

Council Meeting of November 13, 2019

Workshop Agenda Item No. 8b

REQUEST FOR COUNCIL WORKSHOP

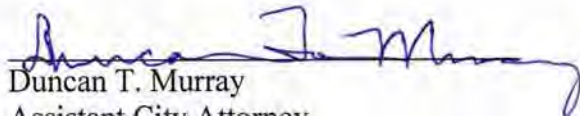
SUBJECT: Workshop Discussion regarding an Ordinance Amending 2009 West Jordan Municipal Code Title 8 (Public Works, Public Ways and Property) regarding the change to the Council-Mayor Form of Municipal Government.

SUMMARY: This Ordinance would Adoption of this Ordinance would update and renumber certain chapter(s) and article(s) of the **Public Works, Public Ways and Property Title**, to comply with the change to the council-mayor form of municipal government. Subsection 8-4-3H changes the council review procedure for roundabouts on arterial roadways to be consistent with the council-mayor form of municipal government.

WORKSHOP

DISCUSSION ONLY: No action to be taken at this meeting; may be placed on the December 4th Council Consent Agenda for action.

Prepared and Presented by:


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Authorized for Council Consideration:


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Legislative

Title 8 PUBLIC WORKS, PUBLIC WAYS AND PROPERTY

Chapter 1 OVERTIME INSPECTIONS; OPERATIONS FEE

8-1-1: PURPOSE:

8-1-2: CONSTRUCTION DURING NORMAL BUSINESS HOURS:

8-1-3: APPLICATION FOR NONBUSINESS HOURS INSPECTION:

8-1-4: PRIOR PAYMENT REQUIRED:

8-1-5: FEE SCHEDULE:

8-1-1: PURPOSE:

The purpose of this chapter is to establish requirements for inspections/operations services performed by city departments for private development projects within the city. It is the intent of this chapter to protect the health, safety and welfare of the public against inadequate, unwarranted or unsafe construction activities or operation of city facilities during nonbusiness hours. Not by way of limitation, the purposes of this chapter are:

- A. To ensure the constructed work product meets city standards and to minimize hazards to life and limb;
- B. To ensure that authorized operations personnel are operating city facilities that are being repaired, relocated, removed or which need to be operational during nonbusiness hours;
- C. To ensure continuation of required city inspections/operations services during nonbusiness hours for construction activities then being performed;
- D. To ensure the city's recovery of costs for such inspections/operations services provided during nonbusiness hours. (2001 Code § 72-7-010; amd. 2009 Code)

8-1-2: CONSTRUCTION DURING NORMAL BUSINESS HOURS:

- A. Normal Business Hours Specified: Normal business hours for the city inspection/operations staff shall be Monday through Friday, seven o'clock (7:00) A.M. through three thirty o'clock (3:30) P.M., excepting city observed holidays.
- B. Activities Conducted During Normal Business Hours: Construction or operations activities that: 1) involve existing city infrastructure; or 2) require city inspection shall be conducted only during normal business hours, except as approved by the city pursuant to this chapter. No such activities shall be conducted without appropriate city staff being present. (2001 Code § 72-7-020; amd. 2009 Code)

8-1-3: APPLICATION FOR NONBUSINESS HOURS INSPECTION:

An application is required for city staff to perform an inspection or provide operations services at any time that is not during normal business hours. The application must be filed with the applicable city department executive assistant at least twenty four (24) hours in advance of the proposed time for commencing the work. The application shall set forth the days and hours of all work being performed during nonbusiness hours and shall not be accepted unless accompanied by the required fees. Applications submitted after the twenty four (24) hour required notification period will not be honored. (2001 Code § 72-7-030; amd. 2009 Code)

8-1-4: PRIOR PAYMENT REQUIRED:

Payment for inspections/operations services performed during nonbusiness hours shall be made at the time the application is submitted to the applicable city department for approval. The inspections/operations services will not be scheduled unless the required application form and payment have been submitted at least twenty four (24) hours in advance. (2001 Code § 72-7-040; amd. 2009 Code)

8-1-5: FEE SCHEDULE:

The inspections/operations fee for city inspections and operations that are performed outside of normal business hours shall be paid to the applicable department in accordance with the resolution adopted by city council. The required fees shall be based on the anticipated number of hours required. After completion of the requested inspections/operations, the city shall determine whether additional payment or partial refund is owed, based on the actual number of hours required. A two (2) hour minimum charge is required for any inspection/operation activity. (2001 Code § 72-7-050; amd. 2009 Code)

Chapter 2

DEVELOPMENT AND CONSTRUCTION STANDARDS

8-2-1: PURPOSE AND SCOPE:

8-2-2: PUBLIC IMPROVEMENT STANDARDS, SPECIFICATIONS AND PLANS:

8-2-3: ASPHALT PAVING:

8-2-4: UNDERGROUND UTILITIES REQUIRED:

8-2-5: WATERWAYS:

8-2-6: IRRIGATION AND DRAINAGE DITCHES:

8-2-7: FIRE PROTECTION:

8-2-8: GRADING AND DRAINAGE:

8-2-9: SOILS REPORT:

8-2-10: BLUE STAKING AND OTHER MARKING:

8-2-1: PURPOSE AND SCOPE:

The purpose of this chapter is to provide standards for the installation of improvements required in conjunction with development approval and issuance of building permits and other related city permits/approvals. (2001 Code § 89-6-401; amd. 2009 Code)

8-2-2: PUBLIC IMPROVEMENT STANDARDS, SPECIFICATIONS AND PLANS:

- A. Promulgation ~~Of~~ ~~of~~ Standards: The city ~~manager~~ ~~administrator~~ or designee shall promulgate public improvement standards, specifications and plans, not inconsistent with the provisions of this chapter. These standards may be changed, altered or amended from time to time as necessary for the proper administration of this title and to ensure improvements are constructed and installed in compliance with the provisions of this chapter.
- B. Compliance ~~With~~ ~~with~~ Standards: Compliance with the city public improvement standards, specifications and plans, as amended, shall be required as a condition of development approval, issuance of a building permit, and issuance of related permits and approvals. (2001 Code § 89-6-402; amd. 2009 Code; ~~Ord. 19-____, -2019, Effective at 12 noon on January 6, 2020~~)

8-2-3: ASPHALT PAVING:

Asphalt paving operations shall not begin until all utilities, including, but not limited to, electrical power, natural gas, telephone, cable television, culinary water, irrigation water, sanitary sewer and storm sewer are installed under the streets. Provisions shall be made for future installation of signalized intersections, electrical power, natural gas, telephone and cable television through sleeves or conduits placed under the pavement. The city shall not be responsible for coordinating the timely installation of these utilities, and the city ~~manager~~ ~~administrator~~ or designee may require evidence of such coordination prior to or as a condition of any approvals or permits involving asphalt paving. (2001 Code § 89-6-405; amd. 2009 Code; ~~Ord. 19-____, -2019, Effective at 12 noon on January 6, 2020~~)

8-2-4: UNDERGROUND UTILITIES REQUIRED:

- A. Utilities ~~To Be~~ **to be** Underground: All electrical, communications, television service cables, and similar distribution service wires and/or cables to serve properties in connection with new subdivision developments shall be placed underground at the expense of the developer, builder or property owner, regardless of whether the utilities are initially installed with the development or are in place prior to development. The developer, builder or property owner shall be responsible for complying with the requirements of this section, and shall make necessary arrangements with each of the servicing utilities for installation of such facilities. Efforts will be made by responsible persons to encourage and accommodate collocation within underground utility conduits.
- B. Aboveground Components: Transformers, terminal boxes, meter cabinets, pedestals, concealed ducts, and other facilities necessarily appurtenant to such underground facilities may be placed aboveground.
- C. Water ~~And~~ **and** Sewer: Water and sewer distribution facilities shall be installed in conformance with the city public improvement standards, specifications and plans manual.
- D. Site Plan Applications ~~Not~~ **not** Involving ~~A~~ **a** Subdivision Application: Land use applications not involving a subdivision creation or amendment in connection with property having a frontage of four hundred feet (400') or more shall be governed by the requirements of subsection A of this section.
- E. Nonapplicability ~~To~~ **to** Certain Utility Lines: The provisions of this section shall not apply to low power radio service antennas, transmission lines with a capacity of sixty nine (69) kV or greater, and overhead communication long distance trunk and feeder lines.
- F. Easements: Unless waived for good and sufficient cause by the planning commission, after receiving a recommendation from the city engineer, the developer shall provide easements for all public utilities (electrical power, natural gas, telephone, cable television, culinary water, irrigation water, sanitary sewer and storm sewer) which are not located within a public right-of-way. The developer, builder or property owner shall obtain from the telephone, natural gas, cable television and electrical power companies the required location for easements to serve those utilities.
- G. Variance: The requirements of this section applied to any particular development application may be the subject of a preapplication variance appeal to the board of adjustment, which variance appeal must address and provide substantial evidence of compliance with the existing variance criteria provided in this code. (2001 Code § 89-6-405; amd. 2009 Code; Ord. 12-30, 12-12-2012; ~~Ord. 19- , -2019, Effective at 12 noon on January 6, 2020~~)

8-2-5: WATERWAYS:

- A. Filling ~~Or~~ **or** Dredging ~~Of~~ **of** Waterways ~~And~~ **and** Natural Drainage Channels: Filling or dredging of major natural drainage channels, including the Jordan River, Barney's Wash, Barney's Creek, Bingham Creek, Clay Hollow Wash, Dry Wash and others as designated in the stormwater master plan, is prohibited without the approval of the city engineer. In addition, natural drainage channels shall not be altered without first obtaining required permits for such alteration from the Salt Lake County flood control division, the United States army corps of engineers, and any other agency having jurisdiction over the natural drainage channel.
- B. Pedestrian ~~Or~~ **or** Vehicular Crossings ~~Of~~ **of** Drainage Corridors: In those cases where either pedestrian or vehicular access over a watercourse, gully, stream bed or stormwater runoff channel is found to be necessary or desirable, a bridge or other approved structure, as approved by the city engineer, shall be constructed for that purpose. Bridges or other

structures crossing watercourses, gullies, streambeds or stormwater runoff channels shall be designed to minimize impacts on these natural drainage corridors, and where practical, to provide for the passage of wildlife under such structures.

- C. Preservation ~~Of~~ of Vegetation: All existing vegetation within drainage corridors shall be preserved and, where necessary, to provide adequate screening or to repair damaged riparian areas, supplemented with additional native or adapted planting. (2001 Code § 89-6-407; amd. 2009 Code ~~Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020~~)

8-2-6: IRRIGATION AND DRAINAGE DITCHES:

No open gravity flow irrigation or drainage ditches shall be permitted within the boundary of a development unless approved by the city engineer. The developer, builder or property owner receiving development approval, building permit or similar approval or permit from the city shall pipe all ditches, whether for transporting irrigation, drainage or waste flow water, in accordance with the requirements of this section.

A. Temporary Exemption:

1. The developer, builder or property owner receiving development approval, building permit or similar approval or permit from the city for a residential structure outside of a recorded subdivision may be granted a temporary exemption from the piping requirement if the ditch to be piped is not piped for at least twenty five percent (25%) of the linear distance two hundred fifty feet (250') upstream from the proposed piping and two hundred fifty feet (250') downstream from the proposed piping.

2. The developer, builder or property owner who is granted a temporary exemption from the piping requirements shall pipe the ditch at least twenty five percent (25%) of the adjoining ditch within the two hundred fifty foot (250') distance is piped. For the purpose of determining the twenty five percent (25%) limitation, the ditch shall be deemed to be piped if it has been granted the temporary exemption under this section.

- B. Construction Standards: Irrigation and drainage piping shall comply with the public improvement standards, specifications and plans. The piping shall be of sufficient size and design to handle the reasonably anticipated flow of the irrigation water. The planning commission may, for good cause shown and after receiving a recommendation from the city engineer, waive the requirements of this subsection if it can be reasonably shown that the public is generally protected and that the water to be delivered through the piped ditch is not diminished in quality or quantity.

1. In cases where the ditch upstream from the development is not enclosed, the developer, builder or property owner shall install appropriate boxes, gratings and covers to keep large debris and unauthorized persons from entering the piped ditch. Where the piping runs along the perimeter of the development or property and water users who own adjacent property utilize the ditch, the developer, builder or property owner shall install appropriate weirs, head gates and access boxes, at the appropriate locations, to accommodate the water users.

2. Prior to receiving development approval, building permit or other city approvals or permits, plans shall be submitted for piping of ditches, and shall indicate easement locations.

3. At the time of submission of engineering and technical drawings and materials, detailed engineering drawings and plans shall be provided showing the topography of the finished grade and the piping system to be installed.

4. For private irrigation ditches, written approval of the water users is required before the ditch is piped. It is the responsibility of the developer, builder or property owner to identify the water users.

a. The watermaster responsible for the ditch shall be invited to attend any preconstruction conference.

b. Development and construction activities shall not interfere with or impede the flow of water within the ditch during the irrigation season, unless there is accommodation acceptable to the water users.

c. An unused or abandoned irrigation or drainage ditch may be filled in if written approval is obtained from the persons having water rights within the ditch. The written approval of the water users shall be obtained and presented to the city engineer prior to receiving development approval, building permit or other city approval.

C. Inverted Siphons: The city shall maintain those inverted siphons installed under a city-owned roadway or where required by the city (regardless of where siphon is located) when the siphon is made necessary to accommodate increased traffic demands or to address legitimate public safety concerns. The city shall maintain those inverted siphons installed at those locations designated by the city engineer.

D. Dedication ~~Of~~ of Improvements: Irrigation improvements and facilities shall be owned by the irrigation water users, who shall be thereafter responsible for the operation, repair and maintenance thereof. (2001 Code § 89-6-407; amd. 2009 Code)

E. Easements: Easements necessary for the piping and maintenance of the irrigation ditches shall be shown on the final subdivision plat, where applicable. In cases where a ditch is removed from an existing easement to a new location, the developer, builder or property owner shall convey to the water users an easement, not less than five feet (5') on each side of the centerline of the pipe, for the relocated and piped ditch.

F. Construction:

1. The city's construction manager shall invite the watermaster responsible for the ditch or his designee to attend the preconstruction conference, when applicable.

2. The developer, builder or property owner shall take such actions as are necessary to avoid interference with the flow of water within the ditch during the irrigation season.

3. Unused, abandoned irrigation or wastewater ditches may be filled in if written approval is obtained from the persons having water rights within the ditch. The written approval of the water users shall be obtained and presented to the city engineer prior to final development approval. (2001 Code § 87-5-111; amd. 2009 Code, Ord. 19- , -2019, Effective at 12 noon on January 6, 2020)

8-2-7: FIRE PROTECTION:

Water lines and hydrants shall be constructed for fire protection in accordance with this code, all applicable building and fire codes, and shall comply with the city public improvement standards, specifications and plans. (2001 Code § 89-6-408; amd. 2009 Code)

8-2-8: GRADING AND DRAINAGE:

A. All grading shall comply with and be governed by the international building code, as adopted by the state and the city, whether on public or private lands.

B. In addition, the following requirements shall apply:

1. Prior to placement of concrete for the footings of a structure, the owner shall provide a survey prepared by a licensed engineer or land surveyor to verify that the structure is at an elevation which will allow for proper drainage away from the structure and to an approved drainage facility. The survey requirement may be waived by the building official or the city engineer where compliance can be shown without conducting a survey.

2. New streets shall be so arranged as to allow for drainage to be contained in and channeled through the streets in the event the storm drain system fails, or its capacity is exceeded.

3. Slope easements shall be provided for new streets as necessary to assure that failure of slopes or retaining structures will not adversely affect structures on the abutting properties.

4. The accumulation of water from more than two (2) lots along interior lot lines shall not be permitted unless provision is made for the appropriate disposal of accumulated water.

5. A preliminary grading plan shall be submitted with preliminary subdivision plats and preliminary site plans. The grading plan shall show existing topography of the area and proposed grading using a maximum contour interval of two feet (2'). (2001 Code § 89-6-411; amd. 2009 Code)

C. Grading and drainage plans and construction shall be in conformance with the city "Public Improvement Standards, Specifications And Plans Manual". (2001 Code § 87-5-114; amd. 2009 Code)

8-2-9: SOILS REPORT:

A. Testing: A soils report shall be submitted for all proposed public road improvements. It shall include, but not be limited to, pavement design, groundwater level, soil type, gradation, location of test, type of test, conclusions and recommendations. Tests should be taken along proposed roadways at intersections and at seven hundred fifty foot (750') minimum intervals. A California bearing ratio (CBR) test should be taken at each test pit location. If a water table problem exists, provisions shall be made to control the water to ensure dry basements. The city engineer may require a letter providing a geotechnical report or a geologic report. Recommendations in the report shall be incorporated into the road design.

