

ORDINANCE NO. 1340

**AN ORDINANCE ENACTING CHAPTER 8-5 OF THE
DRAPER CITY MUNICIPAL CODE “WIRELESS FACILITIES
IN PUBLIC RIGHTS-OF-WAY”**

WHEREAS, the Utah State Legislature enacted S.B. 189 “Small Wireless Facilities Deployment Act” (“SB 189”) in the 2018 General Session; and

WHEREAS, SB 189 regulates the deployment of small wireless facilities in the public rights-of-way; and

WHEREAS, SB 189 permits local governments to exercise their police power by adopting an ordinance not in conflict with SB 189; and

WHEREAS, Draper City desires implement the provisions of SB 189 by enacting Chapter 8-5 of the Draper City Municipal Code regulating the deployment of small wireless facilities in the public rights-of-way; and

WHEREAS, the City Council finds that the public rights-of-way within the city are: (a) critical to the travel and transport of persons and property in the business and social life of the city; (b) intended for public uses and must be managed and controlled consistent with that intent; (c) can be partially occupied by the facilities of wireless service providers and entities delivering services for the enhancement of the health, welfare, and well-being of the city and its citizens; and (d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects on the public from such facilities’ construction, placement, relocation, and maintenance of the public way; and

WHEREAS, the City Council finds that the right to occupy portions of the public rights-of-way for limited times for providing wireless services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the city and its taxpayers, and therefore, the taxpayers of the city should receive fair and reasonable compensation for use of the public rights-of-way; and

WHEREAS, the City Council finds that while wireless telecommunications facilities are in part an extension of interstate commerce, their operations also involve the public rights-of-way, municipal franchising, and vital business and community service, which are of local concern. The City Council also finds it has the proprietary right to determine what persons and entities are granted permission to use the public rights-of-way, and to determine the terms and conditions of such use; and

WHEREAS, the City Council finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of wireless telecommunications services, on a nondiscriminatory

basis, responsive to community and public interest, and to assure availability for municipal, educational and community services; and

WHEREAS, the City Council finds that towers and other supporting structures present aesthetic and land use concerns that should be dealt with by encouraging collocation, and minimizing the number of structures in a manner that does not discourage market access or competition; and

WHEREAS, the City Council finds entering a master license agreement with wireless providers: (a) fairly and reasonably compensates the city on a competitively neutral and nondiscriminatory basis as provided herein; (b) encourages competition by establishing terms and conditions under which providers may use valuable public property to serve the public; (c) fully protects the public interests and the city from any harm that may flow from such commercial use of its public rights-of-way; (d) protects the police powers and proprietary authority of the city with respect to its public rights-of-way, in a manner consistent with federal and state law; (e) otherwise protects the public interests in the development and use of the city infrastructure; and (f) protects the public's investment in improvements in the public rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. Enactment. Chapter 8-5 of the Draper City Municipal Code is hereby enacted as set forth in Exhibit A attached hereto and incorporated by this reference.

Section 2. Severability Clause. If any part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all provisions, clauses and words of this Ordinance shall be severable.

Section 3. Effective Date. This Ordinance shall become effective August 31, 2018.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS 7th DAY OF AUGUST, 2018.

ATTEST:

DRAPER CITY

By: 
Rachelle Conner, MMC, City Recorder

By: 
Mayor Troy K. Walker



YES

NO

VOTE TAKEN:

Councilmember Green



Councilmember Lowery



Councilmember Summerhays



Councilmember Vawdrey



Councilmember Weeks



Mayor Walker

Title 8
TELECOMMUNICATIONS

Chapter 5
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

8-5-010: Declaration of Finding and Intent

- A. Findings Regarding Rights-of-Way. The City finds that the public rights-of-way within the City:
1. are critical to the travel and transport of persons and property in the business and social life of the City;
 2. are intended for public uses and must be managed and controlled consistent with that intent;
 3. can be partially occupied by the facilities of Wireless Service providers, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens;
 4. are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the rights-of-way.
- B. Finding Regarding Compensation. The City finds that the right to occupy portions of the public rights-of-way for the business of providing Wireless Services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the rights-of-way.
- C. Finding Regarding Local Concern. The City finds that while Wireless Facilities are in part an extension of interstate commerce, their operations also involve public rights-of-way, municipal zoning, and vital business and community service, which are of local concern. The City also finds that it has the proprietary right to determine what persons and entities are granted permission to use City rights-of-way, and to determine the reasonable and nondiscriminatory terms and conditions of such use.
- D. Finding Regarding Promotion of Wireless Services. The City finds that it is in the best interests of its taxpayers and citizens to promote the development Wireless Services, on a nondiscriminatory basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.
- E. Findings Regarding Minimization of Impacts. The City finds that towers and other supporting structures present aesthetic and land use concerns that should be dealt with by encouraging

collocation, and minimizing the number of Structures in a manner that does not discourage market access or competition.

