducted under the direction of an arborist certified with the International Society of Arboriculture.

- K. Damage and Repair.** No applicant for or permittee of any SWF, or anyone acting on such person's behalf shall take any action or permit any action to take place which may impair or damage any Right-of-Way or the property of another located in, on, or adjacent thereto.

If a Wireless Service Provider's activity causes damage to a Right-of-Way, the Wireless Service Provider shall repair the Right-of-Way to substantially the same condition as before the damage. If a Wireless Service Provider fails to make a repair required by an authority under Subsection(s) within a reasonable time after written notice, the authority may: make the required repair; and charge the Wireless Service Provider the reasonable, documented, actual cost for the repair.

If the damage described in Subsection (2) causes an urgent safety hazard, an authority may: immediately make the necessary repair; and charge the Wireless Service Provider the reasonable, documented, actual cost for the repair.

1. Notice of Work. Unless otherwise provided in a permit, no person or anyone acting on such person's behalf shall commence any non-emergency work in or about the Right-of-Way without ten (10) days' written notice to the Department of Public Works and permittees of property adjacent or near the work area and likely affected by such work of the intent to do so. The notice shall contain a reasonably detailed description of the work to be performed, the properties and area to be affected by it, and a reasonable estimate of the time the work is expected to take. The Department of Public Works may develop a procedure for dispensing with this notice procedure in situations where the impact of the work to be performed is not substantial, or in cases of emergency where notice is not practical in the discretion of the Department.
2. Repair and Emergency Work. In the event of an unexpected and urgently needed repair or emergency, a permittee may commence repair or emergency work as reasonably required under the circumstances, provided notice is given to the City and property owners as promptly as possible, which shall contain the information required in Section 15A-39-15, and reasonably detailed information about the work performed and how it is likely to affect the City, the public using the Right-of-Way, the adjacent or nearby property or permittees, utility and telecommunications equipment permittees.

3. Removal of Unauthorized SWFs. Within forty five (45) days of written notice by the City, a permittee shall, at its sole expense, remove any SWF from the Right-of-Way upon any of the following events: Termination or expiration of such person's permit, approval, or license under which the SWF was authorized; abandonment of a SWF within the Right-of-Way; the facility having been constructed or located without the prior grant of a permit, or constructed or located at a location not so permitted; or circumstances reasonably determined by the City to be inconsistent with public health, safety, or welfare, the circumstances of which were not known at or which arose after the time of the issuance of any permit, approval, or license.
4. Failure to Remove or Relocate. If any person subject to this section who owns, controls, or maintains any unauthorized SWFs within the Right-of-Way fails to remove or relocate any SWFs as required in this section, the City may cause such removal or relocation and charge the permittee for the costs incurred.
5. Emergency Removal or Relocation of SWFs. The City reserves the right to cut, alter, remove, or relocate any SWFs located within the Right-of-Way as necessary in the event of an imminent or current public health or safety emergency.
6. Damage to SWFs by City. The City shall not be liable for any damage or destruction of any SWF damaged by the City, its contractors or agents which was not relocated or removed by the permittee within the time required by the City.

L. Insurance. Unless specifically agreed to by the City after evaluating the risk, a person subject to this section shall secure and maintain in force the following liability insurance policies (or evidence of self-insurance satisfactory to the City):

1. Two million dollars for personal injury or death to any one person and \$3,000,000 aggregate for personal injury or death per single accident or occurrence.
2. Two million dollars for property damage to any one person and \$3,000,000 aggregate for property damage per single accident or occurrence.
3. Two million dollars for all other types of liability including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Utah, or any local agency with jurisdiction.

Such insurance shall specifically name as additional insured the City, its officers, volunteers and employees, and shall further provide that the policy shall not be modified or canceled during the life of the permit without giving at least 30 days' written notice to the City.

A person subject to this section shall file with the City copies of all certificates of insurance showing up-to-date coverage, additional insured coverage, and evidence of payment of premiums as set forth above before commencing any work in the Right-of-Way, and upon request by the City. Coverage shall not be changed or canceled without approval of the City,

and failure to maintain required insurance may be considered a breach of this agreement. The City may at its option review all insurance coverage. If it is determined by the City Risk Manager that circumstances require and that it is reasonable and necessary to increase insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be acquired. The City shall provide written notice should the City exercise its right to require additional insurance. All insurance shall provide 30 days' prior written notice to the City in the event of modification or cancellation. The City shall be provided written notice within 30 days after any approved reduction in the general annual aggregate limit.