B. Excavations ~~And~~ and Fill Affecting Jordan River ~~Or~~ or Tributaries: Development and construction adjacent to the Jordan River or its natural tributaries, or within any marsh or wetlands of the Jordan River, which will result in any excavation or discharge of fill materials into the navigable waters of the Jordan River shall require a permit from the U.S. army corps of engineers prior to the issuance of local permits for excavation of material or disposition of fill into any wetland or stream channel. Compliance with all rules, regulations and conditions imposed by any agency having jurisdiction over such channels, shall be a requirement of development approval, building permit, and other city approvals and permits. (2001 Code § 89-6-412; amd. 2009 Code; Ord. 13-17, 4-24-2013; ~~Ord. 19- -2019, Effective at 12 noon on January 6, 2020~~)

8-2-10: BLUE STAKING AND OTHER MARKING:

Marking of ground or structures to indicate the current or intended location of utilities, future construction, equipment or fixtures must be accomplished using only a water soluble and easily removed or rapidly deteriorating marking solution or compound. Oil based or other permanent or semipermanent paints or stains are prohibited for this type of use in construction or development activities within the city. (Ord. 12-27, 11-28-2012)

Chapter 3 PUBLIC IMPROVEMENT INSTALLATION AND FINANCING

ARTICLE A. TECHNICAL STANDARDS, SPECIFICATIONS AND PLANS

8-3A-1: PUBLIC IMPROVEMENT STANDARDS, SPECIFICATIONS AND PLANS:

8-3A-2: SIDEWALKS:

8-3A-3: MODIFICATIONS TO DESIGN STANDARDS:

8-3A-1: PUBLIC IMPROVEMENT STANDARDS, SPECIFICATIONS AND PLANS:

A. Establishment ~~Of~~ **of** Technical Standards: The city shall establish technical specifications and standard drawings for the construction, installation and connection to public improvements, private streets and other similar improvements. These standards and specifications have been compiled in a document titled "Public Improvement Standards, Specifications And Plans", which includes the following chapters:

1. Drawing standards.
2. Roadway design.
3. Storm drain design.
4. Sanitary sewer design.
5. Culinary water design.
6. Irrigation and planting.
7. Specifications.
8. Roadway plans.
9. Storm drain plans.
10. Sanitary sewer plans.
11. Culinary water plans.
12. Irrigation and planting plans.

B. Compliance ~~With~~ **with** Standards: Compliance with the city public improvement standards, specifications and plans manual, AASHTO standards, and fire, building, and other applicable codes adopted by the city, shall be a requirement of development approval, building permit issuance, and other city approvals and permits involving construction. (2001 Code § 72-10-101; amd. 2009 Code Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3A-2: SIDEWALKS:

- A. Installation ~~Of~~ of Curb, Gutter ~~And~~ and Sidewalk: High back curb, gutter and sidewalk shall be required on both sides of streets. Where any part of a subdivision is adjacent to or connects to an existing, paved city street that has not been improved with curb, gutter, and sidewalks, the subdivider shall install the appropriate curb, gutter, and sidewalk in the proper location for the existing street and shall extend the asphalt paving to the curb and gutter so installed. If there are no lots in the subdivision adjacent to an existing paved street and the subdivider is installing a new street which connects to an existing, paved city street that has not been improved with curb, gutter and sidewalks, the subdivider shall extend curb and gutter on the new street around the radius at the proper setback for the existing city street and shall continue laying that same width of pavement to the existing pavement on the city street to the outside end of the radius so installed.
- B. Sidewalk Design Guidelines:
1. Sidewalks in and around subdivisions shall provide convenient pedestrian access to transit stops along major arterial or collector streets.
 2. Sidewalks shall be separated from the curb by a park strip along all major streets, unless approved by the city engineer.
 3. Where adjacent pedestrian circulation systems are existing or warranted, the developer shall provide sidewalk facilities. In industrial areas, sidewalks shall be provided on arterial and major collector streets. (2001 Code § 87-5-108; amd. 2009 Code, Ord. 19---2019, Effective at 12 noon on January 6, 2020)

8-3A-3: MODIFICATIONS TO DESIGN STANDARDS:

- A. Modifications Authorized: If unique physical conditions affecting a specific subdivision, development or building site are such that it is impossible, or impractical or undesirable for the developer, builder or property owner to fully comply with the design standards and policies contained herein, the city engineer may recommend reasonable modifications to such standards and policies for the specific subdivision, development or building site.
- B. Request ~~For~~ for Modification: Requests for modifications shall be submitted concurrently with the application for development approval or building permit. The request shall clearly state the limitations that apply to the property and identify the specific standards to be considered.
- C. Criteria: Prior to making recommendations for modifications to the design standards and policies, the planning commission shall find that:
1. The size, shape, topography, soil or subsurface conditions of the subject property do not affect other properties in the general vicinity;
 2. Strict application of design standards and policies to the property will significantly limit the use and development of the property when compared to similar properties in the general vicinity;
 3. Granting of the modification will not be detrimental to public safety and welfare, or injurious to other property in the general vicinity; and
 4. The modification is consistent with the spirit and purpose of this title.

- D. City Council Action: The planning commission's recommendations for modification of design standards and/or policies shall be forwarded to the city council for final action. (2001 Code § 87-5-117; amd. 2009 Code; Ord. 19-____ - 2019, Effective at 12 noon on January 6, 2020)

ARTICLE B. PUBLIC IMPROVEMENT REIMBURSEMENT AND DEFERRED IMPROVEMENTS

- 8-3B-1: PURPOSE AND POLICY:**
- 8-3B-2: DEFINITIONS:**
- 8-3B-3: RESPONSIBILITIES FOR IMPROVEMENT COSTS:**
- 8-3B-4: REIMBURSEMENT FOR SYSTEM IMPROVEMENTS:**
- 8-3B-5: REIMBURSEMENT AGREEMENT:**
- 8-3B-6: EXPIRATION:**
- 8-3B-7: COST ALLOCATION FOR NONSYSTEM IMPROVEMENTS:**
- 8-3B-8: ADMINISTRATIVE REVIEW:**
- 8-3B-9: INSTALLATION OF IMPROVEMENTS WITH DEVELOPMENT:**
- 8-3B-10: TIMING OF DEDICATION; DEFERRAL:**
- 8-3B-11: TIMING OF DESIGN; DEFERRAL:**
- 8-3B-12: TIMING OF CONSTRUCTION; DEFERRAL:**
- 8-3B-13: IMPROVEMENT GUARANTEE AND AGREEMENT REQUIRED:**
- 8-3B-14: DEFERRED IMPROVEMENT AGREEMENT:**
- 8-3B-15: CASH DEPOSIT:**

8-3B-1: PURPOSE AND POLICY:

- A. Purpose: The purpose of this article is to require contribution toward development costs by those benefiting therefrom and establish a method of fairly allocating proportionate costs of public improvements, including project improvements and system improvements associated with real estate development. Nothing in this article applies to, or contravenes in any way, the requirements found in chapter 2 of this title concerning the required undergrounding of public utilities' facilities.
- B. Policy: It shall be the policy of the city that, as a condition of development approval, each developer should pay a reasonable share of the costs of public improvements that are roughly proportionate to the impact of the development. Such proportionate share is to be determined in a fair and equitable manner. This policy may be implemented through the use of fees, dedication of real property, dedication of improvements, reimbursements, or any other lawful method. (2001 Code § 87-5-201; amd. Ord. 13-02, 2-13-2013)

8-3B-2: DEFINITIONS:

For the purposes of this article, the words set forth below shall have the following meanings:

APPLICANT: A developer who has submitted an application requesting that the city enter into a reimbursement agreement or deferred improvement agreement.

CFP: The West Jordan capital facilities plan.

CAPITAL PROJECTS STRATEGIC PLAN: The West Jordan document indicating capital facilities projects planned over a six (6) year period, taken from the CFP.

DEFERRED IMPROVEMENT AGREEMENT: An agreement for deferred improvements.

DEFERRED IMPROVEMENTS: Improvements for which construction is deferred according to a deferred improvement agreement entered into pursuant to the provisions of this article.

ELIGIBLE PUBLIC IMPROVEMENTS:

- A. Improvements that are off site or oversized improvements meeting all of the following criteria:
 - 1. They are required as a condition of development approval; and
 - 2. They are anticipated to serve future development; and
 - 3. They are off site or will create additional or excess capacity beyond the proportionate share necessary to serve the proposed development at the city's adopted level of service standards; and
 - 4. They are approved by the city in advance of development in accordance with the city's ordinances, rules, regulations, engineering standards and specifications.
- B. May include "system improvements", as defined in this section, but shall not include "project improvements", as defined in this section, except to the extent that the project improvements are extended off site and/or are oversized to create additional or excess capacity beyond the proportionate share necessary to service the proposed development at the city's adopted level of service standards.

PROJECT IMPROVEMENTS: On site improvements that are planned and designed to provide service for a development and that are necessary for the use and convenience of the occupants or users of the development. The determination of what constitutes "project improvements" will vary somewhat depending on the specific facts and circumstances presented by the nature, size and scope of any particular development. "Project improvements" are not "system improvements", as defined in this section.

REIMBURSEMENT COST ALLOCATIONS: Costs that are allocated to and paid by property owners or developers of properties that are deemed benefited properties and are subject to a reimbursement agreement.

SYSTEM IMPROVEMENTS:

- A. Existing public facilities that are designed to provide services within the city to the community at large; or
- B. Future public facilities identified in the city capital facilities plan (CFP) that are intended to provide services within the city to the community at large; and
- C. Are not project improvements. (2001 Code § 87-5-202; amd. Ord. 13-02, 2-13-2013)

8-3B-3: RESPONSIBILITIES FOR IMPROVEMENT COSTS:

- A. As a condition of development approval, a developer shall be required to install public improvements which are reasonably necessary to serve the proposed development at adopted level of service standards. Where required by the city engineer to connect to existing public improvements with adequate capacity, accommodate future development, or accommodate the CFP, the developer shall also be required to either: 1) install off site or oversized public improvements reasonably necessary to extend, expand or improve the city infrastructure beyond that which is necessary to serve or benefit the particular development; or 2) enter into a deferred improvement agreement pursuant to the provisions of this article. Improvements specifically listed but not yet built in the city capital facilities plan (CFP) may be constructed by the developer out of the CFP planned sequence if such construction is acceptable to the city and does not create unreasonable collateral hardships to the infrastructure system.
- B. All design costs, construction costs, installation costs, and the costs of acquiring and dedicating real property and easements shall be paid by the developer, at the developer's sole expense. (2001 Code § 87-5-203; amd. Ord. 13-02, 2-13-2013)

8-3B-4: REIMBURSEMENT FOR SYSTEM IMPROVEMENTS:

- A. Authorized: Pursuant to this article, the developer may request a reimbursement agreement for eligible public improvements specifically listed on the city's capital projects strategic plan. The city **manager administrator** or designee shall establish a priority for the CFP improvements, including, but not limited to, determination of improvements to be included in the city's capital projects strategic plan.
- B. Impact Fees: Reimbursement for a system improvement may be made from the impact fees collected and deposited in the city's impact fee account for that type of improvement. The eligible costs for the improvement shall not exceed the costs upon which the impact fees were established.
- C. Expiration: The reimbursement for system improvements may continue until such time as the cumulative reimbursement amount being collected as, and paid from, impact fees reaches an amount equal to the maximum reimbursement for said system improvements. No reimbursement shall be due or payable in excess of the amount of impact fees available, after higher priority projects in the CFP have been adequately funded. (2001 Code § 89-6-413; amd. 2009 Code; Ord. 09-31, 10-14-2009; Ord. 13-02, 2-13-2013; **Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020**)

8-3B-5: REIMBURSEMENT AGREEMENT:

- A. Request **For for** Agreement: Any developer who intends to construct eligible public improvements may submit an application requesting that the city enter into a reimbursement agreement with the applicant for eligible public improvements constructed and installed. Reimbursement will be available only pursuant to a fully executed and effective reimbursement agreement. For eligible public improvements that are system improvements, the developer shall not be eligible to request a reimbursement agreement for improvements not on the capital projects strategic plan.
- B. Evaluation **Of of** Agreement: It shall be the policy of the city to evaluate reimbursement agreements on a case by case basis, and develop a fair and equitable method of allocating the proportionate share of the cost to all the properties creating the need for or benefiting from the available public improvements. It is anticipated that each situation will have its own unique features and characteristics, and therefore each reimbursement agreement may use one or more allocation methods, as appropriate and determined by the city, in determining the proportionate share of the costs to be borne by the properties which receive benefit from or create the need for the eligible public improvements.

C. Contents ~~Of~~ of Agreement: The reimbursement agreement shall contain, at a minimum, the following provisions:

1. Identification of the eligible public improvements that the applicant agrees to construct;
2. Estimated cost of the eligible public improvements, including acquisition of property and/or easements;
3. Maximum reimbursement to be made available to the applicant;
4. Maximum reimbursement to be made available to the applicant specifically for the acquisition of property interests, easements or otherwise, not to exceed one hundred fifteen percent (115%) of a city approved MAI certified appraisal provided to the city at the applicant's expense;
5. Except for system improvements, identification of benefited properties to which costs of the eligible public improvements will be allocated;
6. Except for system improvements, allocation of costs and method of assessment which may include, but is not limited to, frontage, zone, area, lot, impervious area, number of connections, or any other fair and equitable criteria;
7. Requirements for documentation, acceptable to the city attorney, verifying actual costs of eligible public improvements;
8. Waiver and a covenant not to sue, which provision shall be in a form acceptable to the city attorney;
9. No interest shall be paid on any amounts due under the agreement;
10. Requirements for modification of the agreement by written amendment, executed by the parties to the agreement; and
11. The reimbursement agreement shall not confer a benefit upon any third party, shall not be assigned, transferred or conveyed without the express approval of the city, and shall be in a form approved by the city attorney.

D. Maximum Reimbursement:

1. The maximum amount of reimbursement shall be established by the city, in the sole discretion of the city, and may be less than that requested by the applicant.
2. No interest shall be included in the amount of the reimbursement, and no interest shall be paid to the developer by the city or any other person on amounts becoming due.
3. In no event shall reimbursement exceed the actual cost of eligible public improvements.
4. The maximum reimbursement shall be as set forth in the reimbursement agreement, or validly executed amendment, unless additional reimbursement is approved by the city ~~manager~~ administrator according to this subsection D.
5. Upon verification by the city engineer of the actual cost of satisfactorily completed eligible public improvements, the city engineer shall recommend a reimbursement amount to the city ~~manager~~ administrator for those eligible public improvements that are system

improvements. The city **manager administrator** may: a) approve reimbursement of the verified actual costs up to the amount of the maximum reimbursement set forth in the reimbursement agreement; b) approve reimbursement of the verified actual costs up to ten percent (10%) over the maximum reimbursement set forth in the reimbursement agreement, provided that the actual costs are determined by the city engineer to be reasonable; or c) recommend to the city council approval or denial of an amendment to the reimbursement agreement increasing the maximum reimbursement.

- E. Collection **From from** Benefited Properties: Reimbursement cost allocations may only be collected from benefited properties that are identified in a fully executed and effective reimbursement agreement. The appropriate amount shall be requested upon development of the identified benefited property. This means in concurrence with recording a subdivision plat or issuance of a building permit, whichever occurs first.
- F. Release **From from** Liability **For for** Payment: The city shall, in all cases, be immune and not liable for any payments to the developer if a city reimbursement ordinance or reimbursement agreement is determined by a court of law to be illegal, unconstitutional, or otherwise unenforceable for any reason. (2001 Code § 87-5-205; Ord. 09-31, 10-14-2009; Ord. 13-02, 2-13-2013; Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

8-3B-6: EXPIRATION:

- A. Except reimbursement for system improvements as set forth in section 8-3B-4 of this article, reimbursement agreements and public reimbursements shall expire a maximum of ten (10) years after the effective date of the agreement, or at such time as the cumulative reimbursement amount reaches the maximum reimbursement, whichever event occurs first. No reimbursement shall be due or payable after said ten (10) year period, unless permitted pursuant to section 8-3B-4 of this article. (2001 Code § 87-5-207; amd. 2009 Code; Ord. 12-19, 6-27-2012; § 8-3B-7; Ord. 13-02, 2-13-2013; Ord. 16-03, 1-13-2016)

8-3B-7: COST ALLOCATION FOR NONSYSTEM IMPROVEMENTS:

- A. In determining the appropriate reimbursement cost allocation for eligible public improvements that are not system improvements, the city **manager administrator** or designee shall consider the reasonable cost of the improvements, including construction and land costs, and other expenses directly related to the completion of the improvement. The city **manager administrator** may also consider the expected useful life of the improvement, the necessity of the improvement for development of the benefited parcels, prior contributions by property owners, the proportionate benefit received by each parcel compared to the benefit received by all parcels served by the public improvements, the intensity of use of the improvements by each parcel served, and any other factors that the city **manager administrator** deems fair and appropriate.
- B. In no event shall the cumulative total of all reimbursement cost allocations exceed the maximum amount of reimbursement set forth in the reimbursement agreement or the actual cost of the eligible public improvements. (2001 Code § 87-5-208; 2009 Code § 8-3B-8; amd. Ord. 13-02, 2-13-2013; Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

8-3B-8: ADMINISTRATIVE REVIEW:

