

ORDINANCE NO. 2019-15

AN ORDINANCE ADOPTING CHAPTER 18.111 SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY

WHEREAS, Senate Bill 189 has made Small Wireless Facilities a permitted use in the public right of way.

WHEREAS, the City finds it to be in the public interest to provide standards for Small Wireless Facilities to protect the community character and allow telecommunication providers to improve service in the City through non-discriminatory standards.

BE IT ORDAINED by the City Council of Heber City, Utah, that Chapter 18.111 Small Wireless Facilities In The Public Right Of Way is **ADOPTED** as shown in Exhibit 1.

This Ordinance shall take effect immediately upon passage.

ADOPTED and PASSED by the City Council of Heber City, Utah this 7 day of May, 2019, by the following vote:

	AYE	NAY	
Council Member Jeffery M. Bradshaw	<u>Non-voting</u>	<u>Presiding officer</u>	
Council Member Heidi Franco	<u>X</u>	<u>    </u>	
Council Member Wayne Hardman	<u>X</u>	<u>    </u>	
Council Member Jeffrey W. Smith	<u>X</u>	<u>    </u>	
Council Member Ronald R. Crittenden	<u>X</u>	<u>    </u>	



APPROVED:

Jeffery M Bradshaw  
 Mayor Kelleen Potter Pro-tem  
 Jeffery Bradshaw

ATTEST: Anna W. Lee

Date: 5/7/19

RECORDER

# **Exhibit 1**

## **18.111 Small Wireless Facilities In The Public Right Of Way**

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### **18.111.010 Purpose**

The purpose of this chapter is to reasonably regulate the installation, operation, co-location, modification, and removal of small wireless facilities (SWFs) in City public rights-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. This chapter is not intended to prohibit or effectively prohibit personal wireless services or to discriminate among providers of personal wireless services.

- A. This chapter is intended to meet the following goals:
  - 1. Promote and protect the public health, safety and welfare by reducing the visibility and adverse impacts of SWFs to the fullest extent possible through the use of integrated design techniques and sensitivity to placement, height, and overall impacts.
  - 2. Provide for the managed development and installation, maintenance, modification and removal of wireless communication infrastructure in the City without discriminating against wireless service providers of functionally equivalent services.
  - 3. Encourage the effective deployment of smaller and less intrusive SWFs where such facilities will have the greatest value to existing wireless infrastructure and minimize adverse impacts upon other infrastructure, the rights-of-way, and the public health, safety and welfare.
  - 4. Encourage the deployment of SWFs along arterial and collector streets and limit their deployment along local streets.
  - 5. Encourage the location of SWFs in non-residential areas.
  - 6. Encourage and support the co-location of SWFs wherever possible on both existing and new wireless support structures.
  - 7. Enhance the ability of wireless service providers to provide services to the community quickly and efficiently.
  - 8. Effectively manage SWFs in the public rights-of-way.
- B. 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 or with other laws codifying standards related to public health and safety.

### **18.111.020 Definitions**

- A. ANTENNA. Communication equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of wireless service.
- B. APPLICABLE CODES: The International Building Code, the International Fire Code, the National Electrical Code, the International Plumbing Code, and the International Mechanical Code, as adopted and amended under Utah Code Annotated, title 15A, State Construction and Fire Codes Act.