F. Findings Regarding Master License Agreement Standards. The City finds entering a Master License Agreement with Providers:

1. fairly and reasonably compensates the City on a competitively neutral and nondiscriminatory basis as provided herein;
2. encourages competition by establishing terms and conditions under which providers may use valuable public property to serve the public;
3. fully protects the public interests and the City from any harm that may flow from such commercial use of its public rights-of-way;
4. protects the police powers and proprietary authority of the City with respect to its rights-of-way, in a manner consistent with federal and state law;
5. otherwise protects the public interests in the development and use of the City infrastructure; and
6. protects the public's investment in improvements in the public rights-of-way.

8-5-020: Purpose and Goals

A. The purpose of this Chapter is to establish requirements for the siting and use of Wireless Facilities in City-owned rights-of-way in a manner that facilitates the delivery of Wireless Services within the City, while minimizing associated adverse impacts. The goals of this Chapter are to:

1. Provide for the managed development and installation, maintenance, modification, and removal of Wireless Services infrastructure in the City to provide adequate wireless communications coverage, without unreasonably discriminating against Providers of functionally equivalent services including all of those who install, maintain, and operate Wireless Facilities.
2. Promote and protect the public health, safety, and welfare, and specifically, protecting aesthetic values, by reducing the visibility of Wireless Facilities and Structures to the fullest extent possible through techniques including but not limited to camouflage/concealment, design techniques, and undergrounding of Wireless Facilities and the equipment associated therewith, where possible.
3. Encourage the deployment of smaller, less intrusive Wireless Facilities to supplement existing telecommunications facilities.
4. Encourage the location of Structures in a manner that is least intrusive to the community.

5. Encourage owners and users of antennas and Structures to locate them, to the extent possible, where the adverse impact on the community is minimized.
6. Enhance the ability of Providers to provide such Wireless Services to the community quickly, effectively, and efficiently.
7. Effectively manage Wireless Facilities in the public right-of-way.

8-5-030: Scope and Applicability

- A. This Chapter shall provide the basic local scheme for providers of Wireless Services and systems that require the use of City-owned rights-of-way, including providers of both the system and service, and those providers of the system only.
- B. The requirements set forth in this Chapter shall apply to all Wireless Facilities and Structures located within City-owned right-of-way, and to all applications to locate or modify Wireless Facilities and Structures within City-owned right-of-way. This Chapter shall apply to all future Providers and to all Providers in the City prior to the effective date hereof, whether operating with or without a license. Title 9, Chapter 41 of the Draper City Municipal Code addresses wireless telecommunications facilities in areas outside of City-owned rights-of-way and Large Wireless Facilities.

8-5-040: Definitions

City means Draper City, Utah.

Collocate means to install, mount, maintain, modify, operate, or replace a 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 means a City-owned Utility Pole that (i) is specially designed for an aesthetic purpose, and (ii) on which attachments have not been placed (other than small wireless facilities, informational or directional signs, or temporary holiday or special event attachments), or on which attachments (other than small wireless facilities, informational or directional signs, or temporary holiday or special event attachments) are prohibited by rule or ordinance.

Discretionary ROW means any ROW that is adjacent to a Residential Zone and has a cross-section of 60 feet wide or less, as depicted in the official plat records.

Discretionary Use means (i) the installation of a new Utility Pole in Discretionary ROW, and (ii) any use that is not a Permitted Use.

Large Wireless Facility means any Wireless Facility that does not qualify as a Small Wireless Facility or a Micro Wireless Facility.

Master License Agreement means an agreement between a Provider and the City that sets forth the general terms and conditions pursuant to which the Provider may install and operate Wireless Facilities in City-owned ROW.

Micro Wireless Facility means a type of Small Wireless Facility that only provides Wi-Fi service, that does not have exterior antenna longer than 11 inches, and that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, not including any antenna.