In the event that a developer of a benefited property disagrees with the reimbursement cost allocation to which the benefited property is subject, the developer may challenge the method or amount of the reimbursement cost allocation by submitting notice of such challenge to the city **manager administrator**. If the developer chooses to pay the reimbursement cost allocation in order to proceed with development, notice shall be given to the city **manager administrator** at the time of payment, that the payment is made under protest and that the developer challenges the reimbursement cost allocation. Failure to submit notice to the city **manager administrator** as required by this section shall constitute a waiver of the developer's right to challenge the reimbursement cost allocation. The city

manager administrator shall render a decision within thirty (30) calendar days of receipt of such notice; provided that he/she may, for good cause, extend the time to render a decision. The city manager's administrator's decision shall be final. (2001 Code § 87-5-209; 2009 Code § 8-3B-9; amd. Ord. 13-02, 2-13-2013; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3B-9: INSTALLATION OF IMPROVEMENTS WITH DEVELOPMENT:

- A. Installation ~~Of~~ ~~of~~ Improvements: Development of real property shall include: 1) construction and installation of all nonpublic improvements required as a condition of development approval; and 2) construction and dedication to the public of street, open space, sanitary sewer, storm sewer and culinary water improvements that are intended to become part of the city system.
- B. Connection ~~Fe~~ ~~to~~ Public Systems: Unless otherwise specifically stated in this code, connection to the public street, sanitary sewer, storm sewer, culinary water and trails systems shall be required for all property being developed. If any or all of the city systems are not available for connection at the property boundary of the development, the developer shall extend, improve and dedicate the required city systems. Design, construction and dedication of public improvements shall conform to this code, the city's master plans, the public improvement standards, specifications and plans, and other applicable regulations.
- C. Design Required: Construction of all public improvements and connections thereto shall be completed pursuant to engineering plans acceptable to, and released for construction by, the city's engineering division. (Ord. 13-02, 2-13-2013; amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3B-10: TIMING OF DEDICATION; DEFERRAL:

- A. Dedication Recorded ~~With~~ ~~with~~ Plat: If a subdivision plat is being recorded, dedication of real property for public improvements shall be performed by plat or, where appropriate, by recording a separate conveyance with the plat. Except as authorized in a deferred improvement agreement entered into pursuant to this article, dedication shall occur before or concurrently with plat recordation. The dedication shall be in a form acceptable to the city attorney and shall be subject to the dedication requirements of this chapter.
- B. Recorded Prior ~~Fe~~ ~~to~~ Building Permit: If no subdivision plat is required, dedication of real property for public improvements shall be in a form acceptable to the city attorney and shall be recorded prior to issuance of any building permit.
- C. Deferral ~~Of~~ ~~of~~ Dedication:
 - 1. Application: The developer may submit an application requesting to defer dedication.
 - 2. City Council Determination: After receiving a recommendation from the planning commission, the city council shall review the developer's application for deferred dedication. City council may approve the application and allow the developer or future property owner to complete the dedication at a later date if city council finds at least one of the following:
 - a. The developer does not own and cannot reasonably acquire the property to be dedicated; or
 - b. The location of the dedication cannot be reasonably determined; or
 - c. The location of the dedication is within a remainder parcel shown on a subdivision plat.

3. Deferred Improvement Agreement Required: If a developer applies for deferred dedication, a proposed deferred improvement agreement may be presented by staff for city council consideration. The terms and conditions shall include the date or timing of future dedication and may include requirements for provision of financial guarantee, recordation with the Salt Lake County recorder and other reasonable terms. City council may accept, reject or modify the proposed agreement. (Ord. 13-02, 2-13-2013, amd. Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-3B-11: TIMING OF DESIGN; DEFERRAL:

- A. Design Completed Prior Te to Final Development Approval: Except as authorized in a deferred improvement agreement entered into pursuant to this article, the design of all public improvements shall be completed by the developer and accepted by the city's engineering division prior to granting final development approval, prior to recording a plat and prior to issuing building permits.
- B. Deferral Of of Design:
1. Application: The developer may submit an application requesting to defer design.
 2. City Council Determination: After receiving a recommendation from the planning commission, the city council shall review the developer's application for deferred design. City council may approve the application and allow the developer, future property owner, future developer or city to complete the design at a later date if city council finds at least one of the following:
 - a. The developer cannot reasonably design the improvements due to unique physical characteristics of the real property; or
 - b. The dedication is being deferred and reasonably requires that the design also be deferred; or
 - c. The construction is being deferred and reasonably requires that the design also be deferred.
 3. Deferred Improvement Agreement Required: If a developer applies for deferred design, a proposed deferred improvement agreement may be presented by staff for city council consideration. The terms and conditions shall include the date or timing of future design completion and may include requirements for provision of financial guarantee, recordation with the Salt Lake County recorder and other reasonable terms. City council may accept, reject or modify the proposed agreement. (Ord. 13-02, 2-13-2013, amd. Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-3B-12: TIMING OF CONSTRUCTION; DEFERRAL:

- A. Completion Within Twenty Four Months: Except as authorized in a deferred improvement agreement entered into pursuant to this article, all public and nonpublic improvements required as a condition of development approval shall be installed and dedicated within twenty four (24) months after the following: 1) the recording date of the plat for all subdivisions; or 2) the date of the improvement guarantee or other contractual commitment for all other development. The time for completion may be extended by the city council after receiving a recommendation from the planning commission.

- B. Completion Prior ~~To~~ to Building Permit: Except as otherwise specifically stated in this code, unless construction of public improvements is deferred in accordance with the provisions of this article and a deferred improvement agreement expressly authorizes issuance of building permits prior to installation of public improvements, the city shall not issue building permits until construction of public improvements is complete as evidenced in writing by the authorized city representative.
- C. Deferral ~~Of~~ of Construction:
1. Application: The developer may submit an application requesting to defer construction of public improvements.
 2. City Council Determination: After receiving a recommendation from the planning commission, the city council shall review the developer's application for deferred construction. City council may approve the application and allow the developer, future property owner, future developer or city to construct the improvements at a later date if city council finds all of the following:
 - a. The city engineer has prepared, and city council has reviewed: 1) the estimated cost of the deferred improvements based on the most recent and most applicable costs incurred by the city in similar projects; and 2) an analysis of the feasibility of installing the improvements within the twenty four (24) month period described in this article; and
 - b. The improvements for which deferred construction is requested meet one or more of the following criteria: 1) they are eligible public improvements as defined herein; or 2) they include public improvements for which some or all of the dedication is being deferred; and
 - c. Based on physical characteristics of the development and affected real property it is not feasible to install the improvements within the twenty four (24) month period described above and therefore deferring the installation to a future date is preferable to the city. Cost of installation shall not be a factor in determining feasibility for public improvements; and
 - d. The deferred improvements are not necessary for public health or safety or as a prerequisite to orderly development of the surrounding area.
 3. Deferred Improvement Agreement Required: If a developer applies for deferred construction, a proposed deferred improvement agreement may be presented by staff for city council consideration. The terms and conditions shall include the date or timing of future construction and may include requirements for provision of financial guarantee, recordation with the Salt Lake County recorder and other reasonable terms. City council may accept, reject or modify the proposed agreement. (Ord. 13-02, 2-13-2013; amd. Ord. 19- , - -2019; Effective at 12 noon on January 6, 2020)

8-3B-13: IMPROVEMENT GUARANTEE AND AGREEMENT REQUIRED:

- A. Improvements Constructed ~~With~~ with Development: The developer of a subdivision shall not be required to complete construction of public improvements prior to dedication of real property or recording of a subdivision plat. Construction of improvements that are not deferred shall be guaranteed by an improvement guarantee as set forth in article C of this chapter, and an improvement guarantee agreement shall be executed as a condition of development approval and prior to plat recordation or issuance of building permit, whichever earlier occurs.
- B. Deferred Improvements: A cash deposit may be required to guarantee construction of deferred improvements, and a deferred improvement agreement shall be executed and recorded with the Salt Lake County recorder prior to plat recordation or building permit issuance, whichever earlier occurs. If design or dedication is deferred, a cash deposit may be required to guarantee

deferred dedication and design, and a deferred improvement agreement shall be executed and recorded with the Salt Lake County recorder prior to plat recordation or building permit issuance, whichever earlier occurs. (Ord. 13-02, 2-13-2013, amd. Ord. 19-___, ___ -2019, Effective at 12 noon on January 6, 2020)

8-3B-14: DEFERRED IMPROVEMENT AGREEMENT:

- A. Application ~~For~~ for Deferred Improvement Agreement: An application shall be required prior to consideration by the city of a deferred improvement agreement.
1. Timing: The application shall be submitted prior to or concurrent with the application for final subdivision approval, final site plan approval or building permit, whichever earlier occurs. Untimely applications may be rejected by city staff and not considered.
 2. Contents: The application shall comply with all city ordinances, policies and procedures in effect at the time the application is submitted, and shall also contain all information reasonably requested by city staff.
- B. Contents ~~Of~~ of Deferred Improvement Agreement: The deferred improvement agreement shall be executed between the developer and the city and shall address, at a minimum, the following:
1. Improvements: All improvements for which deferral is requested shall be identified. Improvements not identified in the deferred improvement agreement shall not be deferred. The agreement shall indicate whether deferral is for dedication, design, construction or a combination.
 2. Legal Description: The deferred improvement agreement shall contain a legal description of the property being developed, which legal description is sufficient for recording.
 3. Cash Deposit: The deferred improvement agreement shall dictate the amount of the cash deposit and shall specify the terms and conditions of expending and releasing the cash deposit, which terms and conditions shall not be inconsistent with the requirements of this article.
 4. Timing: The deferred improvement agreement shall address the timing of dedication, design and construction of the deferred improvements. If appropriate, the timing may be determined by the occurrence of future events such as, but not limited to, a city project or private development project, passage of time or other reasonable method.
 5. Attorney Fees: The deferred improvement agreement shall provide that in the event of litigation occasioned by any default of the developer or property owner, the developer or property owner agree to pay all costs involved, including reasonable attorney fees, and that the same shall become a lien against the property.
 6. Form: The deferred improvement agreement shall be in a form acceptable to the city attorney.
 7. Waiver And and Cooperation: The developer shall waive all right to oppose any city creation of an assessment area and promise to participate in any city project to complete the deferred dedication, design and construction identified in the deferred improvement agreement. Said waiver shall be binding upon developer's successors and assigns.
 8. Other Provisions: Any other provisions required by the city as reasonably necessary to effectuate the purposes and provisions of this code.

- C. Recording: The deferred improvement agreement shall be recorded by the city at the expense of the applicant and shall run with and be a burden upon the land. The recorded deferred improvement agreement shall constitute notice to all successors and assigns of title to the real property of the obligations set forth therein, and shall also constitute a lien in such amount necessary to fully reimburse the city for the actual costs described in this article, subject to foreclosure in the event of a default in payment. (Ord. 13-02, 2-13-2013, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3B-15: CASH DEPOSIT:

Prior to the earlier of plat recordation or issuance of any building permit, the applicant shall be required to provide a cash deposit to the city for deferred dedication, design and construction, unless the city council determines that requirement of a cash deposit will not meet the purpose and policy set forth in this article.

- A. Amount ~~Of~~ ~~of~~ Deposit: The amount of the cash deposit shall be determined by the city engineer and shall be equal to the estimated cost of the deferred dedication, design and construction of improvements based on the most recent and most applicable costs incurred by the city in similar projects, plus a contingency of fifteen percent (15%).
- B. Expenditure ~~Of~~ ~~of~~ Cash Deposit:
1. The cash deposit shall be reserved in a non-interest bearing account and shall be spent by the city or released to a private developer or property owner at the appropriate time to pay the cost of dedication, design and construction identified and deferred as part of the development approval and deferred improvement agreement.
 2. If the deferred improvements are dedicated, designed or installed by a private developer or property owner as part of any noncity project, the obligation of the then current owner(s) of property obligated by the terms of the deferred improvement agreement cannot exceed the amount of the cash deposit. The initiator of the noncity project cannot use the deferred improvement agreement to cover additional costs or expenses incurred as a result of completing the deferred dedication, design or construction.
- C. Return ~~Of~~ ~~of~~ Excess Amounts: If the amount of the cash deposit exceeds the actual cost of the deferred dedication, design and construction, including, without limitation, reasonable design costs, costs of construction management and contract administration, administrative costs, legal fees and court costs, the city shall refund the difference to the then current owner(s) of the property, without regard to mortgage holders.
- D. Collection ~~Of~~ ~~of~~ Deficiency ~~For~~ ~~for~~ City Project:
1. If the actual cost of property acquisition, design and construction of a city project exceeds the amount of the cash deposit, the city may expend the cash deposit and use the deferred improvement agreement to collect the deficiency. The then current owner(s) of the property shall be obligated by the deferred improvement agreement to pay the difference to the city, without regard to mortgage holders.
 2. The then current owner of the property obligated by the terms of the deferred improvement agreement, with the written permission of the city, may choose to dedicate, design and install the deferred improvements. Upon inspection and approval of the improvements by the city, the property owner may seek reimbursement of the costs of the improvements up to the value of the cash deposit. The city shall reimburse actual costs using the cash deposit unless there are legal reasons preventing the city from doing so. (Ord. 13-02, 2-13-2013, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

ARTICLE C. IMPROVEMENT ASSURANCES

8-3C-1: PURPOSE AND SCOPE:

8-3C-2: INSTALLATION OF PUBLIC IMPROVEMENTS REQUIRED AS A CONDITION OF DEVELOPMENT:

8-3C-3: ESTIMATED COST OF IMPROVEMENTS:

8-3C-4: AMOUNT OF FINANCIAL ASSURANCE:

8-3C-5: FORM OF FINANCIAL ASSURANCE:

8-3C-6: PUBLIC IMPROVEMENT ACCEPTANCE:

8-3C-7: SYSTEM REDUCTIONS OF FINANCIAL ASSURANCE:

8-3C-8: WARRANTY, REPAIR AND INDEMNIFICATION FOR IMPROVEMENTS:

8-3C-9: INSPECTIONS:

8-3C-10: WARRANTY ASSURANCE:

8-3C-11: FAILURE TO PERFORM:

8-3C-12: FINAL INSPECTION, RELEASE OF WARRANTY ASSURANCE:

8-3C-13: REPAIRS AND EMERGENCY REPAIRS:

8-3C-14: INADEQUATE PROCEEDS; COSTS:

8-3C-1: PURPOSE AND SCOPE:

The purpose and scope of this article is to provide for and govern construction and the form, amount and release of financial assurance for all public improvements, and all private streets, boundary fences, and nonpublic improvements which will be installed as a condition of development. As used in this article, "public improvements" shall mean all improvements which will be dedicated to the City city or be installed in the public right-of-way. (2001 Code § 89-6-1201; amd. Ord. 13-03, 2-13-2013; Ord. 14-07, 3-12-2014; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-3C-2: INSTALLATION OF PUBLIC IMPROVEMENTS REQUIRED AS A CONDITION OF DEVELOPMENT:

With regards to the construction of public and nonpublic improvements and the recording of the subdivision plat, a developer has the following options and responsibilities:

- A. Option A - Construction Required Prior ~~Te~~ to Recording Plat: Unless the developer chooses option B, construction of all public improvements required as a condition of development shall be completed pursuant to a land disturbance permit issued under title 11 of this Code prior to plat recordation or building permit issuance. The developer shall warrant the public improvements according to the provisions of this article and provide financial assurance for the warranty. Unless otherwise expressly excepted by this article, no subdivision plat shall be recorded, no lots shall be sold, and no building permits shall be issued until:

1. Construction of all "essential public improvements" (as defined in subsection D of this section) is complete; and
2. All essential public improvements have been accepted by the City city in accordance with this article.