The Director or the City's Risk Manager may require increases in insurance coverage when the dollar values change by more than 20 percent as measured by the CPI-U.

M. Indemnification. A person subject to this section shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in its capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise (except those arising from the sole negligence on the part of the City, its employees or agents) (A) for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of such person or its officers, agents, employees, or contractors or to which such person or its officers', agents', employees' or contractors' acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by the permit or applicable law; (B) arising out of or alleged to arise out of any claim for damages for such person's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; and/or (C) arising out of or alleged to arise out of such person's failure to comply with the provisions of any statute, regulation or applicable policy of the United States, state of Utah or any local agency applicable to such person in its business. Nothing herein shall be deemed to prevent the City, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve a person subject to this section from its duty of defense against liability or of paying any judgment entered against the City, its officers, or its employees.

N. Assignments or Transfers of Permits. The City reserves the right to require in any permit issued under this section that ownership or control of a person subject to this section shall not, directly or indirectly, be transferred, assigned, or disposed of by sale, lease, merger, consolidation or other act of such person, by operation of law or otherwise without the prior written consent of the City, which consent the City may withhold or condition in its discretion. The subleasing of the space on poles is permitted, subject to the terms of this section and the terms of any license or lease agreement for use of the poles.

1. Absent extraordinary and unforeseeable circumstances, no permit shall be assigned or transferred before construction of the SWFs has been completed.

2. A permittee and the proposed assignee or transferee shall provide and certify the following to the City not less than one hundred and twenty (120) days prior to the proposed date of transfer: Detailed information setting forth the nature, terms and conditions of the proposed assignment or transfer; all information otherwise reasonably required by the City of a permit applicant under this section with respect to the proposed assignee or transferee; and an application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.
 3. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to carry on the activities of the permit required by applicable laws, ordinances, approvals, licenses and permits.
 4. Any transfer or assignment of a permit without the prior written consent of the City as set forth herein shall be void and shall result in revocation of the existing permit.
 5. Before a transfer is effective, the transferee shall file with the Director a signed statement signed by the transferee that the transferee shall accept of all permit terms and conditions. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in this section.
- O. Transfers Affecting Control.** Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the permittee, or of the ownership or control of affiliated entities which have ownership or working control of the permittee, or of control of the capacity or the SWFs or substantial parts thereof shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval; however, a transfer by a permittee to another person or entity controlling, controlled by, or under common control with the permittee shall not require City approval, provided notice thereof is timely provided to the City. Approval shall not be required for mortgaging purposes.
- P. Obligation to Comply with this Section.** An applicant or permittee shall not be relieved of its obligation to comply with every provision of the Revised Ordinances of Sandy City, this section, any permit issued hereunder or any applicable law or regulation by reason of any failure of the City to notice, enforce or prompt compliance by the applicant or permittee.
- Q. Conflicts with Prior Ordinances.** In the event that any City ordinance or regulation, in whole or in part, adopted prior to the effective date of this chapter, conflicts with any provisions in this section, the provisions of this section will control.
- R. Violations.** Any unauthorized installation made prior to obtaining a permit, approval of an applicant's master plan, and violations of other related requirements of the City, may be grounds for denial of an application, or other sanctions allowed by law.
- S. Revocation or Termination.** A permit granted hereunder may be revoked (or revoked in respect to those facilities in the permit determined to violate the following subparagraphs) for the following reasons: Construction or operation anywhere in the City without a permit contrary to city ordinances; construction or operation at an unauthorized location;

unauthorized assignment of a permit; unauthorized sale, assignment or transfer of all of a permittee's assets, or a substantial interest therein; misrepresentation by or on behalf of a person in any application upon which the City relies in making any decision herein; abandonment of SWFs in the ROWs without timely removal and restoration as required by law; Failure to relocate or remove SWFs as required in this section; Failure to pay taxes, compensation, fees or costs when and as due; Insolvency or bankruptcy of the permittee; Violation of a provision of this section; or Violation of the terms of a permit.