Permitted Right of Way or Permitted ROW means any ROW that is not Discretionary ROW.

Permitted Use means (i) the Collocation of a Small Wireless Facility in any ROW, and (ii) the installation, operation, modification, maintenance, or replacement of (a) a Utility Pole in Permitted ROW, or (b) equipment required for a Provider's Collocation of a Small Wireless Facility.

Provider means a person that provides Wireless Services to customers, and/or builds or installs Wireless Facilities.

Right of Way ("ROW") means the surface of and the space above and below any public street, road, highway, alley, sidewalk, or other way dedicated to public pedestrian or vehicular use, now or hereafter existing as such within the City. ROW does not include federal interstate highways or fixed guideways for public transit.

Site License means a license approved pursuant to this Chapter that authorizes a Provider to install and operate Wireless Facilities in ROW, subject to the terms of this Chapter and a Master License Agreement.

Small Wireless Facility means a Wireless Facility on which each Provider's antenna could fit within an enclosure of no more than six cubic feet in volume, and for which all wireless equipment associated with the Wireless Facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not including any electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable run for the connection of power or other service, wireless Provider antenna, or coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular Collocation, unless the cable is a wireline backhaul facility (in which case the cable should be included in calculating the total volume of the associated equipment).

Structure means a Utility Pole or a Wireless Support Structure.

Utility Pole means a pole or similar structure that is in a right-of-way and is or may be used for: wireline communications, electric distribution, lighting, traffic control, signage, 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 City-owned power poles.

Wireless Facility means equipment at a fixed location that enables wireless communication between user equipment and a communications network, including 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 (i) between Wireless Support

Structures or Utility Poles, (ii) not immediately adjacent to or directly associated with a particular antenna, or a (iii) wireline backhaul facility.

Wireless Service means any service using licensed or unlicensed spectrum, whether at a fixed location of mobile, provided to the public using a Wireless Facility. Wireless Service includes the use of Wi-Fi.

Wireless Support Structure means an existing or proposed structure that is in a Right-of-Way; and designed to support or capable of supporting a Wireless Facility, including a monopole, tower, billboard, or building. Wireless Support Structure does not include a structure designed solely for the Collocation of a Small Wireless Facility, Utility Poles, or electric power poles owned by the City or by an interlocal entity.

8-5-050: License and other Requirements for Use of the ROW

- A. Except to the extent exempted by federal or state law, every Provider must obtain a Site License for each Wireless Facility and Structure to be constructed or installed in the ROW. When a Provider applies for a Site License, if the Provider and the City have not already executed a Master License Agreement, the City will provide the Provider with a copy of the City's standard Master License Agreement. The City will not issue any Site Licenses to a Provider until the Provider and the City have executed a Master License Agreement.
- B. Before offering or providing any services pursuant to the Master License Agreement, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses
- C. The grant of a license to a Provider will not excuse the Provider from obtaining: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any other permit, agreement or authorization required in connection with the use of property or facilities owned by third parties; or (iii) any other permit or authorization required in connection with excavating or performing other work in or along the ROW.
- D. The City will not grant licenses for the installation of Large Wireless Facilities in the ROW.

8-5-060: Nature of License

- A. A license granted hereunder will not convey title, equitable or legal, in the ROW. A license is only the right to occupy ROW on a nonexclusive basis for the limited purposes and for the limited period stated in the license; the right may not be subdivided, assigned, or subleased except as may be expressly provided in a Master License Agreement.
- B. A Provider's use of the ROW pursuant to a license granted hereunder, shall be subject to the prior and continuing right of the City to use any and all parts of the ROW exclusively or concurrently with any other person or entity, and shall be further subject to all deeds,

easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW.