- B. Option B - Additional Financial Assurance ~~And~~ and Recording Plat Prior ~~Te~~ to Construction: At the developer's option, the subdivision plat may be recorded prior to construction of public improvements, provided that the City city and developer enter into an improvement construction and assurance agreement providing financial assurance. The improvement construction and assurance agreement may authorize construction of public improvements to be completed within twenty four (24) months after the date of final plat recordation. The improvement construction and assurance agreement shall be in a form acceptable to the City city, securing the satisfactory completion of all required public and nonpublic improvements and the warranty of all public improvements. After the effective date of the improvement construction and assurance agreement, the plat may be recorded and lots may be sold, but no building permits shall be issued until:
1. Construction of all essential public improvements is complete; and
 2. All essential public improvements have been accepted by the City city in accordance with this article.
- C. Changing Options: If a developer chooses option A and begins the construction of public improvements and if the developer meets the requirements of option B, then the developer may later, with the signed, written approval of the City Engineer city engineer, and after a filing fee has been paid according to the City's city's uniform fee schedule, change to option B, but may not subsequently change back to option A. If a developer chooses option B and records the subdivision plat, then the developer may not later change to option A.
- D. Definition ~~Of~~ of "Essential Public Improvements": For purposes of this article, this term means public improvements which are essential and required to be completely installed, inspected, tested, and serviceable before the issuance of building permits for each phase of a subdivision, site plan, or other development, as follows:
1. Recorded plat, unless it is a model home (approved by the City city as part of a written agreement) or some other exception specifically allowed by City city regulations;
 2. Access to the development, including a possible secondary and/or public safety access (if required);
 3. "Continuous all-weather temporary street/road surface", defined as a street/road constructed with a minimum of site specific required structural fill for permanent roads and road base, or other approved material complying with local standards, including a street surface designed to support an 80,000-pound load, and including necessary clear road width, (see Utah Code section 15A-5-205.6 and IFC section 3310.1);
 4. Temporary street identification signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles. Signs shall be of an approved size, weather resistant, and be maintained until replaced by permanent signs. Where required by the Fire Code fire code official, address identification shall be provided in additional approved locations to facilitate emergency response (see IFC sec. 501.4 and 505.2 and IBC sec. 501.2);
 5. Culinary water system improvements (which shall be installed, inspected, tested, and serviceable);
 6. Fire hydrants and, if required, fire suppression lines and other fire system improvements (which shall be installed, inspected, tested, and serviceable);
 7. Special or private improvement systems, for which exchanges, enhanced entitlements, or other consideration was received, as specified in a development plan and/or development agreement (and which shall be bonded for; or installed, inspected, tested, and serviceable); and

8. Any other infrastructure required by the ~~Building Code~~ building code or ~~Fire Code~~ fire code (which shall be bonded for; or installed, inspected, tested, and serviceable).
- E. Deny Building Permits: The City city shall deny an applicant a building permit(s) if:
1. The applicant has not completed one or more essential public improvements; or
 2. The plans of and for the proposed erection, construction, reconstruction, alteration, building, or other structure or use do not fully conform to all regulations, permits, plats and approvals then in effect.
- F. Public Improvements Necessary ~~For~~ for Building Occupancy: No permanent or temporary certificate of occupancy shall be given and no building may be occupied until all essential public improvements (listed in subsection D of this section) and other public improvements (listed in this subsection) are completely installed, inspected, tested, and serviceable, unless the developer or builder can establish, to the satisfaction of the City city, that any remaining public improvements are not necessary to the safety required for building occupancy:
1. Sanitary sewer system improvements (installed, inspected, tested, and serviceable);
 2. Storm drainage system improvements (installed, inspected, tested, and serviceable, but does not require final landscaping);
 3. Other street system improvements, including all asphalt; curb, gutter, and sidewalk; and permanent street name, dead end, and traffic control signs (installed, inspected, tested, and serviceable); and
 4. Any other infrastructure required by City city regulations (installed, inspected, tested, and serviceable); and all inspections have been successfully completed; but
 5. If approved by the ~~City Engineer~~ city engineer, minor punch list items covered by an improvement construction and assurance agreement do not have to be completed for a permanent certificate of occupancy; in such cases, a temporary certificate of occupancy may be issued.
- G. No Third Party Beneficiaries: The City city imposed requirements of the improvement construction and assurance agreement and associated financial assurance:
1. Are for the sole benefit of the City city;
 2. Are not for the individual benefit of any citizen or identifiable class of citizens, including, but not limited to, the purchasers of lots or building spaces within the development for which the improvement assurance is required;
 3. Are not for the purpose of ensuring that funds are available for the payment to material suppliers or labor suppliers, and no rights shall accrue to such suppliers; and
 4. Shall not create any City city obligation to third parties to:
 - a. Enforce its terms;
 - b. Install the improvements; or
 - c. Respond in damages for the lack of full enforcement of the improvement assurance or the lack of complete installation of the improvements.
- H. Determination ~~Of~~ of Compliance: The ~~City Engineer~~ city engineer has discretion to determine substantial compliance with the regulations in this section.

- I. Form: Each developer shall sign a form, agreeing to comply with the requirements of this section, for each phase of a subdivision, site plan, or other development. (2001 Code § 89-6-1202; amd. Ord. 13-03, 2-13-2013; Ord. 14-07, 3-12-2014; Ord. 17-10, 2-22-2017; Ord. 18-32, 10-10-2018, Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3C-3: ESTIMATED COST OF IMPROVEMENTS:

- A. Estimated Cost ~~Of~~ of Public Improvements, System Categories: Based on the approved engineering drawings, the city engineer shall calculate the estimated cost of public improvements. The estimated cost shall typically include, not by way of limitation, the following system categories:
 1. Earthwork and erosion control;
 2. Culinary water;
 3. Sanitary sewer;
 4. Storm sewer;
 5. Street improvements, including, but not limited to, curb, gutter and sidewalk;
 6. Secondary and irrigation water;
 7. Public landscaping;
 8. Finish items related to the public improvements; and
 9. Other categories as approved by the city engineer.
- B. Estimated Cost ~~Of~~ of Nonpublic Improvements: Where required, the city engineer shall also calculate the reasonable estimated cost of private streets, boundary fences and other nonpublic improvements to be installed as a condition of development. (2001 Code § 89-6-1203; amd. Ord. 13-03, 2-13-2013; Ord. 14-07, 3-12-2014; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3C-4: AMOUNT OF FINANCIAL ASSURANCE:

- A. Public Improvements Completion Assurance: If the developer desires to record the subdivision plat prior to city acceptance of all public improvements, the developer shall submit financial assurance in the amount of one hundred percent (100%) of the estimated cost of public improvements based on the approved engineering drawings. The estimated cost of public improvements and amount of the financial assurance will not take into consideration any portion of public improvements constructed prior to plat recordation.
- B. Nonpublic Improvements Completion Assurance: The amount of financial assurance for construction of nonpublic improvements shall be one hundred percent (100%) of the estimated cost of private streets, boundary fences, landscaping, common area and recreational facilities and amenities, and other nonpublic improvements to be installed as a condition of development.
- C. Warranty Assurance: The amount of financial assurance for warranty of public improvements shall be the lesser of the following: ten percent (10%) of the estimated cost of public improvements; or ten percent (10%) of the developer's reasonable proven cost of completion. (2001 Code § 89-6-1204; amd. Ord. 13-03, 2-13-2013; Ord. 14-07, 3-12-2014)

8-3C-5: FORM OF FINANCIAL ASSURANCE:

The city shall accept the following forms of financial assurance:

- A. An escrow account held by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. The city shall have immediate access to the proceeds, which shall be available to the city by presenting a site draft at an office located within fifty (50) miles of the city.
- B. An irrevocable standby letter of credit issued by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. The city shall have immediate access to the proceeds, which shall be available to the city either by: 1) presenting a site draft at an office located within fifty (50) miles of the city; or 2) presenting an electronic copy of the site draft by e-mail or facsimile.
- C. Cash or a cashier's check, for deposit with the city in its accounts. Interest, if any, earned by the city on the deposited sum shall be retained by the city as reimbursement and an offset for the cost of administering the improvement construction and assurance agreement and financial assurance. (2001 Code § 89-6-1205; amd. Ord. 13-03, 2-13-2013; Ord. 14-07, 3-12-2014; Ord. 14-26, 7-30-2014)

8-3C-6: PUBLIC IMPROVEMENT ACCEPTANCE:

- A. Public Improvement Acceptance: City acceptance of public improvements shall occur only after the city engineer verifies all of the following: 1) all systems are constructed; 2) all corrections list items are complete; 3) all city inspections and reinspections are complete, except the final inspection to occur at the end of the warranty period; 4) all public improvements are in compliance with city ordinances, standards, specifications and the approved engineering drawings; 5) a maintenance plan has been submitted to the city for public landscaping improvements; 6) as built drawings have been submitted to the city; 7) the developer has provided financial assurance for the warranty; and 8) the subdivision plat is recorded. Acceptance shall not be deemed to have occurred unless and until the plat has been recorded and the city **manager administrator** has issued a validly executed letter of acceptance.
- B. Timing **Of of** City Inspection **And and** Acceptance: After completing all systems, the developer shall submit a written request for the city to perform an inspection of the public improvements. Failure to request city inspections and reinspections in writing shall delay the city's inspection and potential acceptance. The date of city acceptance shall be the later of: 1) the date on which the plat is recorded; or 2) the date on which the city **manager administrator** signs the letter of acceptance.
- C. Temporary System Connections: Prior to city acceptance of public improvements, the city engineer may authorize temporary connection to the city's existing infrastructure for the purpose of testing and inspecting the public improvements. The connection shall not become permanent unless and until the date of city acceptance as defined in this article. At any time prior to city acceptance, including, without limitation, any time prior to plat recordation, the city engineer's authorization for temporary connection may be revoked if the city engineer determines that public improvements may not be timely completed or dedicated to the city. (Ord. 14-07, 3-12-2014; amd. Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-3C-7: SYSTEM REDUCTIONS OF FINANCIAL ASSURANCE:

- A. Applicability: This section shall only apply to public improvements that are subject to a public improvement construction and assurance agreement.
- B. System Reduction Request: For public improvements that are subject to a public improvement construction and assurance agreement, the developer may submit system inspection and reduction requests no more frequently than once every thirty (30) calendar days after completing a system or systems. One interim reduction may be requested for the public landscaping system if the public landscaping improvements are substantially complete and seasonal conditions prevent total completion, testing and inspection.
- C. Reduction Requirements **And and** Amount:
1. Except as otherwise allowed by this article for public landscaping improvements, the financial assurance may only be reduced upon satisfactory completion of an entire system, as determined by the city engineer. The amount of the reduction shall be determined by the city engineer and shall not exceed ninety percent (90%) of the initial assurance amount for the completed system.
 2. If seasonal weather conditions prevent the public landscaping improvements from being completed, tested and inspected, the financial assurance may be reduced upon substantial completion of the public landscaping system, as determined by the city engineer. To the extent reasonably practical, the completed portion of the public landscaping improvements must be inspected by the city and found by the city engineer to be in full compliance with city ordinances, standards and specifications, and the approved engineering drawings. The amount of the interim landscaping reduction shall be determined by the city engineer and shall not exceed seventy five percent (75%) of the initial assurance amount for the public landscaping system.
 3. No system reduction shall be authorized until such time as the city engineer has inspected the improvements and found them to be in full compliance with city ordinances, standards and specifications, and the approved engineering drawings. All reductions shall be by written authorization of the city engineer.
 4. A system reduction shall not constitute city acceptance of any system or any portion of the public improvements. City acceptance shall only be by the letter of acceptance issued in accordance with this article. The warranty period will not commence until after city acceptance. (2001 Code § 89-6-1206; amd. Ord. 13-03, 2-13-2013; 2009 Code § 8-3C-6; Ord. 14-07, 3-12-2014; Ord. 19- , -2019. Effective at 12 noon on January 6, 2020)

8-3C-8: WARRANTY, REPAIR AND INDEMNIFICATION FOR IMPROVEMENTS:

- A. Indemnification: A developer who enters into an improvement construction and assurance agreement, shall agree to indemnify, defend and hold the city harmless from any and all liability that may arise as a result of the public improvements until the city's acceptance.
- B. Warranty Period, Repairs **And and** Maintenance:
1. The warranty period shall be a minimum of twelve (12) months.
 2. The warranty period may be longer if the city:
 - a. Determines for good cause that a one year period would be inadequate to protect the public health, safety and welfare; and

- b. Has substantial evidence on record:
 - (1) Of prior poor performance of the applicant; or
 - (2) That the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.
- 3. The warranty period will begin on the date of city acceptance as defined in this article.
- 4. During the warranty period the developer shall unconditionally warrant that the public improvements comply with the city's written standards for design, materials and workmanship and will not fail in any material respect as a result of poor workmanship or materials.
- 5. Prior to commencing the warranty period, the developer shall submit to the city a maintenance plan for public landscaping. During the warranty period, the city shall provide maintenance of accepted public improvements and follow the public landscaping maintenance plan. Landscaping failure within the warranty period shall be presumed to be due to defective materials or workmanship if the city certifies that the city, or its contractor, substantially followed the maintenance plan.
- 6. Regardless of cause, repair work shall be the responsibility of the developer until the date on which the warranty period begins.
- 7. The warranty provisions of this chapter shall not apply to nonpublic improvements.
- C. Issuance ~~Of~~ of Building Permits: Except as specifically set forth by written agreement entered into prior to issuance, no building permit shall be issued for construction within a development or subdivision until the day after the date of city acceptance as defined in this article. (2001 Code § 89-6-1207; amd. 2009 Code; Ord. 13-03, 2-13-2013; 2009 Code § 8-3C-7; Ord. 14-07, 3-12-2014; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3C-9: INSPECTIONS:

- A. After all public improvements have been completed, the developer shall request a warranty inspection in writing. The developer shall request a reinspection, in writing, after completing corrections list items. At the end of the warranty period, the developer shall request a final inspection, in writing. The developer shall request reinspection, in writing, after completing corrections list items.
- B. Inspections and reinspections will be performed by the city within fifteen (15) days after receipt by the city engineer of a written request.
- C. After performance of an inspection or reinspection, the city engineer shall prepare a corrections list identifying incomplete, unsatisfactory and defective items. The developer shall complete the corrections items within forty five (45) days and submit a written request for reinspection. Failure to complete the corrections list items within forty five (45) days may result in additional reinspections and preparation of revised corrections lists.
- D. If corrections items are not timely completed or a written request for reinspection or certificate of completion is not submitted, the following shall apply: 1) the developer shall be responsible for the cost of each additional inspection and preparation of additional corrections lists; 2) for warranty inspections, the public improvements shall not be accepted by the city, the warranty period shall not commence and the developer will remain responsible for all cost and expense of repairing the improvements, including, without limitation, administrative costs, labor and materials costs; 3) the developer shall be responsible for all additional deterioration and

damage caused by the failure to timely correct defective conditions or request the reinspection; and 4) the city shall have the right to make demand on the proceeds of the financial assurance or warranty assurance, as applicable, for incomplete, unsatisfactory or defective items.

- E. Upon verification by the city engineer and the city manager administrator that there is no corrections list or the corrections list items have been satisfactorily completed in accordance with the approved engineering drawings and the city ordinances, standards and specifications, and provided that the requirements of this article are met for city acceptance, the city manager administrator will issue a letter of acceptance and allow the plat to be recorded. (2001 Code § 89-6-1207; amd. 2009 Code § 8-3C-7C; Ord. 13-03, 2-13-2013; § 8-3C-8; Ord. 14-07, 3-12-2014; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3C-10: WARRANTY ASSURANCE:

- A. Prior to plat recordation, developer shall submit or maintain a warranty assurance in the amount set forth in this article. The city manager administrator may approve reduction of an existing public improvement assurance to an amount equal to the warranty assurance amount required by this article. (Ord. 14-07, 3-12-2014; amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-3C-11: FAILURE TO PERFORM:

If the developer fails to complete the required improvements as set forth in an improvement construction and assurance agreement, within twenty four (24) months from the date of final plat recordation or, if no plat is recorded within twenty four (24) months from the effective date of the improvement construction and assurance agreement, the city engineer will notify the developer that s/he has forty five (45) calendar days in which to complete the improvements. If the improvements are not completed within the forty five (45) day period, demand may be made on the holder of the financial assurance, and the city may take the necessary corrective action, at the expense of the developer. (2001 Code § 89-6-1207; amd. 2009 Code § 8-3C-7D; Ord. 13-03, 2-13-2013; § 8-3C-9; Ord. 14-07, 3-12-2014)

8-3C-12: FINAL INSPECTION, RELEASE OF WARRANTY ASSURANCE:

- A. Release Of of Financial Assurance For for Nonpublic Improvements: The financial assurance for completion of nonpublic improvements shall be released upon verification that all nonpublic improvements have been installed in accordance with the approved engineering drawings and the city ordinances, standards and specifications. Release shall be evidenced by written approval of the city manager administrator. The public works director may determine to perform an interim inspection of nonpublic improvements and may, upon verification of satisfactory installation of some nonpublic improvements, approve interim reduction of the nonpublic improvement assurance by an amount reasonably determined by the public works director; provided that the public works director has received written request from the developer and has considered the following: 1) the type of nonpublic improvements; 2) the amount of the nonpublic improvement assurance; 3) the difference in nonpublic improvement and public improvement assurance amounts; and 4) other reasonably related information.
- B. Final Inspection Of of Public Improvements, Release Of of Public Improvement Assurance:
1. After the warranty period is complete, the developer shall request a final inspection and release of the improvement assurance by submitting a completed application to the city engineer.

2. After performance of the final inspection, the city engineer shall prepare a corrections list identifying defective items, which shall be repaired by the developer within forty five (45) calendar days. Upon completion of the corrections list items, a certification of completion shall be submitted to the city engineer. The certification shall be in a form acceptable to the city engineer. Within forty five (45) days after receiving the certification, the city shall reinspect and accept or reject the public improvements.

3. No release will occur until the city engineer receives a complete application requesting release. Completeness shall be determined by the city engineer, and incomplete applications may be returned to the developer.

4. Upon verification by the city engineer and the city **manager administrator** that the corrections list items have been satisfactorily completed in accordance with the approved engineering drawings and the city ordinances, standards and specifications, the city **manager administrator** will approve release of the warranty assurance. Final release shall be evidenced by written approval of the city **manager administrator**.

C. **Proof of Release:** The city shall deliver proof of release to the developer. The developer shall be responsible to ensure that such delivered acknowledgment is received and forwarded to the appropriate parties. (2001 Code § 89-6-1208; amd. Ord. 10-18, 7-28-2010; 2009 Code § 8-3C-8; Ord. 13-03, 2-13-2013; § 8-3C-10; Ord. 14-07, 3-12-2014; **Ord. 19- - -2019, Effective at 12 noon on January 6, 2020**)

8-3C-13: REPAIRS AND EMERGENCY REPAIRS:

If at any time during the construction period for platted projects or warranty period, repairs to any of the public improvements become necessary, the following actions may be taken:

A. The city **manager administrator** may require the developer to undertake immediate corrective repairs or other safety measures at any time the improvement is in a defective condition such that, in the opinion of the city **manager administrator**, public safety or convenience is jeopardized by such defective condition.