- C. **APPLICABLE STANDARDS:** The structural standards for antenna supporting structures and antenna, known as ANSI/TIA-222, from the American National Standards Institute and the Telecommunications Industry Association.
- D. **APPLICANT:** A wireless provider or their authorized agent who submits an application.
- E. **APPLICATION:** A request submitted by a wireless provider for a permit to co-locate a small wireless facility in a right-of-way or to install, modify or replace a utility pole or a wireless support structure.
- F. **CITY:** The City of Heber, Utah.
- G. **CO-LOCATE:** To install, mount, maintain, modify, operate, or replace a small wireless facility on an existing wireless support structure.
- H. **DESIGN DISTRICT:** An area that is zoned or otherwise designated by Municipal ordinance or City Code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
- I. **DIRECTOR:** The Planning Director or designee.
- J. **ELIGIBLE SUPPORT STRUCTURE:** Any monopole, utility pole, wireless support structure or related accessory equipment, as defined in this chapter, provided that it is existing at the time the relevant application is filed with the City.
- K. **PRINCIPAL ARTERIAL STREET:** A right-of-way identified as a Principal Arterial Street in the Capital Facilities Plan
- L. **MAJOR COLLECTOR STREET:** A right-of-way identified as a Major Collector Street in the Capital Facilities Plan.
- M. **MAJOR LOCAL STREET:** A right-of-way identified as a Major Local Street in the Capital Facilities Plan.
- N. **MICRO-WIRELESS FACILITY:** Refers to a type of very small wireless facility that, not including any antenna is no larger in dimension than twenty four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height, on which any exterior antenna is no longer than eleven inches (11"), and which only provides Wi-Fi service.
- O. **MINOR ARTERIAL STREET:** A right-of-way identified as a Minor Arterial Street in the Capital Facilities Plan.
- P. **MINOR COLLECTOR STREET:** A right-of-way identified as a Minor Collector Street in the Capital Facilities Plan.
- Q. **MINOR LOCAL STREET:** A right-of-way identified as a Minor Local Street in the Capital Facilities Plan.
- R. **MONOPOLE:** A structure in the right-of-way erected by an applicant or provider specifically to support SWFs.
- S. **NONDISCRIMINATORY:** Describes the equal treatment of similar situated entities unless there is a reasonable, competitively neutral basis for different treatment.
- T. **PERMIT:** Written authorization from the City allowing the provider to perform work pursuant to the installation of a small wireless facility.
- U. **RELATED ACCESSORY EQUIPMENT:** Refers to equipment used in conjunction with an antenna or other component of SWFs which may be attached to a wireless support structure or located on the ground at or near the base of a wireless support structure.
- V. **RIGHT-OF-WAY:** Refers to any area within, on, below, or above a public road, highway, street or alley, and may include sidewalks, park-strips and other areas associated with them and controlled by the City.
- W. **SMALL WIRELESS FACILITY (SWF):** A wireless facility on which each provider's antenna could fit within an enclosure of no more than six (6) cubic feet in volume and for which all related accessory equipment, whether mounted on the pole or the ground, is cumulatively no more than twenty eight (28) cubic feet in volume.
- X. **SUBSTANTIAL MODIFICATION:** A modification to an eligible support structure which: a) increases the height of the structure by more than ten percent (10%) or more than ten feet (10'),

whichever is greater; b) involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than six feet (6'); c) involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; involves the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure; or involves the installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; d) entails any excavation or deployment outside of the current site; or e) would defeat the concealment elements of the eligible support structure.

Y. **TECHNICALLY FEASIBLE:** The demonstrated measure of the feasibility of a proposal as it relates specifically to projected constraints of engineering, impacts to the signal, spectrum, stability, or practical interference with other facilities or properties.

Z. **UTILITY POLE:**

1. . A pole or similar structure in the public rights-of-way which is or may be used, in whole or in part, for: 1) wireline communications; 2) electric distribution; 3) lighting; 4) traffic control; 5) signage; 6) functions similar to items 1) through 5); or 7) the co-location of an SWF.
2. . Utility pole does not include: 1) a wireless support structure; 2) a structure that supports electric transmission lines; or 3) a City owned structure that supports electric lines used for the provision of the City's electric service.

AA. **WIRELESS SUPPORT STRUCTURE:** An existing or proposed structure located in the right-of-way and designed to support or to be capable of supporting an SWF. A wireless support structure does not include: 1) a structure designed solely for the co-location of an SWF; 2) a utility pole; or 3) a City owned structure that supports electric lines used for the provision of the City's electric service.

### **18.111.030 Approval Process**

It shall be unlawful to install any SWF without first having a permit from the Planning and Building Departments of the City. No building permit shall be issued for any project until a SWF permit has been approved. The approval process of SWFs is as follows:

- A. **Franchise Agreement:** Prior to the City approving a permit, the applicant must have entered into a small cell wireless franchise agreement. Franchise agreement requests do not qualify as an application.
- B. **Small Wireless Facility Applications.**
  1. **Land Use Authority.** SWF applications are subject to administrative review. The Planning Director, or designee, shall be the Land Use Authority for SWF applications.
  2. **Complete Application.** A SWF application is deemed complete upon the submittal of all required application elements as outlined in Section 18.111.050. Within thirty (30) days of receiving an SWF application, the City shall determine whether the application is complete, and notify the applicant in writing of the determination. If the application has been determined to be incomplete, the applicant notification shall include the findings for the determination.
  3. **Expiration.** When a SWF application has been determined as incomplete, the application shall expire after ninety (90) days following the notification to the applicant, should the applicant fail to respond with an updated application.
  4. **Review.** Upon the determination of a complete application, the City shall review and take action on said application within sixty (60) days for co-locations of SWFs and one hundred five (105) days for new monopoles and replacement utility poles. Upon the determination of the City that an application does not comply with the applicable laws, the applicant may resubmit modified plans within the applicable time periods. Failure by

the applicant to submit modified plans within the applicable time periods will result in the denial of the application. Upon receiving modified plans from the applicant, the City shall have thirty (30) days for review and action on the modified plans. Failure by the City to request a resubmittal or take action within the applicable time periods will result in the approval of the application.