8-5-070: Master License Agreements

- A. Authority: The City is empowered and authorized to issue nonexclusive licenses governing the installation, construction, operation, use and maintenance of Wireless Facilities and Structures in ROW, in accordance with the provisions of this Chapter. Any such licenses will be granted through a Master License Agreement entered into between the City and Provider, and subsequent Site Licenses that apply and extend the terms of the Master License Agreement to specific locations in the ROW.
- B. Non-Discrimination: The City shall enter into Master License Agreements with Providers on a non-discriminatory basis. Notwithstanding the foregoing, the City may negotiate additional or different terms with different Providers, in the exercise of the City's reasonable discretion and pursuant to the City's reserved police powers and the City's proprietary rights in the ROW.
- C. Term: Master License Agreements will be for an initial term of ten (10) years (the "Term"). At the end of the Term, the Master License Agreement will continue to apply to Site Licenses granted during the Term. The term of a Master License Agreement may be renewed if the Provider is in compliance with the Master License Agreement and all applicable laws, rules, and regulations, including this chapter. At the expiration of the term of the Master License Agreement, the Provider shall remove its wireless facilities from the ROW within 180 days of the expiration of the Master License Agreement or within 180 days of the expiration of the Site License if the Site License term expires after the term of the Master License Agreement unless otherwise agreed to by the City. The City will not renew Site Licenses or grant new Site Licenses after the Term, until the City and the Provider have executed a new Master License Agreement with terms and conditions acceptable to both the City and the Provider. Site Licenses will be for a term of ten (10) years, and will be subject to all the terms and conditions of the Master License Agreement in effect when the Site License is granted.
- D. Compensation: The Master License Agreement will require the Provider to pay fair and reasonable compensation to the City, as determined by the City Council, for (i) the administrative expenses associated with entry into the Master License Agreement and individual Site Licenses, (ii) the Provider's use of ROW, including the City's expenses associated with maintenance and management of the Provider's use of ROW, and (iii) other applicable fees. Specifically, Providers must pay the following fees:
 - 1. Application Fee: In order to offset the cost to the City to review applications, Providers shall pay a non-refundable Application Fee for each application for a Site License or modification to a Site License, as set forth on the City's consolidated fee schedule as the same may be amended from time to time. The Application Fee for Collocating a Small Wireless Facility on an existing or replacement Utility Pole or Wireless Support Structure shall be not more than \$100 per Collocation. The Application Fee for installing, modifying, or replacing a Utility Pole in connection with a Permitted Use shall be not more than \$250 per Utility Pole. The Application Fee for installing, modifying, or replacing a Utility Pole

in connection with a Discretionary Use shall be not more than \$1,000 per Utility Pole. The Application Fee must be paid at the time the application is submitted to the City.

2. **Site License Fee:** In order to offset the cost to the City of inspecting and managing licensed Wireless Facilities, and to compensate the City for the use of the ROW, the Master License Agreement will require Providers to pay an annual fee for each Site License. The Site License Fee shall not be more than the greater of: (i) 3.5% of all gross revenue related to the Provider's use of ROW for Small Wireless Facilities, or (ii) \$250 annually for each Small Wireless Facility. Notwithstanding the foregoing, no Site License Fee will be charged to a Provider that is subject to the Municipal Telecommunications License tax, pursuant to Utah Code Ann. § 10-1-401 *et seq.* For Small Wireless Facilities Collocated on City-owned Utility Poles, the Provider shall pay an annual fee of \$50 per pole in addition to the Site License Fee, if applicable, described above.
 3. **Other Fees:** Providers must also pay all other applicable fees established in the Draper City Municipal Code, specifically including but not limited to fees for excavation permits and business licensing.
- E. **Insurance, Indemnity, and Security:** Prior to the execution of Master License Agreement, a Provider must deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Master License Agreement, and shall obtain and provide proof of the insurance coverage required by the Master License Agreement. A provider shall also indemnify the City as set forth in the Master License Agreement.
- F. **Ordinance Amendments:** The City reserves the right to amend its ordinances affecting this chapter at any time. The City shall give Provider notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between Provider's rights and obligations under applicable ordinances as amended and the Master License Agreement, the provisions of the Master License Agreement shall govern during its term. Otherwise, Provider agrees to comply with any such amendments.

8-5-080: Site License Application

- A. **Application Requirements:** To be considered for a Site License, a Provider must submit an application to the Public Works Department, on a form provided by the City. In addition to any information required on that form, the application must include the following information:
1. The type of Site License sought, e.g., Collocation of Small Wireless Facility, Collocation of Large Wireless Facility, installation of new Utility Pole, or installation of new Wireless Support Structure. If the Site License is for a Collocation, the application must designate the type of Structure on which the Wireless Facility will be mounted, e.g., existing Utility Pole or Wireless Support Structure, an existing City-owned Utility Pole, etc.
 2. The location of the proposed Wireless Facility or Structure, including the designation of the proposed ROW as Permitted or Discretionary.