B. Reasonable efforts will be made to have the developer complete emergency repairs or other safety measures. However, if in the exclusive judgment of the city **manager administrator**, an emergency or hazardous condition exists the city may take immediate action. The city shall not take more action than is reasonably necessary to alleviate the emergency or hazardous situation. Thereafter, upon written demand, the developer shall immediately reimburse the city for all labor, materials or equipment usage expenditures. If reimbursement has not been made within five (5) working days after notification of the amount due, a demand will be made on the holder of the financial assurance for the amount due. (2001 Code § 89-6-1209; 2009 Code § 8-3C-9; amd. Ord. 13-03, 2-13-2013; § 8-3C-11; Ord. 14-07, 3-12-2014; **Ord. 19- - -2019, Effective at 12 noon on January 6, 2020**)

8-3C-14: INADEQUATE PROCEEDS; COSTS:

A. If the developer does not timely complete improvements or make repairs, and if the proceeds of the improvement assurance are inadequate, for whatever reason (including previous reductions), to pay the cost of completing and repairing the improvements to meet the city ordinances, standards and specifications, and the approved engineering drawings, the developer who submitted the improvement assurance shall be responsible to pay to the city the deficiency. Building permits and other city approvals may be denied for the development or property until: 1) the improvements are satisfactorily completed and repaired as verified by the city engineer; or 2) a new, satisfactory improvement assurance for the deficiency has been executed and delivered to the city.

- B. The city's cost of administration incurred in obtaining the proceeds of the improvement assurance, including attorney fees and court costs, if any, shall be recovered by the city from the proceeds of the assurance. (2001 Code § 89-6-1210; 2009 Code § 8-3C-10; amd. Ord. 13-03, 2-13-2013; § 8-3C-12; Ord. 14-07, 3-12-2014)

ARTICLE D. DEDICATION

8-3D-1: GOVERNING FACTORS:

8-3D-1: GOVERNING FACTORS:

The dedication of any interest in real property to the city for any purpose shall be governed by the following:

- A. Evidence ~~Of~~ ~~of~~ Intent ~~To~~ ~~to~~ Dedicate: The owner shall evidence its intent to dedicate by presenting to the city a final plat or other instrument of conveyance for recordation showing the dedication.
- B. Title Report: The intention to dedicate shall be accompanied by a current title report identifying every person and/or entity whose consent is necessary to give clear title to the real property interest to be dedicated.
- C. Acceptance ~~Of~~ ~~of~~ Dedication: The acceptance of the dedication by the city for public use shall be evidenced by the approval of the final plat or other instrument of conveyance for recording.
- D. Free ~~And~~ ~~and~~ Clear ~~Of~~ ~~of~~ Liens ~~And~~ ~~and~~ Encumbrances: Any real property interest dedicated to the city shall be conveyed free and clear of all liens and encumbrances of any kind, including tax liens. The final plat or other instrument conveying the dedicated real property interest to the city shall contain a warranty by the owner that the dedicated real property interest is free and clear of all liens and encumbrances as required under this subsection.
- E. Tax Clearance: At the time of dedication, the owner shall provide the city with tax clearance showing that all taxes, interest and penalties have been paid, including greenbelt or rollback tax assessments and accrued property taxes, or acknowledge in writing the obligation to assume and pay all taxes, interest and penalties, including greenbelt or rollback tax assessments and accrued property taxes by January 1 of year following dedication.
- F. Withholding ~~Of~~ ~~of~~ Final Plat Approval: The city may withhold final plat approval until the owner provides the city with tax clearance required under subsection E of this section. (2009 Code, amd. Ord. 19-____, -2019, Effective at 12 noon on January 6, 2020)

Chapter 4 STREET DESIGN AND INSTALLATION

8-4-1: CONNECTION TO PUBLIC STREETS:

8-4-2: EXTENSION OF STREETS REQUIRED:

8-4-3: STREET DESIGN AND LAYOUT:

8-4-1: CONNECTION TO PUBLIC STREETS:

It is unlawful for any person to make or allow to be made any connection to any public street without City city approval. (2009 Code, amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-4-2: EXTENSION OF STREETS REQUIRED:

- A. Payment of impact fees and other fees does not guarantee the existence of public streets to the property boundaries where the connection is to be made. Prior to connecting to a public street, the developer, builder or property owner shall be required to extend the public street to an appropriate connection location as determined by the City-Manager city administrator or designee.
- B. Public street extensions shall be constructed in accordance with the City city's master street plan, street standards and specifications. (2009 Code, amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-4-3: STREET DESIGN AND LAYOUT:

A. Master Street (Transportation) Plan:

1. Preservation: For the purpose of preserving the integrity of the City city street transportation master plan, no permit or approval shall be issued for the construction of any building, structure or part thereof on any land located within the boundaries of any right-of-way shown on the transportation master plan, as adopted and amended by the City Council city council. Improvements that are incompatible with the transportation master plan shall not be permitted.

2. Compliance With with Plan: All development and construction within the City city shall incorporate applicable recommendations of the adopted transportation master plan. Extensions and widening shall be constructed by developer, builder or property owner according to the standards specified in the plan. The City-Engineer city engineer may require a traffic study to be conducted and its recommendations implemented as a condition of any development approval, building permit or other related approvals and permits.

3. Permit Issuance: No building permits shall be issued, nor shall any development be approved, if the building or development is not in compliance with the provisions of this section.

4. Improvement Setbacks: All permanent structures shall be located at appropriate setbacks in accordance with the transportation master plan and applicable zoning ordinances.

a. The constructed roadway shall deviate from the surveyed centerline of the right-of-way only where necessary to adjust for existing roadway improvements and survey errors.

- b. Additional setbacks beyond master planned right-of-way may be required by the City Manager city administrator, or designee, for turning lanes. The length of reserved right-of-way, plus appropriate setback, plus the next increment of reserved right-of-way, across the frontage of the developer's property, shall not exceed a maximum distance of two hundred feet (200').
- B. State Road Connections: The developer shall make connections to State state roads at such locations and in the manner specified by the State Department of Transportation Engineer state department of transportation engineer.
- C. Eminent Domain: Nothing in this section shall obligate the City city to purchase the right-of-way or to exercise its right of eminent domain or to create or recognize any right of inverse condemnation.
- D. Design Standards: All public and private streets and connections thereto shall be designed and constructed in accordance with the public improvement standards, specifications and plans.
- E. Streets Along Development Boundaries: Streets along a development boundary shall be constructed to City city standards, except that at the recommendation of the City Engineer city engineer, the right-of-way line may be contiguous with the back of the curb.
- F. Dedication: All streets shall be dedicated for use by the public, except private streets approved by the Planning Commission planning commission. Dedication shall comply with section 8-3D-1 of this title. Private streets may be dedicated for use by the public pursuant to City city policy.
- G. Curb, Gutter And and Sidewalk: All streets shall be designed and constructed with high back curb and gutter at the locations specified by the City Engineer city engineer. Curb, gutter, and sidewalk shall comply with the provisions of the public improvement standards, specifications and plans.
1. As a condition of any development approval or building permit upon any property where any part of the property is adjacent to or connects to an existing, paved City city street, the developer, builder or property owner, shall install the appropriate curb, gutter, and sidewalk in the proper location for the street and shall extend the asphalt paving to the curb and gutter so installed. The road width, base and asphalt paving shall comply with the transportation master plan and provisions of the City city public improvement standards, specifications and plans.
 2. A new street which connects to an existing, paved City city street, shall have curb and gutter extended around the radius at the proper location for the existing City city street. The same width of pavement shall be continued to the existing pavement on the City city street, to the outside end of the radius so installed.
 3. Whenever a new structure is built, or a structure that is existing on the effective date of the ordinance codified herein, modified, renovated or improved (where the combined value of such modifications, renovations or improvements undertaken since the effective date of the ordinance codified herein or to be undertaken exceed 50 percent of the current market value of the structure), or where any site development increases the use of public streets, the owner of the property shall place curb, gutter, and sidewalk at the proper location along the entire frontage of the property for the road width as determined by the City Engineer city engineer. If the development abuts a State state highway, the developer must obtain approval for the location of curb, gutter, and sidewalk from the appropriate agency. The owner, developer or builder shall install road base and asphalt complying with the provisions of the public improvement standards, specifications and plans, from the existing edge of pavement to the line of the new curb and gutter so installed. The widened portion may be dedicated to the City city at the option of the owner. The dedication of property shall not alter zoning limitations or zoning privileges.

- H. Arterial Street Roundabouts: Roundabouts ~~to~~ may only be constructed on arterial streets, ~~as if designated as such on the West Jordan City master street plan,~~ ~~may not be constructed prior to being approved as an individual project by the City Council.~~ Exceptions: Roundabouts may also be constructed on arterial streets if:

1. Approved as part of a development agreement approved by the city council;
2. Required by the Utah Department of Transportation or other agency; or
3. Construction has begun prior to January 6, 2020.

~~Roundabouts on arterial streets that have been included in the City's adopted General Plan must be approved by resolution by the City Council prior to their construction.~~

~~This subsection H shall not apply to roundabouts on arterial streets whose construction has begun prior to October 1, 2017. (2001 Code § 89-6-403; amd. 2009 Code; amd. Ord. 12-26, 10-24-2012; Ord. 17-31, 6-14-2017; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)~~

Chapter 5 STREETS, SIDEWALKS, PUBLIC WAYS GENERALLY

8-5-1: SNOW REMOVAL:

8-5-2: MAINTENANCE OF SIDEWALKS:

8-5-3: MUD AND DIRT IN PUBLIC AREAS ELIMINATED:

8-5-4: AIRBORNE DUST AND DEBRIS:

8-5-1: SNOW REMOVAL:

- A. Snow Removal ~~From from~~ From from Sidewalks Required: It is unlawful for the owner, occupant, lessor or agent of any property abutting any paved sidewalk to fail to remove or cause to be removed from the length and breadth of the entire sidewalk abutting such property all hail, snow or sleet falling thereon, within twenty four (24) hours after such hail, snow or sleet has ceased falling. Each day such sidewalk is not so cleared shall constitute a new violation.
- B. Placement ~~Of of~~ Of of Snow Removed ~~From from~~ From from Sidewalks: Snow removed from sidewalks shall be placed on private property or in the park strip between the sidewalk and curb. It is unlawful to place snow in drive aprons, the gutter or traveled portion of the public right ~~of way.~~ of way.
- C. Removal ~~Of of~~ Of of Snow ~~From from~~ From from Private Property: Snow removed from private parking lots, private streets, private sidewalks or other private property shall be stored on private property. The owner of the property from which snow is removed shall be responsible for the following: 1) identifying appropriate snow storage areas on the private property; and 2) instructing any person who performs snow removal on the property that snow shall be stored in the identified

areas. It is unlawful for the property owner to cause or allow snow from the private property to be placed within any public right-of-way by an owner, agent, employee, contractor or any person performing snow removal on the property. It shall be unlawful for any person removing snow from private property to place such snow in the public right-of-way. (2009 Code; amd. Ord. 11-36, 12-7-2011; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-5-2: MAINTENANCE OF SIDEWALKS:

- A. Repair Required: Except for those curbs, gutters and sidewalks covered by a current improvement guarantee and except as provided in subsection B of this section, the city manager administrator will cause defective curbs, gutters and sidewalks which expose the city to liability for personal injuries to be repaired as soon as possible, subject to availability of funds budgeted for that purpose.
- B. Costs: The city will pay the materials and labor costs for the repair of curb and gutter sections. The city will pay the labor costs for the repair or replacement of defective sidewalks; the adjacent property owner will be responsible for the payment of the materials costs to repair or replace defective sidewalks. Notwithstanding the provisions of this subsection, the adjacent property owner will be responsible for all materials and labor costs for the repair or replacement of defective concrete within the property owner's driveway (whether such be sidewalk, curb, gutter or drive approach). The adjacent property owner will be responsible for the complete labor and materials costs for the repair or replacement of defective sidewalk where the defective condition was caused by the abuse or improper use of the sidewalk by the adjacent property owner, his guests, licensees or invitees.
- C. State Highway: Nothing in this section shall obligate the city for the repair, replacement and/or maintenance of curb, gutter and/or sidewalk located within the public right-of-way of a state highway; such repair, replacement and/or maintenance is the sole responsibility of the state department of transportation.
- D. Nonliability Of of City: Nothing in this section shall be construed as an admission by the city that any of its curbs, gutters or sidewalks, or any other public improvement within the public right-of-way, is in a defective or unsafe condition. Any repairs to any curb, gutter and/or sidewalk or other improvement within the public right-of-way shall not be deemed to be an admission that such improvement was defective or in an unsafe condition prior to the repair. (2001 Code § 74-1-102, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-5-3: MUD AND DIRT IN PUBLIC AREAS ELIMINATED:

- A. Tracking Of of Dirt Prohibited: It shall be unlawful for a licensed contractor and/or property owner to permit tracking of mud, dirt or debris of any kind from a construction site onto any street, sidewalk, or public right-of-way within the limits of the city, including city, state, county, and private roads. The contractor and/or property owner shall ensure that the wheels of all vehicles and equipment are free of mud, dirt and debris when such vehicles and equipment enter streets, sidewalks, or public rights of way.
- B. Littering On on Highways Prohibited:
 - 1. It shall be unlawful for a licensed contractor and/or property owner to permit any vehicle with any load to enter onto any street, highway, road or thoroughfare within the limits of the city, including state, county, and private roads, unless said load and any covering thereon is suitably fastened, secured, and confined according to the nature of such load or covering so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

2. It shall be unlawful for a licensed contractor and/or property owner to permit any vehicle from which sand, gravel, rocks or other similar materials fall or discharge to enter onto any street, highway, road or thoroughfare within the limits of the city, including state, county, and private roads.

C. Storing Of of Materials In in Public Right-Of-Way Right-of-Way Prohibited: It shall be unlawful for any licensed contractor and/or property owner to cause or permit dirt, debris or materials of any kind to be stored or placed, whether temporarily or permanently, on any street, gutter, curb, sidewalk or other public right-of-way, except where a contractor and/or property owner is required by the city engineer to place free draining rock over curbs, gutters and sidewalks to protect such curbs, gutters and sidewalks from damage during construction activities.

D. Removal Of of Mud, Dirt And and Debris:

1. The licensed contractor and/or property owner shall immediately remove any and all mud, dirt, debris, or other materials which are tracked, spilled, discharged, stored or placed on any sidewalk, curb, gutter, street, highway, road, thoroughfare or public right-of-way in violation of this section. Failure to so remove shall constitute a separate violation of this section. Removed material shall not be permitted to enter the storm drainage system.

2. The licensed contractor and/or property owner shall immediately remove all mud, dirt, debris or other materials which enter the storm drainage system as a result of the licensed contractor's and/or property owner's violation of this section or as a result of removal.

3. If it becomes necessary for the city to remove any material which the licensed contractor and/or property owner has caused or permitted to be tracked, spilled, discharged, stored or placed on any sidewalk, curb, gutter, street, highway, road, thoroughfare, public right-of-way or storm drain in violation of this section, the licensed contractor and/or property owner shall be required to pay all costs incurred by the city for such removal according to the current fees and service charges as promulgated by the city council.

4. Use of water from fire hydrants for such removal shall not be permitted unless proper permits are obtained in accordance with all applicable laws, ordinances and policies, and all required fees are paid. The licensed contractor and/or property owner shall be responsible to pay all costs of water used for such cleanup. (2001 Code § 74-1-103, amd. Ord. 19- - - - 2019, Effective at 12 noon on January 6, 2020)

8-5-4: AIRBORNE DUST AND DEBRIS:

A. Airborne Dust And and Debris Prohibited: It shall be unlawful for a licensed contractor and/or property owner to permit airborne dust and debris originating from a construction site to travel or be deposited upon, over or across any streets or sidewalks, including state, county, and private roads or any public right-of-way.

B. Exception: Where a licensed contractor and/or property owner has implemented dust control methods satisfactory to the city engineer or designated representative and airborne dust and debris originating from the construction site continue to escape, it shall not be a violation of this section. (2001 Code § 74-1-104, amd. Ord. 19- - - - 2019, Effective at 12 noon on January 6, 2020)

Chapter 6 STREETLIGHTS

8-6-1: REQUIRED; COMPLIANCE:

8-6-2: INSTALLATION REQUIRED:

8-6-3: STREETLIGHT OPERATION AND MAINTENANCE FEE:

8-6-1: REQUIRED; COMPLIANCE:

Streetlighting for public and private streets shall be required and shall comply with the city public improvement standards, specifications and plans. (2001 Code § 87-5-109; amd. 2009 Code)

8-6-2: INSTALLATION REQUIRED:

- A. Streetlighting Required: The developer of a residential, commercial, industrial or institutional development is required to install streetlighting systems within the development.
- B. Citizen Option ~~To to~~ Install: The residents of areas which do not have adequate streetlighting systems may install, at their expense, streetlighting systems acceptable to the city ~~manager~~ administrator and to the Rocky Mountain Power Company, or its successor.
- C. Dedication ~~Of of~~ Citizen Installations Required: The streetlighting systems installed pursuant to subsections A and B of this section shall be dedicated to the city.
- D. Operational Expenses Paid ~~By by~~ City: The city will pay for the operation and maintenance and expenses of the streetlighting systems installed pursuant to subsections A and B of this section according to electrical service schedule 12, or its successor provisions, pertaining to customer-owned systems, of the public service commission and Rocky Mountain Power Company, or its successor. (2001 Code § 74-3-101; amd. Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-6-3: STREETLIGHT OPERATION AND MAINTENANCE FEE:

- A. Streetlight Operation ~~And and~~ Maintenance Assessments: The director of finance or his/her designee shall assess a monthly streetlight operation and maintenance fee for the following:
 - 1. Each single-family residence;
 - 2. Each separate unit or structural subdivision available for occupancy in a multiple-unit residential or commercial structure;
 - 3. Each lot within a mobile home subdivision;
 - 4. Each apartment within an apartment complex; and
 - 5. Each dwelling or separate office space available for occupancy within a condominium project.
- B. Amount: The fee charged shall be the sum periodically adopted by the city council in the city's consolidated fee and service charge resolution.