5. Denial. The City shall provide written notice to the applicant outlining the findings for the denial.
6. Exceptions to permits.
  - a. Except as otherwise provided, applications for permits are not required for:
    - 1) a. Routine maintenance of the SWF or support structures for the SWF;
    - 2) b. The replacement of one SWF with another SWF of substantially similar or smaller size;
    - 3) c. The installation of a micro wireless facility that is strung on a cable between two (2) existing utility poles in compliance with the National Electrical Safety Code; or
    - 4) d. Non-substantial modifications as described in this chapter.
  - b. Notwithstanding the above, a wireless provider shall give the City, and or Affected Entities, ten (10) days advance notice before conducting any of the activities outlined above.
7. Consolidated permits.
  - a. The City shall allow an applicant:
    - 1) For co-location of SWFs, to file a consolidated application for the co-location of up to twenty five (25) SWFs, if all of the SWFs in the consolidated application are substantially the same type, and are proposed for co-location on substantially the same types of structures;
    - 2) For installation, modification or replacement of monopoles or utility poles, to file a consolidated application for up to twenty five (25) monopoles or replacement utility poles.
  - b. An applicant may not file within a 30-day period more than one consolidated application, or multiple applications that collectively seek permits for a combined total of more than twenty five (25) SWFs and monopoles or replacement utility poles.
  - c. A consolidated application may not combine applications solely for co-location of SWFs on existing utility poles with applications for the installation, modification or replacement of a monopole or utility pole.

#### **18.111.040 Franchise Agreement Requests**

All franchise agreement requests shall be submitted to the City Manager.

#### **18.111.050 Right of Way Rates**

A wireless provider shall pay for the right to use or occupy a right-of-way for SWF's in the amount of the greater of:

- A. 3.5% of all gross revenue related to the wireless provider's use of the right-of-way for SWF's; or
- B. \$250 annually for each SWF.

#### **18.111.060 Application Requirements**

Any person desiring to develop, construct or establish a personal wireless services facility in the City shall submit an application for site plan approval to the City. The City shall not consider the application until all required information has been included. A complete application shall include all elements of the proposed telecommunications facility and shall produce all information required by the telecommunications facility application. Applicants shall provide the following submittal requirements.

- A. Fee. SWF application fee per the Consolidated Fee Schedule.
- B. Site Plan. A site plan meeting the City's standard requirements for site plans.
  - 1. Site and Area Assessment: Applications for SWFs in the public rights-of-way shall include an assessment of the proposed site's position in relation to other sites and SWFs in the larger area. This assessment should include future SWFs and future modifications of existing SWFs which are planned within five (5) years of the application.
- C. Written Information as in Section 18.110.050.

**18.111.070 Uses**

- A. Permitted. The following facility types are permitted in the public right of way:
  - 1. Omni-directional antennas;
  - 2. Radio units;
  - 3. UE relays;
  - 4. Power distribution modules;
  - 5. Monopoles or utility poles where allowed in this section;
  - 6. New or replacement utility poles; or
  - 7. Other technology that functions similar to those outlined in subsections A1 through A6 of this section, as may be subsequently determined by the Director.
- B. Prohibited. The Following SWFs are prohibited in the public right of way:
  - 1. SWFs that may materially:
    - a. Interfere with the safe operation of traffic control equipment;
    - b. Interfere with the clear view for traffic and pedestrian safety;
    - c. Create a public health or safety hazard;
    - d. Interfere with compliance with the Americans With Disabilities Act, or a similar Federal or State standard regarding pedestrian access or movement; or
  - 2. Wireless communication facilities which do not qualify as SWFs under this chapter.
- C. Non-Substantial Modification Permitted: Non-substantial modifications of existing eligible support structures in the public rights-of-way, which have been installed in accordance with the provisions of this chapter, are deemed to be allowed if:
  - 1. The modification decreases the size or height of the facility;
  - 2. The modification does not amount to a substantial modification as defined in this chapter; and
  - 3. The modified facility will still meet applicable requirements of this section.
- D. Location.
  - 1. SWF's shall be installed on the highest priority location feasible. The applicant shall make a good faith effort to locate SWF's within the public right of way in the following order of priority:
    - a. Third party utility poles.
    - b. Cobra head light poles.
    - c. Decorative light poles.
    - d. New monopole.
  - 2. Burden of Proof. The applicant shall attempt to locate SWF's on site in the order of priority set forth above. If the applicant desires to locate a SWF on a site other than the highest priority site, the applicant shall be the burden of demonstrating to the City why the facility could not be located on the priority sites. The applicant shall provide the following information to the City.
    - a. Higher Priority Sites. The identity and location of any higher priority sites located within the desired service area
    - b. Reason for rejection of higher priority sites. The reason(s) why the higher priority sites are not technologically, legally or otherwise feasible.