3. A scaled site plan, rendering or photo simulation, scaled elevation view and other supporting drawings and calculations, showing the location and dimension of all improvements. The submittal must include sufficient information to determine compliance with the standards and requirements of this Chapter, specifically including information concerning Structure height and location within the ROW, compliance with the City's intersection and driveway sight distance standards, and compliance with the Americans with Disabilities Act.
 4. An industry-standard pole load analysis indicating that the Structure on which the Wireless Facilities will be mounted will safely support the load.
- C. Avoiding Redundant Submittals. The Public Works Department may allow a Provider to maintain on file with the Public Works Department any documentation that would otherwise be required for each individual application, such as basic Wireless Facility design documents and pole load analyses. The Provider must update any such information as necessary to keep it current.
- D. If a Provider desires to be exempted from the Site License Fee, the Provider must submit evidence that the Provider is subject to the Municipal Telecommunications License Tax pursuant to Utah Code Ann. § 10-1-401 *et seq.*
- E. The City may require the applicant to submit additional information for any application for a Site License for a Discretionary Use.

8-5-090: Standards Applicable to Wireless Facilities in Rights of Way

The following standards, requirements, and prohibitions apply to all Wireless Facilities licensed pursuant to this Chapter.

- A. Height. The maximum height of new or modified Structures, including the antenna and any part of the Small Wireless Facility mounted on the Structure, is 50 feet above ground level at the point of installation. The antenna of a Wireless Facility may not extend more than 10 feet above the top of an existing Structure. All equipment permitted to be mounted on the exterior of new or existing Structures must be mounted at least 8 feet above ground level.
- B. Placement. Wireless Facilities and new Structures must be placed in locations that will not: (i) obstruct or hinder the usual travel or public safety on the ROW; (ii) create a public health or safety hazard, (iii) obstruct, damage, or interfere with another utility facility in the ROW, or the use of such other utility facilities, (iv) materially interfere with the safe operation of traffic control equipment, (v) materially interfere with a sight line or a clear zone for transportation or pedestrians, (vi) materially interfere with compliance with the Americans with Disabilities Act, and (vii) violate applicable laws or legal obligations.
- C. Design Requirements. Wireless Facilities and new Structures must be architecturally integrated with existing buildings, structures and landscaping, including considerations of height, color, style, placement, design and shape. Exposed cabling is prohibited, except for Collocations on existing Structures where internal cable routing is not feasible (e.g., on a wooden pole). Horizontal protrusions from the Structure must not exceed 2 feet. New

Structures must be of monopole design; lattice Structures will not be permitted. New Structures must not be made of wood. To the extent feasible, equipment shall be installed on the interior of new Structures.

- D. **Additional Design Requirements in Town Center Zone.** In order to maintain the historic character of the Town Center zoning district, all Wireless Facilities and new Structures in the Town Center zone must employ screening, concealment, camouflage, or other stealth techniques to minimize visual impacts.
- E. **Electrical Service.** Providers will be solely responsible for establishing electrical power services for their Wireless Facilities and for the payment of all electrical utility charges to the applicable electric service provider based upon applicable tariffs.
- F. **Undergrounding of Lines.** All fiber backhaul lines and electrical distribution lines serving Wireless Facilities must be located underground, unless the Wireless Facility is collocated on an existing Structure that already features above-ground lines, and the owner of the existing Structure agrees to provide communication or power service to the Wireless Facility through those existing lines. The City may require that the new electrical power line be overlashed on the existing electrical power line. Providers may seek a waiver from this requirement in accordance with Title 8, Chapter 2 of the Draper City Code.
- G. **Compliance with Law.** All Wireless Facilities must at all times comply with all applicable federal, state, and local building codes and safety codes and regulations.
- H. **Additional Requirements:** Wireless Facilities will be subject to any additional requirements set forth in the applicable Master License Agreement and Site License.
- I. **Decorative Poles.** New or replacement Utility Poles must be designed to reasonably conform to the design aesthetic of Decorative Poles in the vicinity, if any.

8-5-100: License Approval of Permitted Uses

- A. The Public Works Director has authority to approve applications for Permitted Uses. The Public Works Director may deny an application for a Permitted Use that does not comply with the requirements of this Chapter, specifically including but not limited to Section 8-5-090. The Public Works Director shall forward any applications for Discretionary Uses to the Zoning Administrator.