- C. Billing ~~And~~ ~~and~~ Accounting Practices: The director of finance shall implement appropriate billing and accounting practices so that the applicable streetlight operation and maintenance fees are assessed, billed and collected based on the reasonably estimated benefits received. These accounting, billing and collection practices may include, but are not limited to, incorporating said lighting fees to culinary water bills. (2001 Code § 74-3-102; amd. Ord. 19-~~2019~~, Effective at 12 noon on January 6, 2020)

Chapter 7 BRIDGES, CULVERTS AND MONUMENTS

8-7-1: BRIDGES:

8-7-2: MONUMENTS:

8-7-3: RESTORATION AND CONSTRUCTION STANDARDS FOR BRIDGES AND CULVERTS:

8-7-1: BRIDGES:

Design and construction of new bridges over a wash, stream, natural drainage channel, or canal shall be approved in advance by the city engineer. If a bridge is proposed over a canal or natural drainage not owned or controlled by the city, written approval from by the owner of the canal or natural drainage shall be provided to the city with the construction drawings. (2001 Code § 87-5-112; amd. 2009 Code)

8-7-2: MONUMENTS:

- A. Location: For all new construction, permanent survey monuments shall be accurately set and established at:
1. The intersections of centerlines of newly constructed streets and new intersections with centerlines of existing streets.
 2. Property lines.
 3. Other locations directed by city engineer.
- B. Permanency: All permanent monuments shall remain in place, or be reset at the developer, builder or property owner's expense, after curbs, gutters, and sidewalks are installed. Monuments shall be of a type approved by the city engineer. All subdivision plats shall be tied to a section corner or monument of record, as established by the Salt Lake County surveyor. (2001 Code § 87-5-115; amd. 2009 Code)

8-7-3: RESTORATION AND CONSTRUCTION STANDARDS FOR BRIDGES AND CULVERTS:

- A. All waterway openings on bridges and culverts (60 inches and greater diameter) owned and/or maintained by the city shall be capable of passing a once in twenty five (25) years flood flow.
- B. The requirements of subsection A of this section shall be applicable to all future bridge and culvert (60 inches or greater diameter) replacement or repair projects, which, following completion, are estimated to have traffic counts greater than fifty (50) vehicles per day.
- C. The city **manager administrator** and the city engineer are directed to enforce the provisions of this section to ensure that all bridge and culvert construction and/or restoration complies with the standards. (2001 Code § 74-1-101, amd. Ord. 19-____ -____-2019, Effective at 12 noon on January 6, 2020)

Chapter 8 ENCROACHMENTS

- 8-8-1: TITLE, APPLICATION AND PURPOSE:**
- 8-8-2: DEFINITIONS:**
- 8-8-3: PERMIT AND FEE REQUIREMENTS:**
- 8-8-4: SECURITY INSTRUMENTS:**
- 8-8-5: LIABILITY PROTECTION:**
- 8-8-6: COMMENCEMENT AND COMPLETION OF ENCROACHMENT:**
- 8-8-7: CONSTRUCTION/EXCAVATION ENCROACHMENT REQUIREMENTS AND REGULATIONS:**
- 8-8-8: BUS SHELTERS AND BENCHES:**
- 8-8-9: RELOCATION AND REMOVAL REQUIREMENTS:**
- 8-8-10: PUBLIC SAFETY:**
- 8-8-11: APPEALS:**
- 8-8-12: VIOLATIONS:**
- 8-8-13: ENFORCEMENT:**
- 8-8-14: SUSPENSION AND REVOCATION OF PERMIT BY CITY ENGINEER:**
- 8-8-15: STOP WORK ORDER:**
- 8-8-16: ABATEMENT; NOTICE TO SURETY; EXPENDITURE OF CASH GUARANTEE:**
- 8-8-17: PENALTIES:**

8-8-1: TITLE, APPLICATION AND PURPOSE:

- A. Title: This chapter shall be known and may be cited as the *ENCROACHMENT REGULATIONS OF THE CITY*. (2001 Code § 72-3-101)

B. Application:

1. The provisions of this chapter shall not apply to any officer or employee of the city in the discharge of his or her official duties.
2. Work performed by any person under contract with, or at the request of, the city shall be exempt from the fee and security requirements of this chapter.
3. The provisions of this chapter shall apply to rights of way.

C. Purpose: The purpose of this chapter is to regulate encroachments in the right-of-way, for the purpose of: 1) minimizing the disruption of traffic, 2) protecting the city's investment in its infrastructure by preserving the serviceable life of its streets, sidewalks, curbs, gutters and other improvements, 3) promoting the efficient flow of traffic, and 4) generally promoting the public safety and welfare of the residents of, and visitors to, the city. Accordingly, all construction and excavation in, and obstruction of, the right-of-way shall be subject to the procedures and requirements of this chapter. (2001 Code § 72-3-102; amd. 2009 Code; Ord. 16-16, 4-13-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-8-2: DEFINITIONS:

As used in this chapter, the following words and phrases shall have the meanings given in this section:

APPLICANT: Any person who proposes to encroach upon a right-of-way and has applied for a permit for the proposed encroachment pursuant to the provisions of this chapter.

CITY ENGINEER: The engineer of the city who shall be so designated by appointed by the mayor with the advice and consent of the city council.

COMPETITIVE UTILITY PROVIDER: Each person who provides public utility services within the city in competition with one or more persons providing the same or similar services.

EMERGENCY: Any unforeseen circumstances or occurrence, the existence of which constitutes a clear and immediate danger to persons or property, or which causes interruption of utility services.

ENCROACH AND ENCROACHMENT: Going upon, over, under, within, or using or doing work upon, any right-of-way so as to prevent, obstruct or interfere with the normal use of the right-of-way. "Encroach" and "encroachment" shall include the performance of any of the following acts on, over, under or within a public right-of-way:

- A. Excavating or placing embankments or stockpiling any material;
- B. Placing or leaving any rubbish, brush, earth or other material of any nature;
- C. Constructing, placing or maintaining any pathway, sidewalk, curb, gutter, driveway, surfacing, culvert, drainage facility, pipe, conduit or cable;
- D. Erecting or maintaining any post, pole, fence, guardrail, wall, loading platform, or any other structure;
- E. Planting or removing any tree, shrub, grass or growing thing;
- F. Taking, placing, moving or using any vehicle, or combination of vehicles, or other object of a dimension, weight or other characteristic prohibited without a permit by the state transportation code;
- G. Preparing commercial motion or still picture photography;

- H. Locating, drilling or plugging test holes for seismological exploration or any other similar purpose;
- I. Conducting land surveying operations or making traffic counts in such a way that it is necessary to excavate or in any way interfere with the normal flow of traffic;
- J. Construction activity on adjacent right-of-way or private property which impacts the public's use of the right-of-way; and
- K. Any unusual event or activity that will alter or disrupt traffic.

ENCROACHMENT PERMIT: A permit issued by the city engineer pursuant to the provisions of this chapter.

FACILITY OR FACILITIES: Wires, lines, cables, coaxial cables, conduit, manholes, ducts, pipelines, tunnels, vaults, ditches, tracks, poles, antennas, transceivers, amplifiers, switches, electronic devices, structures or other improvements of any kind or nature, whether fixed or movable.

MAJOR WORK: Any reasonably foreseeable work in the right-of-way that will: a) affect the right-of-way for more than ten (10) calendar days, b) involve a street cut of more than one hundred feet (100') in length, or c) involve a street cut of more than two hundred (200) square feet.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD): The latest edition of the "Manual On Uniform Traffic Control Devices" published by the federal highway administration.

NEW STREET: A street that has received new subbase, the reworking of existing pavement or subbase and the application of new surfacing, or the addition of equal to or greater than two inches (2") of new pavement surfacing overlay.

PERMITTEE: A person who has been issued an encroachment permit pursuant to the provisions of this chapter.

PUBLIC HIGHWAY: The part of a right-of-way which is improved for use as a public road, street, way, lane or alley, including shoulders and excluding park strips and sidewalks.

PUBLIC IMPROVEMENT STANDARDS, SPECIFICATIONS, AND PLANS: The latest version of the engineering regulations, or standard specifications and details for municipal construction published by the city.

RESURFACED STREET: Any street that has received a bituminous pavement overlay, slurry seal, chip seal, fog seal or microsurface application of less than two inches (2") of thickness.

RIGHT-OF-WAY: Any land, or interest therein, which, by deed, conveyance, agreement, dedication, usage, or other process of law, has been reserved for or dedicated to the city for the use of the general public for public purposes.

TELECOMMUNICATION FACILITIES: All equipment and personal property used in connection with the provision of telecommunication services either within or outside of the city, including, without limitation, all conduits, wiring, cables, fiber optic cables, switches, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment and related appurtenances.

USER: A person or entity engaging in any lawful activity within the right-of-way.

WORK ZONE: All affected area(s) within the right-of-way including, but not limited to, the trench area(s), the travel path or route, and all area(s) occupied by equipment, traffic control, storage, spoils and waste material. (2001 Code § 72-3-201; amd. 2009 Code; Ord. 16-16, 4-13-2016; Ord. 19- -2019, Effective at 12 noon on January 6, 2020)

8-8-3: PERMIT AND FEE REQUIREMENTS:

A. Permit Required; Exceptions:

1. It shall be unlawful for any person, agency or entity to encroach, or to make or cause to be made any encroachment, upon, over, under or within any right-of-way in the city without first obtaining a permit from the city engineer.
2. An owner, lessee, or person in control of property under active agricultural use and immediately abutting the right-of-way may, without obtaining a permit, use the untraveled portion of the right-of-way abutting such property for the growing and maintenance of agricultural crops so long as such use does not interfere with vehicular or pedestrian traffic, or drainage of the right-of-way.
3. Encroachments for which permits are not required shall be subject to removal by the city under the procedure and penalties set forth in this code. (2001 Code § 72-3-301)

B. Application Form; Filing:

1. Application shall be made in a form acceptable to the city engineer, and shall contain, at a minimum, the following:
 - a. The applicant's name and address;
 - b. The contractor's name, license number, and place of business; and
 - c. Sufficient detail as, in the judgment of the city engineer, is necessary to show the purpose, location, and dimensions of the proposed encroachment and the work zone.
2. The application shall be completed, signed by the applicant, and filed with the city engineer, together with the fees, security, certificate of insurance, and any other documents required by this chapter or the city engineer. (2001 Code § 72-3-302; amd. 2009 Code)

C. Accompanying Exhibits ~~May Be~~ may be Required: When required by the city engineer, the applicant shall attach to, or enclose with, the application the following:

1. A plan and profile map, plot, drawing to scale, diagram, or similar exhibit which plainly shows any and all information necessary to locate, delineate, illustrate and identify the proposed encroachment. The scale shall be one inch equals fifty feet (1" = 50') or less. The city engineer may require the plans to be stamped by a civil engineer licensed in the state of Utah; (2001 Code § 72-3-303; amd. 2009 Code)
2. A traffic control plan that conforms to the latest edition of MUTCD; and
3. A proposed work schedule.

D. Emergency Work:

1. Any person maintaining pipes, lines or other facilities in the right-of-way may proceed with work upon existing facilities without a permit when emergency circumstances demand the work to be done immediately, provided a permit could not reasonably and practicably have been obtained beforehand.
2. If emergency work is commenced on or within any right-of-way during regular business hours Monday through Friday eight o'clock (8:00) A.M. to five o'clock (5:00) P.M., the city engineer shall be notified within one-half (1/2) hour from the time the work is commenced. The

person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall ensure that work is accomplished according to the engineering regulations, public improvement standards, specification and plans, the "Manual On Uniform Traffic Control Devices", and other applicable laws, ordinances, regulations and generally accepted industry practices.

3. Any person commencing emergency work in the right-of-way during nonbusiness hours without a permit shall notify the on call staff member within one-half ($1/2$) hour from the time work is commenced and shall also notify the city engineer during the first hour of the first regular business day on which city offices are open for business after such work is commenced.

4. Any user performing emergency work shall be required to apply for a permit, and a permit may be issued, retroactive to the date when the work began.

E. Fees; Refunds:

1. Before a permit is issued, the applicant shall pay to the city all fees as adopted by resolution of the city council.

2. Fees shall not be refunded unless no permit is issued or unless the permit issued is rejected by the permittee because of special conditions imposed therein. Fees shall be refunded without interest, which shall be retained by the city as reimbursement for administrative costs. (2001 Code § 72-3-305; amd. 2009 Code)

3. Any person found to be causing an encroachment in the right-of-way without having a valid and unexpired encroachment permit shall be required to pay a fee equal to two (2) times the normal encroachment permit fee.

F. Issuance ~~Of~~ of Permit; Denial ~~For~~ for Good Cause: Upon receiving an application in the proper form, together with fees, security, and all other required items, the city engineer shall issue a written encroachment permit subject to the conditions set forth in the permit, this chapter, and required by law. The city engineer may deny the permit for good cause shown, including, but not limited to, the following: (2001 Code § 72-3-306; amd. 2009 Code)

1. The applicant is not a responsible person. In determining whether or not the applicant is a responsible person, the city engineer may consider the reports of other persons as to the applicant's reputation for faithfully completing construction projects; or

2. The encroachment will not be in the public interest or will be detrimental to the public health, safety or welfare.

3. The applicant does not have a current franchise or similar agreement with the city.

G. Permittee Acceptance ~~Of~~ of Terms ~~And~~ and Conditions: By accepting the permit, the permittee agrees to be bound by all the terms and conditions set forth in the permit and in this chapter. (2001 Code § 72-3-307)

H. Additional Requirements:

1. In addition to the requirements set forth in this chapter, the city engineer may adopt such orders, rules and regulations as are reasonably necessary to accomplish the purposes of this chapter and are consistent herewith.