Standards for Revocation or Lesser Sanctions. In determining whether a person subject to this section has violated or failed to comply with provisions of this section or of a permit, the Director shall determine the appropriate action to take considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors: Whether the misconduct was egregious; whether substantial harm resulted; whether the violation was intentional; whether there is a history in the City or in other jurisdictions within the last five years of prior violations of the same or other requirements; whether there is a history of overall compliance in the City or in other jurisdictions within the last five years; and whether the violation was voluntarily disclosed, admitted or cured.

- T. Notice and Duty to Cure.** In the event that the City believes that grounds exist for revocation of a permit, the City shall give the person subject to this section written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing such person a reasonable period of time not exceeding thirty (30) days to furnish evidence: That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance. That rebuts the alleged violation or noncompliance. That it would be in the public interest to impose some penalty or sanction less than revocation.
- U. Limited Exemptions from Standards.** All exemptions granted under this section are subject to review and reconsideration by the Community Development Director. The applicant always bears the burden to demonstrate why an exemption should be granted. An applicant seeking an exemption under this section for SWFs on the basis that a permit denial would effectively prohibit personal wireless services must demonstrate with clear and convincing evidence all the following: A significant gap in an applicant's service coverage exists; and all alternative sites identified in the application review process are either technically infeasible or not potentially available.
- V. Appeals.** A person aggrieved by a decision of the City may appeal to the City's Board of Adjustment, and may not appeal to district court without first appealing to the Board of Adjustment.
- W. Severability.** If any provision of this section or any amendments thereto is in conflict with any applicable federal or State law now in force or hereafter enacted, such provision shall be inoperative to the extent of such conflict and be treated as though it had not been included herein, but all other provisions of this section shall remain in force. In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this

section. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.

- X. Headings and Captions.** Headings and captions used in this section other than the section, article, division and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section.
- Y. Force Majeure Events.** Neither a Wireless Service Provider nor the City shall not be in breach of its obligations under this section nor shall the City nor a Wireless Service Provider incur any liability to the other for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this section) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Section shall not apply to that extent).

As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, the Wireless Service Provider or the City invoking it shall submit to the other reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Wireless Service Provider's or the City's obligations under this Agreement.

Each Wireless Service Provider and its subcontractors shall, at all times take all reasonable steps within their respective powers and consistent with good operating practices (but without incurring unreasonable additional costs) to: prevent Force Majeure Events affecting the performance of the provider's obligations under this section; mitigate the effect of any Force Majeure Event; and comply with its obligations under this section.

A Wireless Service Provider and the City invoking a Force Majeure Event shall consult together in relation to the above matters following the occurrence of such an event. "Force Majeure Event" means the occurrence of: an act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder; ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device; a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), in each case affecting on a general basis the industry related to the affected services and which is not attributable to any unreasonable action or inaction on the part of the wireless facilities provider or any of its subcontractors or suppliers and the settlement of which is beyond the reasonable control of all such persons; specific incidents of exceptional adverse weather conditions in excess of those required to be designed for in this section which are materially worse than those encountered in the relevant

places at the relevant time of year during the forty (40) years prior to the time the wireless services provider first provides service through SWFs within the City; tempest, tornado, earthquake or any other natural disaster of overwhelming proportions; pollution of water sources; discontinuation of electricity supply; or other unforeseeable circumstances beyond the control of the wireless service provider against which it would have been unreasonable for it to take precautions and which the it cannot avoid even by using its best efforts, which in each case directly causes the wireless service provider to be unable to comply with all or a material part of its obligations under this section.

15A-38 Definitions.

Applicant The person who applies for a permit, license, or other right under this chapter.

Antenna Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devised and configurations; and exterior apparatus designed for telephone, radio or television communications through the sending and/or receiving of wireless communications signals.

Base Station A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a pole as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

- A. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed personal wireless services and fixed personal wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Section of the Land Development Code, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this Section, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

Collocate or Collocation To install, mount, maintain, modify, operate, or replace a small wireless facility: on a wireless support structure or Utility Pole; or for ground-mounted equipment, adjacent to a wireless support structure or Utility Pole.