8-5-110: License Approval of Discretionary Uses

- A. The Zoning Administrator has authority to approve applications for Discretionary Uses.
- B. An application for a Discretionary Use will not be approved without prior approval by the Zoning Administrator, following a public meeting.
- C. The Zoning Administrator is not required to approve an application for a Site License for a Discretionary Use unless the applicant establishes, by clear and convincing evidence, that

denial of the application would effectively prohibit the applicant from providing Wireless Service.

- D. If the applicant fails to establish, by clear and convincing evidence, that denial of the application would effectively prohibit the applicant from providing Wireless Service, the Zoning Administrator may still approve an application for a Site License for Discretionary Use, if the Zoning Administrator finds that it is in the best interests of the City to do so, based on considerations of health, safety, or welfare. In making that determination, the Zoning Administrator may consider comment from the general public, specifically including members of the public that reside in the vicinity of the proposed Utility Pole.
- E. The Zoning Administrator may approve an application for a Site License with conditions that further the goals of this Chapter, specifically including conditions that minimize any adverse effect of the Wireless Facility or Structure on adjacent properties.

8-5-120 Modifications of Wireless Facilities

- A. A Provider may not alter, modify, or enlarge a licensed Small Wireless Facility or Utility Pole without prior written consent from the City. To obtain such consent, the Provider must submit an application in accordance with Section 8-5-080.
- B. Applications for modifications to Wireless Facilities and Structures will be subject to the same standards, requirements, and processing deadlines as applications for Collocations.
- C. Notwithstanding the foregoing, a Provider is not required to submit an application or obtain consent from the City for the following activities: (i) routine maintenance on a Small Wireless Facility or Utility Pole, (ii) replacement of a Small Wireless Facility with a Small Wireless Facility that is substantially similar or smaller in size, and (iii) 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. A Provider must provide the City with advance written notice of any such activity.
- D. A Provider must apply for an excavation permit in accordance with Title 11, Chapter 6 of the Draper City Code for any work that requires excavation or the closure of sidewalks or vehicular lanes. The requirement to obtain an excavation permit applies even for work that is exempted from the application process pursuant to Subsection C, above.
- E. Any approved modifications will be documented in a new or amended Site License.

8-5-130 Application Processing

- A. Consolidated Applications. A Provider may submit a consolidated application for the Collocation of up to 25 Wireless Facilities, so long as the Wireless Facilities are of substantially the same type, and proposed for Collocation on substantially the same types of Structures. A Provider may submit a consolidated application for the installation, modification, or replacement of up to 25 Structures. In any 30 day period, a Provider may not file more than (i) one consolidated application, or (ii) multiple applications that collectively seek Site Licenses for a combined total of more than 25 Wireless Facilities and Structures.

- B. **Completeness.** Within 30 days after the date when an application is submitted to the City, the City shall determine whether the application is complete, and shall notify the Provider of that determination in writing. If the City determines that an application is incomplete, the City shall specifically identify the missing information in the written notification. The processing deadline will be tolled from the date when the City sends the written notification until the date when the Provider submits the missing information. If the Provider does not submit the missing information within 90 days after the date of the written notification, the application will expire.
- C. **Processing Deadlines.** The City shall approve or deny applications in accordance with the following deadlines:
1. Applications for the Collocation of Small Wireless Facilities shall be approved or denied within 60 days after the day when the City receives a complete application. The City may extend the deadline by a single additional period of 10 business days by sending the applicant written notice of the extension before the applicable deadline.
 2. Applications for new, modified, or replacement Utility Poles shall be approved or denied within 105 days after the day when the City receives a complete application. The City may extend the deadline by a single additional period of 10 business days by sending the applicant written notice of the extension before the applicable deadline.
- D. **Denial.** If the City denies an application, the City shall provide the applicant with a written decision that documents the basis for the denial, and shall send that decision to the applicant on or before the day that the City denies the application. If the City denies an application for one or more Utility Poles, or on or more Small Wireless Facilities in a consolidated application, the City shall not use that denial as a basis to delay the application process for any other Utility Pole or Small Wireless Facility in the same consolidated application.
- E. **Resubmittal.** Within 30 days after the day on which the City denies an application, the applicant may cure the deficiencies noted in the denial resubmit the application without paying an application fee. The City shall approve or deny the resubmitted application within 30 days of receipt, and shall limit its review to the deficiencies noted in the original denial unless the applicant has changed another portion of the application.
- F. **Installation Deadline.** A Site License will expire 270 days after approval if the licensed Small Wireless Facility or Utility Pole is not installed and operational. The foregoing deadline will be tolled for any period of time during which the lack of commercial power or communications facilities delays completion.