- c. Justification for proposed site. Why the proposed site is essential to meet the service demands of the geographic service area and the citywide network

E. Zoning. SWF uses permitted in each zone are outlined in the following table:

(P) Permitted, (N) Not Permitted, or (N*) Not Permitted unless located in a right of way with a width greater than 60 feet.								
Zone	SWF Attached to existing Monopole	SWF Attached to New Monopole	SWF Attached To Existing Utility Pole	SWF Attached To New Utility Pole	SWF Attached to Light Pole	SWF Ground Equipment	SWF Attached to Utility line (Micro-Wireless Facility)	SWF Attached to Traffic Signals and street signs
A-2	P	N*	P	N*	P	P	P	P
RA-2	P	N*	P	N*	P	P	P	P
C-2	P	N*	P	N*	P	P	P	P
C-3	P	N*	P	N*	P	P	P	P
C-4	P	N*	P	N*	P	P	P	P
CMP	P	N*	P	N*	P	P	P	P
I-1	P	N*	P	N*	P	P	P	P
I-2	P	N*	P	N*	P	P	P	P
M&BP	P	N*	P	N*	P	P	P	P
MURCZ	P	N*	P	N*	P	P	P	P
PC	P	N*	P	N*	P	P	P	P
R-1	P	N*	P	N*	P	P	P	P
R-2	P	N*	P	N*	P	P	P	P
R-3	P	N*	P	N*	P	P	P	P

**18.111.080 Development Standards**

Standards for SWF’s are as follows:

A. General Standards

1. Co-Location and Application for New Monopoles: Wherever possible, the City encourages the installation of new SWFs in the public rights-of-way be accomplished by co-location with existing utility poles. Where new monopoles are necessary, the City strongly encourages designs which facilitate the co-location of future, additional SWFs.
2. Installation at Street Corners and Intersections: SWFs shall, where feasible, be located at the corner of street intersections.
3. 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.
4. 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.
5. Concealment: All SWF’s shall be concealed and match the color and design of the structure to which it is attached.
6. 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.

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.

7. **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 section 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.** 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. **Main Street:** 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.
  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 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, with the exception that all supporting equipment shall be placed underground. In the event that a third party utility does not have a standard for SWF's, the City Standards shall apply.
- E. SWF Types
1. SWF attached to existing monopoles.
  2. SWF attached to new monopoles.
  3. SWF attached to existing utility poles.
  4. SWF attached to new utility poles.
  5. SWF attached to light poles.
  6. SWF Ground Equipment.
  7. SWF attached to utility line (Micro-Wireless Facility).
  8. SWF attached to Traffic Signals and Street Signs.

### **18.111.090 Revocation of Permits**

In some circumstances the City may take steps to revoke a permit granted for the installation of an SWF and to cause the removal or modification of such a facility.

- A. Revocation: The City may revoke any permit granted for installation of an SWF under this chapter if it finds that:
1. The SWF was constructed without a permit or is in operation in violation of the terms of a required franchise agreement.
  2. The SWF was constructed or installed at an unauthorized location.
  3. There has been a misrepresentation in the application for the SWF.
  4. There is a violation of the requirements of this chapter.
  5. There is a violation of the terms of the permit.
  6. There is a violation of the requirements of other departments of the City or of the terms of permits issued by other departments of the City related to the installation of the SWF.
  7. There is a failure to pay fees and taxes as required under this chapter or a pertinent franchise agreement.
  8. There is demonstrated insolvency or bankruptcy of the permittee.
  9. Facilities, including any pole, in the public rights-of-way have been abandoned and have not been removed.
    - a. Abandonment may be presumed to have occurred if the use has been discontinued for a minimum of one year, or the structure remains vacant for a period of one year.
    - b. The provider may rebut the presumption of abandonment, and has the burden of establishing that any claimed abandonment has not occurred.
- B. Notice: In the event that the City finds that there are grounds for revocation of a permit, the City shall give written notice of the apparent violation or noncompliance to the provider or owner of the facility, and provide a period not to exceed thirty (30) days in which the provider or owner of the facility may:

1. Show that corrective actions have been or are being actively pursued in order to remedy the violation or noncompliance.
  2. Provide evidence rebutting the City's findings of noncompliance or violation.
- C. City Action: In the event that an applicant holding a permit fails to show corrective actions or successfully rebut the City's findings of noncompliance or violation, the City may revoke the permit and take necessary actions to cause the removal of the SWF or related accessory equipment found to be in violation or noncompliant. When a permit has been revoked by the City under this subsection, it shall be considered an unauthorized facility.
- D. Removal Of Unauthorized Facilities: Within forty five (45) days of written notice by the City, a provider or owner of an SWF which has not been authorized by permit or for which a permit has been revoked under this chapter shall, at its sole expense, remove any facilities from the public rights-of-way. If the facilities are not removed from the public rights-of-way within this time, the City may cause such removal and charge the provider or owner for the costs incurred.