Decorative Pole A City-owned or managed pole: that is specially designed and placed for an aesthetic purpose; and on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than: a small wireless facility; a specialty designed informational or directional sign; or a temporary holiday or special event attachment; or on which no appurtenance or attachment has been placed, other than: a small wireless facility; a specialty designed informational or directional sign; or a temporary holiday or special-event attachment.

Design District An area: that is zoned or otherwise designated by City ordinance or code; and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Director The Director of the Community Development Department, or the Director's designee.

Eligible Facilities Request A collocation or modification that is not a substantial modification any request for modification of an Existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station involving: Collocation of new transmission equipment. Removal of transmission equipment. Replacement of transmission equipment.

Emergency Any occurrence, or substantial imminent threat thereof, whether natural, technological or man-made, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Hazardous Materials Any substance: Which is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of Utah or any political subdivision thereof; or which contains asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity or petroleum, including crude oil or any fraction thereof; or which is or becomes defined as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material or toxic substance under the Resource Conservation and Recovery Act, 42 U.S.C. § § 6901-6987; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § § 9601-9657; the Hazardous Materials Transportation Act, 49 U.S.C. § § 1801-1812; the Clean Water Act, 33 U.S.C. § § 1251-1387; the Clear Air Act, 42 U.S.C. § § 7401-7642; the Toxic Substances Control Act, 15 U.S.C. § § 2601-2655; the Safe Drinking Water Act, 42 U.S.C. § § 300f-300j; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § § 11001-11050; under title 19, chapter 6 of the Utah Code, as any of the same have been or from time to time may be amended; and any similar federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials on the Property, including all interpretations, policies, guidelines and/or directives of the various governmental authorities responsible for administering any of the foregoing, now in effect or hereafter adopted, published and/or promulgated; or the presence of which on the Property requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy, or common law; or the presence of which on the Property causes or threatens to cause a nuisance on the Property or to adjacent properties or poses or threatens to pose a hazard to the health and safety of persons on or about the Property.

Land Development Code Sandy City Land Development Revised 2008.

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; and on which any exterior antenna is no longer than 11 inches; and that only provides Wi-Fi service.

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

Personal Wireless Services Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined at 47 U.S.C. Section 332 (c)(7)(C), or as modified from time to time in the United States Code.

Permittee The person who has received a permit to operate or maintain a SWF under this ordinance, or that person's authorized representative.

Pole Agreement An Agreement by the owner of a pole in the ROW to place a SWF on the pole.

Related Accessory Equipment The transmission equipment customarily used with, and incidental to Wireless Communication Facilities antennas, including by way of example, coaxial or fiber-optic cable, regular and backup power supply and remote radio units.

Section 6409(a) Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

Section 6409(a) Modification Any eligible facilities request that does not cause a substantial change and submitted for approval pursuant to Section 6409(a) and the FCC's regulations at 47 C.F.R. §1.40001 and following sections.

Small Wireless Communications Facility A type of wireless facility: (a) on which each Wireless Service Provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (b) 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: (i) electric meter; (ii) concealment element; (iii) telecommunications demarcation box; (iv) grounding equipment; (v) power transfer switch; (vi) cut-off switch; (vii) vertical cable run for the connection of power or other service; (viii) WirelessService Provider antenna; or (ix) 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.

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 modification standard established in 47 C.F.R. Sec. 1.40001(7); or (b) a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part 1,

Appendix C, Sec. III.B. An explanatory Note is the thresholds for a substantial modification outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial modification would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

SWF Small Wireless Communication Facility

Technical Necessity Exception The allowance of a facility to be maintained because of engineering or technological incapability or significant implacability reasons.

Telecommunications Review Group Comprised of the directors of the Sandy City departments of Community Development, Public Works, Public Utilities, and the City Attorney, or their designees, and others appointed from time to time by the City's CAO.

Utility Pole A pole or similar structure that: is in a Right-of-Way; and is or may be used, in whole or in part, for: wireline communications; electric distribution; lighting; traffic control; signage; a similar function to a function described in Subsections (28)(a)(i) through (v); or the collocation of a small wireless facility.

Utility pole *does not* include: a wireless support structure; a structure that supports electric transmission lines; or a municipally owned structure that supports electric lines used for the provision of municipal electric service.

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

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

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

Wireless Service Provider A company or other entity providing wireless cell service, or a company providing services to such a company or entity by contract.