8-5-140 Appeal of Administrative Decisions

- A. The appeals and variance hearing officer, appointed pursuant to Section 9-4-050 of the Draper City Code, shall hear and decide appeals from administrative decisions applying the provisions of this chapter, specifically including appeals from the denial of a Site License application by the Public Works Director or the Zoning Administrator.

- B. An applicant for a Site License may appeal the denial of the application to the appeals and variance hearing officer or city council, as applicable, as provided in subsection C.1 of this section. A complete notice of appeal shall be filed within fourteen (14) days of the decision which is appealed.
- C. An appeal of an administrative decision shall be considered and processed as provided in this subsection:
1. A complete notice of appeal shall be submitted to the office of the zoning administrator on a form established by the administrator along with the fee established by the city in its consolidated fee schedule. The notice of appeal shall include at least the following information:
 - a. The name, address and telephone number of the applicant and the applicant's agent, if any;
 - b. The decision appealed;
 - c. Grounds for the appeal; and
 - d. A description of the action claimed by the applicant to be incorrect.
 2. After the notice of appeal is determined to be complete and timely filed, the zoning administrator shall schedule a hearing before the appeals and variance hearing officer within thirty (30) days of the date the notice of appeal is filed, unless otherwise agreed to in writing by the City and the appellant. At least ten (10) days prior to the hearing, the appeals and variance hearing officer shall give public notice of the hearing and shall notify the parties in interest. Prior to the hearing the zoning administrator shall transmit to the appellate body all papers constituting the record of the action which is appealed.
 3. An appeal to the appeals and variance hearing officer shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the zoning administrator. An appellant may request a stay by submitting to the zoning administrator, in writing, a request for a stay setting forth the reasons why a stay is necessary to protect against imminent harm. In determining whether or not to grant a stay, the zoning administrator shall assure that all potentially affected parties are given the opportunity to comment on the request. A ruling on the request for a stay shall be given within five (5) days from the date the request is received by the zoning administrator. The zoning administrator, in granting a stay, may impose additional conditions to mitigate any potential harm that may be caused by the stay, including requiring the appellant to post a bond.
 4. The appeals and variance hearing officer shall conduct a hearing based upon the record only, taking no new testimony or new information but relying solely upon the information and final decision of the officer or body from whom the appeal was taken. The appeals and variance hearing officer shall determine the correctness of the lower decision and thereafter affirm or reverse, wholly or in part, the lower decision, modify that decision, or impose any conditions needed to conform the matter appealed to applicable approval standards.

The appeals and variance hearing officer shall have all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a Site License.

5. After the appeals and variance hearing officer makes a decision, the zoning administrator shall give the applicant written notice of the decision. The decision takes effect on the date when the appeal authority issues a written decision.
6. A record of all appeals shall be maintained in the office of the zoning administrator.

8-5-150 Interpretation and Application of Chapter

- A. Notwithstanding Draper City Municipal Code 8-1-030(B), the provisions of Title 8, Chapter 1 of the Draper City Municipal Code, Telecommunications Systems, apply to Wireless Facilities licensed under this Chapter, and to applications made under this Chapter. In applying Title 8, Chapter 1 to this Chapter, the word “franchise” shall be replaced with the word “license,” as the context requires. In the event of a conflict between the terms of this Chapter and the provisions of Title 8, Chapter 1, the terms of this Chapter will govern.
- B. The Public Works Director is authorized to interpret the provisions of this Chapter and the application of Title 8, Chapter 1 to this Chapter, in his or her reasonable discretion. The Public Works Director is authorized to resolve ambiguities arising out of the application of this Chapter, specifically including the designation of ROW as Permitted or Discretionary.

To be published on Wednesday, August 15, 2018, in the *Salt Lake Tribune* and *Deseret News*

City of Draper Notice of Ordinance Adoption – On August 7, 2018, the Draper City Council approved Ordinance #1340. Wireless Facilities in Public Rights-of-Way. The complete ordinance is on file at the Draper City Recorder's Office and online at www.draper.ut.us. Published this 15th day of August, 2018, Rachelle Conner, Draper City Recorder.