2. The city engineer may provide in the encroachment permit any requirements which he or she finds will substantially aid in the protection of the right-of-way, the improvements therein and the traveling public. The city engineer may establish special provisions for the work to be done under the permit, including, but not limited to, length of trench, the equipment to be used,

the type of backfill, paving, traffic signs or devices, hours of work, flagmen, lights and inspections. The city engineer may add such requirements and conditions by rubber stamp or attachments to the permit, or both, and they shall become an integral part of the permit. (2001 Code § 72-3-308; amd. 2009 Code)

3. All encroachments shall conform to standards established by the city engineer.
- I. Changes ~~In~~ in Authorized Encroachment: No changes shall be made in the location, dimensions, character or duration of the encroachment as granted by the permit, except on written authorization by the city engineer. (2001 Code § 72-3-311; amd. 2009 Code)
- J. Display ~~Of~~ of Permit: The permittee shall keep the issued encroachment permit, or a copy thereof, at the site of the encroachment, or in the cab of the vehicle when movement thereof on a public highway is involved, and the permit shall be shown to any authorized representative of the city engineer or law enforcement officer upon demand. (2001 Code § 72-3-312)
- K. Nontransferable: Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than as specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit; provided, however, that the permittee shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this chapter and under said permit. (2001 Code § 72-3-313; amd. 2009 Code)
- L. Permits ~~To~~ to Move Certain Vehicles ~~And~~ and Objects:
 1. Before a vehicle or combination of vehicles or object of a weight or dimension or characteristic prohibited by law without a permit is moved on any public highway, a permit to do so shall first be granted by the state department of transportation, the state highway patrol, or by the city engineer, as applicable. In all cases where the international building code, as adopted by the city, requires the owner of any premises to obtain a relocation permit to move any building or structure onto the premises, the city engineer shall not grant an encroachment permit until the applicant furnishes to the city engineer evidence that the relocation permit has been obtained.
 2. Before issuing a permit for the movement of a vehicle or object with a rolling height of over sixteen feet (16'), the city engineer shall require evidence of approval of height clearance from the public utility companies having overhead lines crossing the proposed route. (2001 Code § 72-3-314; amd. 2009 Code; Ord. 12-10, 4-25-2012, eff. 7-1-2012; Ord. 16-16, 4-13-2016; Ord. 19-, -2019, Effective at 12 noon on January 6, 2020)

8-8-4: SECURITY INSTRUMENTS:

- A. Cash Deposits:
 1. Restoration: Unless exempt, each applicant, before obtaining a permit, shall deposit with the city engineer a cash deposit consisting of cash or a certified or cashier's check in a sum to be fixed by the city engineer as sufficient to reimburse the city for restoring the ~~right~~ of-way to its original condition. Such cash deposit may be used by the city for traffic control and emergency work on an as needed basis as determined by the city engineer.
 2. Time: Where the size, nature, and location of the encroachment warrants, the city engineer may require an additional time completion deposit which shall be held by the city for the duration of the encroachment activity. The permittee shall forfeit to the city a portion of such deposit for each calendar day that the encroachment continues beyond the number of days specified on the encroachment permit. The daily amount to be forfeited shall be as adopted by resolution of the city council. The remainder shall be released within thirty (30) calendar days of the city's receipt of a written request from the permittee. (2001 Code § 72-3-401; amd. 2009 Code)

- B. Bonds: In lieu of the cash deposit required by the provisions of subsection A of this section, the applicant, with the approval of the city engineer, may file a surety bond issued by a company authorized to do a general surety business in the state, in an amount fixed by the city engineer as sufficient to reimburse the city for restoring the right-of-way to its original condition. Where the size and nature of the project warrant, the city engineer may require an additional cash deposit of one thousand dollars (\$1,000.00) for encroachments in collector and arterial rights of way and five hundred dollars (\$500.00) for other encroachments to be used by the city, as needed in the discretion of the city engineer, for traffic control or emergency work. (2001 Code § 72-3-402; amd. 2009 Code)
- C. Annual Bonds: In lieu of submitting a cash deposit or bond for each encroachment, the applicant may, with the approval of the city engineer, annually file with the city engineer a surety bond issued by a company authorized to do a general surety business in the state, in a sum fixed by the city engineer as sufficient to reimburse the city for restoring the right-of-way to its original condition. (2001 Code § 72-3-404)
- D. Additional Bonds ~~And~~ ~~and~~ Cash Deposits: The city engineer may at any time require an additional bond or cash deposit upon finding that the amount of a bond or cash deposit is insufficient to cover the cost of restoring the right-of-way in accordance with city standards. (2001 Code § 72-3-406)
- E. Release ~~Of~~ ~~of~~ Deposits ~~And~~ ~~and~~ Bonds: Except as otherwise provided in this chapter any deposit or bond required by the city engineer pursuant to the provisions of this chapter shall be payable to or for the benefit of the city and shall be filed or deposited with the city engineer. No less than three (3) years after the satisfactory completion of all activity associated with the encroachment, and the fulfillment of all conditions of the permit, the city engineer shall release the deposit or bond upon the application of the permittee. Release shall be in writing, signed by the city engineer or designee. (2001 Code § 72-3-407; amd. 2009 Code)
- F. Exemptions ~~Te~~ ~~to~~ Bond Requirements: Public utilities operating under the jurisdiction of the public utilities commission of the state, utilities holding a franchise from the city, and governmental agencies may be relieved by the city engineer of the obligation of furnishing a restoration bond if the city engineer is satisfied that proper restoration will be made. (2001 Code § 72-3-409; amd. Ord. 16-16, 4-13-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-8-5: LIABILITY PROTECTION:

- A. Liability ~~For~~ ~~for~~ Roadway Damages: The permittee shall indemnify the city for any and all damages caused to the right-of-way or improvements therein as a result of acts or omissions of the permittee or arising out of activities performed pursuant to the encroachment permit. (2001 Code § 72-3-501; amd. 2009 Code)
- B. Nonliability ~~Of~~ ~~of~~ City ~~For~~ ~~for~~ Damages: The permittee shall indemnify, defend and hold the city harmless from any claims or judgments for damages or other relief against the city as a result of acts or omissions of the permittee or its contractor, or arising out of or related to the encroachment or other operations under the permit, whether the condition giving rise to the claim or judgment was created in whole or in part by the permittee or its contractor. (2001 Code § 72-3-502; amd. 2009 Code)
- C. Liability Insurance: The permittee shall maintain public liability insurance, including, but not limited to, motor vehicle insurance, sufficient to cover any claims for damages for personal injury, including death, and for damage to property which may arise from the encroachment or other operations under the permit, whether such encroachment or other operations are by the permittee, or by any agent, or by anyone directly or indirectly employed by the permittee or permittee's agents. Certificates of insurance shall be filed with the city engineer and shall be subject to approval for adequacy of protection. No permit shall be issued under this chapter

unless the applicant has submitted a certificate of insurance from a company authorized to issue insurance in the state, evidencing that the applicant has, at a minimum, comprehensive general liability and property damage coverage, that includes contractual liability coverage, with minimum limits of two million dollars (\$2,000,000.00) for injuries, including accidental death, to any one person; in an amount not less than three million dollars (\$3,000,000.00) on account of injuries sustained in any one accident; and property damage insurance in an amount not less than five hundred thousand dollars (\$500,000.00) for each accident. (2001 Code § 72-3-503)

- D. Responsibility ~~Of~~ ~~of~~ Subsequent Owners: All obligations, responsibilities and other requirements of the permittee, as set forth in this chapter, shall be binding on subsequent owners of the encroachment. Each subsequent owner shall be required to apply for and receive an encroachment permit modification, including the new owner's information. (2001 Code § 72-3-504; amd. 2009 Code; Ord. 16-16, 4-13-2016; Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

8-8-6: COMMENCEMENT AND COMPLETION OF ENCROACHMENT:

- A. Time: The permittee shall commence and complete the encroachment as stated in the permit. If the encroachment is not completed within forty five (45) days or within such shorter time as stated in the permit, the permit shall be void unless, prior to its expiration, the time for completion has been extended in writing by the city engineer.
- B. Notices ~~Of~~ ~~of~~ Commencement: At least forty eight (48) hours prior to commencing any encroachment, the permittee shall notify the city engineer of the time of commencement and provide the name, address, telephone number, and license number of the contractor, if any, who will perform work related to the encroachment. Additional time may be required by the city engineer as stated in the encroachment permit.
- C. Notice ~~Of~~ ~~of~~ Completion ~~Of~~ ~~of~~ Encroachment: Upon completion of the work, the permittee shall give written notice of completion to the city engineer. The work may be deemed to be incomplete until written notice of completion.
- D. Delay ~~Of~~ ~~of~~ Completion: Failure to complete the encroachment within the time specified in the permit shall be a violation. The time for completion will not be extended if the city engineer finds that delay in commencing or prosecuting the encroachment is caused by lack of diligence on the part of the permittee.
- E. Inspection ~~Upon~~ ~~upon~~ Completion: Upon receipt of the notice of completion of the encroachment, the city engineer shall inspect the site of the encroachment within three (3) working days and ascertain whether or not the permittee has complied with all the conditions and requirements imposed in the permit and the provisions of this chapter. The permittee shall be advised in writing of the results of the inspection. If the city engineer determines that the permittee has not complied with all such conditions and requirements in performing the encroachment, the city engineer may order the permittee to correct the work immediately. If the permittee fails to correct the work within ten (10) days after being ordered to do so in writing, the city engineer may correct the work. The permittee shall reimburse the city for the work performed. (Ord. 16-16, 4-13-2016; amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

8-8-7: CONSTRUCTION/EXCAVATION ENCROACHMENT REQUIREMENTS AND REGULATIONS:

- A. Permit Required: Any person desiring to perform any construction or excavation work in the right-of-way shall first apply for and obtain a permit for such work. It is unlawful for any person to commence work in the right-of-way until the city engineer has approved the application and until a permit has been issued for such work, except as specifically provided to the contrary in this chapter.

- B. Persons Eligible ~~For~~ for Permit: No person shall be eligible to apply for or receive an encroachment permit for construction or excavation, except the following:
1. Contractors licensed by the state as general contractors;
 2. Public utility companies;
 3. The city;
 4. Local governments, districts, and other political subdivisions of the state;
 5. Residents installing, replacing, or maintaining less than five hundred (500) square feet or one hundred (100) linear feet of sidewalk, curb and gutter, driveway approach, or other work approved by the city engineer, upon a portion of the public right-of-way adjacent to their residence.
- C. Exemptions:
1. It is lawful for a city, county, or state employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefor.
 2. A permit is not required for hand digging excavations for installation or repair of sprinkler systems and landscaping within the unpaved areas of the right-of-way. However, conformance to all city specifications is required.
- D. Inspections; Charges: If, in the judgment of the city engineer, it appears desirable to maintain an inspector to determine whether work is being done in compliance with the encroachment permit, the city engineer shall assign an inspector, and the permittee shall pay the city in accordance with the fees adopted by resolution of the city council. The provisions of this section shall be applicable to all permittees, including governments, districts and other political subdivisions. (2001 Code § 72-3-601; amd. 2009 Code)
- E. Project Site Management:
1. The permittee shall keep the work site and haul routes to and from the work site, clean and free from rubbish, debris and mud at all times.
 2. The permittee shall clean up the work site within twenty four (24) hours after receiving written notice from the city. Should the permittee not clean up the site as required, the city may perform the cleaning and recover the full cost of cleaning from the permittee.
- F. Compliance With with Specifications, Standards And and Traffic Control Regulations:
1. The work performed in the right-of-way shall conform to the requirements of the engineering regulations, design standards, construction specifications and traffic control regulations of the city.
 2. All excavations shall be conducted in a diligent and expeditious manner resulting in a minimum amount of interference or interruption of street and pedestrian traffic. All weather pedestrian access to businesses shall be provided. Permittee shall supply barricades or equivalent structures where necessary to provide safe and efficient traffic flow, and to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and the right-of-way restoration has been completed. From sunset to sunrise, all barricades and excavations must be clearly delineated with adequate lighting. The engineering department, the police department and the fire department shall be notified at least forty eight (48) hours in advance of any planned excavation requiring street closure or traffic detour.

- G. Filing ~~Of of~~ Maps ~~And and~~ Drawings: The city engineer may require any person owning, using, controlling, or having an interest in any pipe, conduit, duct or tunnel under the surface of any ~~right-of-way~~ for supplying or conveying gas, electricity, communication facilities, water, steam, ammonia or oil, or for any other purpose, to file in the office of the city engineer, within sixty (60) days after the complete installation, a corrected set of maps or drawings drawn to a scale of not more than fifty feet to one inch (50' = 1") showing the complete installation of all such pipes, conduits, ducts or tunnels. The same may be required showing the location in detail of such pipes, conduits, ducts or tunnels when such are abandoned or altered. Scaled maps and drawings submitted periodically by public utilities shall be deemed in compliance with the intent of this section. If required, all maps and drawings shall be submitted in electronic PDF or CAD format. (2001 Code § 72-3-606)
- H. Completion ~~Of of~~ Work; Restoration ~~Of of~~ Rights ~~Of -of-~~Way:
1. Upon completion of an encroachment, the ~~right-of-way~~ shall be restored by replacing, repairing or rebuilding it to its original condition before the encroachment was commenced, including the completion of any work necessary to restore the ~~right-of-way~~ to a safe and usable condition as directed by the city engineer. All obstructions, materials and debris upon the ~~right-of-way~~ shall be removed. Where excavations occur within areas already paved, the city engineer may require temporary paving and temporary traffic markers to be installed within twenty four (24) hours after the excavated area is backfilled.
 2. In the event that the ~~right-of-way~~ is not promptly restored, as provided in this section, or should the nature of any damage to the ~~right-of-way~~ require restoration before the person performing the encroachment can be notified or can respond to notification, the city engineer may, at his or her option, make the necessary restoration. The permittee shall reimburse the city for the total cost of restoration in accordance with the fees adopted by the city council. (2001 Code § 72-3-607)
- I. Storage ~~Of of~~ Materials:
1. Storage of excavated soil or other materials shall not be permitted unless included in the encroachment permit. Where permitted, materials shall be stored in accordance with the permit, and the permittee shall be responsible for the safety of the workers and the general public. The permit shall not create any right to use property adjacent to the ~~right-of-way~~, and permittee shall be responsible for coordination with owners of adjacent property.
 2. In areas too narrow to permit the proper storage of materials, the city engineer may require that the permittee remove the materials from the encroachment site. (2001 Code § 72-3-611)
- J. Monuments: A monument set for the purpose of preserving survey points, lines or elevation shall not be removed or disturbed without first obtaining permission from the city engineer and Salt Lake County surveyor. The replacement of a removed or disturbed monument shall be done at the expense of the permittee in accordance with Salt Lake County requirements. (2001 Code § 72-3-612)
- K. Open Trenches: In any trenching operation, the open trench shall not be in excess of three hundred feet (300') ahead of the trench work proper, unless specifically authorized by the city engineer. When any excavation is commenced, the work of making and refilling shall be prosecuted diligently until completion. (2001 Code § 72-3-613)
- L. Interference ~~With with~~ Drainage: If the encroachment interferes with drainage, the permittee shall provide for proper drainage in a manner approved by the city engineer. (2001 Code § 72-3-614)

- M. Small Pipes: Laterals, services, and other small diameter pipes shall be jacked, bored, or driven beneath a paved surface unless other methods are approved by the city engineer. (2001 Code § 72-3-615)
- N. Covering Pipes ~~And~~ ~~and~~ Conduits: The minimum cover over any pipe or conduit installed under any ~~right-of-way~~ shall be thirty inches (30") of material measured from the existing or proposed flow line of the nearest gutter to the top of the pipe or conduit. If a gutter flow line is not established, the cover shall be thirty inches (30") of material measured from the surface of the nearest outermost edge of the traveled way to the top of the pipe or conduit. Where there are existing curbs and gutters or where curbs and gutters are under construction, utilities may maintain a minimum thirty inches (30") of cover starting one foot (1') back of the curb line in the parkway or sidewalk area. Maximum cover shall be seventy two inches (72"). The city engineer may permit the installation of pipes or conduits at lesser or greater depths where the required cover cannot be provided. (2001 Code § 72-3-616)
- O. Backfilling: The backfilling and compaction of an excavation shall be in accordance with standards established by the city engineer, both as to materials and methods. The backfilling shall commence within forty eight (48) hours after the work in a trench is completed. (2001 Code § 72-3-617)
- P. Paving ~~By~~ ~~by~~ City: The city engineer shall have the power to order the paving by city employees of any excavation up to one hundred feet (100') in length. The permittee shall reimburse the city in accordance with the fees adopted by the city council. (2001 Code § 72-3-618)
- Q. Cleanup:
1. Except for materials properly stored, the permittee shall at all times keep the public highway clear of all materials, earth and debris. If the permittee fails to do so within twenty four (24) hours after having been notified by the city engineer, the work may be done by the city engineer and the permittee charged in accordance with the fees adopted by the city council.
 2. When a pole, guy stub or similar timber is removed and not replaced, the entire length thereof shall be removed from the ground and the hole backfilled and compacted.
- R. Coordination ~~Of~~ ~~of~~ Major Work Within ~~The~~ ~~the~~ Right-Of ~~-of-~~ Way:
1. The city engineer may, on or prior to January 1 of each year, publish a schedule identifying the location and anticipated start date and completion date of major work anticipated to be performed within and by the city during the period beginning on the next succeeding January 1. The schedule may be updated every six (6) months and shall be available for inspection at the office of the city engineer.
 2. Applications for encroachments involving major work shall be accepted by the city engineer on or before November 1 of each calendar year for the next year period beginning on the next succeeding January 1. The application must be on a form approved by the city engineer and must include a construction schedule which identifies, in reasonable detail, the location and anticipated start date and completion date of all anticipated major work.
 3. Permit issuance may be denied or delayed by the city engineer where the person requesting a permit fails to timely apply or does not accurately identify the major work as set forth in this section. Among other things, the city engineer will consider excavation restrictions and other major work when determining the denial or delay.

4. It shall be the general policy of the city engineer to facilitate coordination of major work by disclosing application information to other applicants. Any requests to maintain the confidentiality of information submitted pursuant to this section will be considered by the city in accordance with the provisions of the Utah government records, access and management act.

5. In issuing or conditioning a permit for major work, the city engineer may do any or all of the following: a) schedule work in the right-of-way in the order in which applications are filed, and without regard to other work in the right-of-way; b) delay or accelerate the commencement date of major work so that such work is performed simultaneously; or c) delay or accelerate the commencement date of major work so that such work is performed in sequence, or is separated by a reasonable period of time.

6. Each applicant shall use all available information to coordinate, in good faith, its major work in the right-of-way with work proposed by the city and other users.

S. Excess Capacity:

1. Each competitive utility provider applicant must determine the size of facilities required to provide the capacity reasonably anticipated to satisfy the needs of such applicant for a minimum of five (5) years following installation and present its determination to the city.

2. Facilities must be designed and constructed to provide the capacity described above, or such lesser capacity as reasonably approved by the city engineer.

T. Excavation Restrictions:

1. The city engineer may, from time to time, impose excavation restrictions on portions of the right-of-way. The city engineer will not issue a permit for any portion of the right-of-way subject to an excavation restriction, except as set forth in this section.

2. The duration of the excavation restrictions will be as follows:

a. Seven (7) years following the completion of a new street or portion thereof;

b. Three (3) years following the resurfacing of a street or portion thereof;

c. Five (5) years following the completion of any excavation work in the right-of-way. The city engineer may impose the restriction solely on the user who performed the work, or on such owner and other prospective permittees or class of permittees as the city engineer determines;

d. Until excess capacity no longer exists, for any portion of the right-of-way where excess capacity exists.

3. The excavation restrictions may include, but are not limited to, one or more, or a combination of the following:

a. A limited restriction prohibiting excavation by one user or type of user that does not preclude excavations by different users or types of users;

b. A comprehensive restriction prohibiting all excavation and construction activity in the affected portion of the right-of-way;

c. A restriction defining methods and standards of excavation or construction activity within the affected portion of the right-of-way.

4. The nature, scope and duration of the restriction will be consistent with the terms described in the notice provided for in this section. The nature, scope and duration of each excavation restriction shall be evidenced in writing, which writing shall be available for inspection during regular business hours at the office of the city engineer.

U. Notice ~~Of~~ of Excavation Restrictions:

1. The city engineer shall publish, or cause to be published, annual notice advertising his/her intent to impose excavation restrictions relating to portions of the right-of-way which will be under construction during the next succeeding calendar year. The notice shall be published at least once each week for three (3) consecutive weeks in a newspaper of general circulation within the city, which is used by the city for the publication of legal notices; provided that the first publication shall be on or before December 31. In addition, such notice shall be mailed by the city engineer to each person who has made written request therefor. The notice shall describe the following:

- a. The nature of the project giving rise to the restriction;
- b. The portion of the right-of-way affected by the restriction;
- c. The effective date of the restriction;
- d. The duration of the restriction; and
- e. The nature of the restriction.

2. The notice shall invite those to whom the restriction will apply to participate in the project in the manner described by the city engineer, which may include any or all of the following:

- a. Locating facilities in the same trench as an applicant;
- b. Sharing the cost of joint facilities with an applicant;
- c. Collocating facilities within a common conduit;
- d. Entering into lease arrangements with the applicant;
- e. Constructing separate facilities in the project area within the same time frame;
- f. Otherwise cooperating in a manner mutually agreeable to the users; or
- g. Participating in the project in such manner as the city engineer determines to be in the best interests of the city.

h. The notice shall further provide that all interested users must file a permit application with the city engineer not later than six (6) weeks prior to the estimated date of commencement of construction of the proposed project. Nothing herein shall require the city engineer to publish notice of an excavation restriction which applies to only one user, provided that written notice of such excavation restriction is mailed or otherwise provided to such user.

V. Suspension ~~Of~~ of Excavation Restrictions: The city engineer may temporarily or permanently suspend an excavation restriction for any of the following reasons:

1. To permit work to be performed by the city;

2. To permit emergency repair work, or, in the discretion of the city engineer, work which could not reasonably have been anticipated by the applicant at the time of publication of the notice of excavation restrictions;
3. Excess capacity no longer exists in the restricted portion of the right-of-way;
4. To permit the installation of service laterals, the need for which could not have been reasonably anticipated at the time of publication of the notice of excavation restrictions; or
5. Suspension of the restriction is otherwise in the city's best interest. (2001 Code § 72-3-619; 2009 Code; § 8-8-6; amd. Ord. 16-16, 4-13-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-8-8: BUS SHELTERS AND BENCHES¹:

- A. Improvements: All street improvements (i.e., curb, gutter, and sidewalk) shall be in place, prior to the installation of a bus bench or bus shelter.
- B. Location: Bus benches or shelters shall be located behind the sidewalk, on private property, and only at bus stops designated by the Utah transit authority (UTA); provided, that: 1) a physical barrier exists behind the sidewalk which prevents the placement of a bench or shelter at that location; or 2) the property owner refuses to grant approval for the placement of the bench or shelter behind the sidewalk; and 3) there is adequate depth in the park strip so that the bus bench or bus shelter will not encroach on the sidewalk and there is a minimum distance between the front edge of the bench or shelter and the face of the adjacent curb of forty eight inches (48") on state roads and twenty four inches (24") on city streets. Any person requesting approval to locate a bus bench or bus shelter in a street right-of-way shall first submit written documentation from the property owner that approval to locate the shelter or bench behind the sidewalk has been refused. Nonetheless, bus benches and bus shelter signs shall not be located in clear vision areas at intersections and shall not obstruct sidewalks, roadways or other locations where the structures may pose a hazard to motorists or pedestrians. Benches installed by UTA which carry no message may be located within a right-of-way. However, bus benches or bus shelters proposed to be located adjacent to state roads shall comply with all applicable state provisions governing the location and site development standards for such benches or shelters.
- C. Construction ~~And~~ ~~and~~ Materials: The following provisions shall govern the construction and materials for bus benches and bus shelters:
 1. Bus bench backs and seats shall be constructed of metal, fiberglass or rigid plastic/vinyl materials and shall be kept in good repair. Bench legs shall be constructed of reinforced concrete. The design and materials of bus shelters shall be approved by the city prior to issuing permits.
 2. A concrete pad shall be required for all bus benches and bus shelters. The minimum pad size for bus benches shall be four feet by six feet (4' x 6'), and the minimum pad size for a bus shelter shall be two feet (2') wider than the width of the shelter and two feet (2') longer than the length of the shelter. Additional space should also be designed for persons in wheelchairs and/or to provide additional waiting area for bus patrons.
 3. The minimum pad area for a bus bench or bus shelter may include part of a sidewalk. However, no bus bench or bus shelter shall infringe upon or obstruct any sidewalk, other pedestrian path, or driveway without adding paving which meets passage standards established by the Americans with disabilities act (ADA).
 4. Bus benches and bus shelters shall be securely fastened to the concrete pad. Upon removal of a bench or shelter, the concrete pad shall be repaired by the owner of the bench or shelter, including removal of attachment bolts and repair of all holes in the concrete pad.

- D. Shelter Design: Bus shelters shall be designed to meet the following requirements:
1. A minimum four foot three inch by fifteen foot (4'3" x 15') concrete pad for each shelter, with interior seating and patron waiting area;
 2. A minimum five foot by eight foot (5' x 8') ADA landing pad in park strip (when required);
 3. Interior room for wheelchair passengers;
 4. Minimum three foot (3') wide entry;
 5. City name and logo on both ends of the shelter;
 6. Name and service number to call for service of shelter;
 7. Twenty four (24) hour interior illumination;
 8. The shelter is to be bolted to a concrete pad;
 9. All electrical wiring is to be located underground; and
 10. All shelters shall include a trash receptacle of a matching color and design.
- E. Insurance: For any bus bench or bus shelter sign, the company or person responsible for the bus bench or shelter sign shall enter into an agreement with the city, which must be approved by the city attorney. This agreement will require, among other things, that the company or person responsible for the bus bench or bus shelter sign provide to the city proof of liability insurance in the minimum amount of one million dollars (\$1,000,000.00), name the city as an additional insured, and indemnify and hold harmless the city from any and all injuries and defense costs arising from the placement or use of the bus bench or bus shelter sign.
- F. Violation: Failure to comply with the bus bench and bus shelter provisions shall constitute a violation of this chapter.
- G. Removal: The city engineer may require removal of a bus bench or bus shelter that does not comply with the requirements of this section. The city engineer shall mail notice, postage prepaid, to the address provided in the agreement. The notice shall state the nature of the noncompliance and the date by which remediation or removal shall be complete, which date shall be no less than thirty (30) calendar days after mailing. Failure to remediate or remove the bus bench or bus shelter within the notice period shall be a separate violation for each day the bus bench or bus shelter remains in place. (2001 Code § 89-6-1108; amd. 2009 Code; § 8-8-7; Ord. 16-16, 4-13-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-8-9: RELOCATION AND REMOVAL REQUIREMENTS:

- A. Expense ~~Of~~ ~~of~~ Owner: If any city construction or other maintenance work in a ~~right-of-way~~ requires the relocation or removal of an encroachment or facility located over, under, in or through any ~~right-of-way~~, the owner shall relocate or remove the encroachment or facility at owner's sole expense. The provisions of this section are not intended in any way to supersede or override any prior right which otherwise exists in favor of the owner.

- B. Written Demand **By by** City: When removal or relocation is required, the city engineer shall give the owner a written demand: 1) specifying that the encroachment or facility must be relocated or removed from the right-of-way; and 2) stating a reasonable time within which the encroachment or facility must be relocated or removed. If the owner fails to comply, the city may relocate or remove the encroachment or facility at the expense of the owner in accordance with the fees adopted by the city council.
- C. Reasonable Time Defined: In determining what is a reasonable time for the purposes of this section, the city engineer will take into consideration the nature of the encroachment or facility, the urgency of the need for its removal, the cost of its removal, the difficulty of its removal, the value of the intact property of the owner, and other facts peculiar to the particular situation.
- D. Restoration: When an encroachment or facility is removed and not replaced, the entire encroachment or facility must be removed from the right-of-way and the hole backfilled and compacted and returned to its preexisting condition unless the city engineer permits otherwise. The city engineer may designate a reasonable area for relocation within the right-of-way. (2001 Code § 72-3-701; amd. 2009 Code; § 8-8-8; Ord. 16-16, 4-13-2016, **Ord. 19- - -2019, Effective at 12 noon on January 6, 2020**)

8-8-10: PUBLIC SAFETY:

- A. Interference **With with** Use **Of of** Highways: All encroachments shall be planned and executed in such a manner that they will not unreasonably interfere with the safe and convenient travel of the general public. At no time shall a public highway be closed or the use thereof denied to the general public without the approval of the city engineer. (2001 Code § 72-3-801)
- B. Safety Devices:
 - 1. In the conduct of the encroachment, the permittee must provide and maintain such safety devices, including, but not limited to, lights, barricades, signs, flagmen and message boards, as are necessary to protect the public. Any omission on the part of the city engineer to specify in the permit what safety devices must be provided by the permittee will not excuse the permittee from complying with all laws and regulations relating to the protection of persons under the circumstances. If the city engineer finds that suitable safeguards are not being provided, he or she may provide, maintain and relocate such safety devices as are deemed necessary, or he or she may revoke the permit, subject to appeal as provided in this chapter, and restore the right-of-way in accordance with existing city standards, charging the permittee in accordance with the fees adopted by the city council.
 - 2. A permittee making any excavation or leaving any obstruction which could be a hazard to persons using a right-of-way shall provide and maintain warning lights far enough away from the excavation or obstruction to give adequate warning to such persons, and at spacing of not more than fifty feet (50') along the excavation or obstruction, from one-half (1/2) hour before sunset of each day to one-half (1/2) hour after sunrise the next day, until the work is completed and the right-of-way is made safe for use.
 - 3. All safety devices shall conform to the requirements of the encroachment permit and requirements of the city engineer. (2001 Code § 72-3-802; amd. 2009 Code)
- C. Visibility Aids: When the location or position of an encroachment impairs visibility to vehicular traffic, the city engineer may require that the encroachment be painted or equipped with reflectors or other aids to visibility, or the city engineer may require the encroachment to be relocated at the sole expense of the permittee. No encroachment shall be maintained across any sidewalk area or shoulder of a public highway. No encroachment of any nature shall be permitted or maintained which impedes, obstructs, denies or impairs the sight distance for safe pedestrian or vehicular traffic.

- D. Tampering ~~With~~ ~~with~~ Traffic Barricades: It is unlawful for any person maliciously or wantonly or without authorization and legal cause to extinguish, remove or diminish any light illuminating any barricade or excavation or to tear down or remove any rail, fence or barricade protecting any excavation or other construction site. (2001 Code § 72-3-803; 2009 Code; § 8-8-9; amd. Ord. 16-16, 4-13-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-8-11: APPEALS:

- A. Appeals; Form: Any person aggrieved by the refusal, suspension or revocation of a permit may appeal to the city ~~manager~~ ~~administrator~~ within ten (10) days after the date of such action. The appeal shall be in the form of a written notice filed with the city ~~clerk~~-recorder and signed by the applicant or permittee. The notice shall have attached a copy of the application and shall recite and include copies of such other items as have been filed. The notice shall state clearly and concisely the grounds upon which the applicant relies in the appeal.
- B. Hearing: The city ~~manager~~ ~~administrator~~ shall set the matter for a hearing on the closest practicable date after the notice is filed and shall notify the applicant and the city engineer of the hearing date.
- C. City ~~Manager~~ ~~Administrator~~ Action: At the hearing, the applicant shall establish to the satisfaction of the city ~~manager~~ ~~administrator~~ that he or she is entitled to the issuance of a permit pursuant to the provisions of this chapter. The city engineer may present grounds for the denial of the permit. The city ~~manager~~ ~~administrator's~~ decision shall be final. (2001 Code § 72-3-901; amd. 2009 Code; Ord. 12-10, 4-25-2012, eff. 7-1-2012; § 8-8-10; Ord. 16-16, 4-13-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-8-12: VIOLATIONS:

Failure to comply with any provision of this chapter, the encroachment permit, or any order of suspension, revocation or stop work shall be deemed a violation of this chapter. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying. (2001 Code § 72-3-1001; amd. 2009 Code; § 8-8-11; Ord. 16-16, 4-13-2016)

8-8-13: ENFORCEMENT:

- A. Authority: The public works department shall enforce all of the provisions of this chapter, employing all legal means available to do so. The public works director may designate any department employee as an enforcement official.
- B. Enforcement Proceedings: Unless otherwise provided, this chapter may be enforced through administrative procedures, or by filing civil or criminal actions as provided by law. The city has sole discretion to decide whether to file a civil or criminal case for a violation. The city may file both or one or the other. The possibility of an administrative remedy shall in no way interfere with the city's right to prosecute violations of this chapter as criminal offenses, or to seek any civil remedy to enjoin, prevent, or abate the violation. If the city chooses to file both civil and criminal charges for the same violation on the same day, no civil fines shall be assessed, but all other remedies shall be available. (Ord. 16-16, 4-13-2016)

8-8-14: SUSPENSION AND REVOCATION OF PERMIT BY CITY ENGINEER:

- A. Permit Revocable: Under the provisions of this chapter, the issuance of a permit grants only a revocable privilege of encroachment and confers no vested rights of any kind or nature upon a permittee. Every encroachment permit issued by the city may be revoked or suspended for the following:

1. Failure by the permittee or agents, officers, employees or contractors to comply with any provision of the encroachment permit, this chapter, a stop work order or any other applicable ordinance or law relating to the encroachment. The permittee shall be strictly responsible for conformance of the encroachment with all applicable laws;
 2. Fraud or misrepresentation of a material fact in the procurement of the encroachment permit;
 3. Failure to pay when due any fee, charge or penalty provided in city ordinance;
 4. The existence of any condition or doing of any act which does constitute, may constitute, or cause a condition endangering life, health or property; or
 5. Any other reason expressly provided for in this chapter, or any act or failure to act identified as a violation in this chapter.
- B. Authority: The city engineer may revoke or suspend the encroachment permit without a hearing for reasons provided in this chapter; however, the suspension or revocation will not take effect until the time period for appealing the decision as set forth in this chapter has passed. Written notice of the suspension or revocation will be given by personal service or registered mail to the permittee. The written notice shall state: the reasons for such decision; that continuation of the encroachment after the effective date of the suspension or revocation is a class B misdemeanor and a violation of this chapter; that the decision may be appealed; and a general summary of the appeal procedure. If the violation results in a danger to life, health, or property, a stop work order will also be issued.
- C. Effect ~~Of~~ of Revocation ~~Or~~ or Suspension:
1. After revocation, the permittee must reapply for a new encroachment permit and pay the application fee. Except for activity specifically described in the order of revocation as required to remove the encroachment, any encroachment or activity that occurs prior to issuance of a new encroachment permit will be a violation of this chapter and punishable as such.
 2. A suspension will be in effect for no less than two (2) and no more than ten (10) days. The reinstatement fee will be as adopted by city council or if no reinstatement fee is adopted, fifty percent (50%) of the application fee as adopted. Except for activity specifically described in the order of suspension as required to remove the encroachment during the suspension period, any encroachment or activity that occurs during the suspension period will be a violation of this chapter and punishable as such. (Ord. 16-16, 4-13-2016, ~~amd. Ord. 19-~~ ~~2019, Effective at 12 noon on January 6, 2020~~)

8-8-15: STOP WORK ORDER:

- A. Issuance ~~Of~~ of Stop Work Order: A stop work order may be issued for any of the following: causing any encroachment in the right ~~of~~ of way without a valid and unexpired encroachment permit; violation of this chapter; failure to comply with any other city ordinance or law related to the encroachment; existence of any condition or doing of any act which does constitute, may constitute, or cause a condition endangering life, health or property.
- B. Authority: A stop work order may be issued by the city engineer or engineering inspector directed to any person or persons causing the encroachment, violation or dangerous condition.
- C. Effect: The stop work order will take effect immediately upon delivery to any person performing work or encroaching in the right ~~of~~ of way or immediately upon posting of a stop work order at the location of the encroachment. If an encroachment permit has been issued, a copy of the stop work order should, within one business day, be sent by e-mail, facsimile, hand delivery or any mail or delivery service to the address indicated by the permittee on the encroachment

permit. Defective mailing or failure to receive delivery, regardless of cause, will not render the stop work order ineffective. The stop work order will remain in effect until the city engineer or engineering inspector has verified remediation of conditions and compliance with requirements for which the stop work order was issued. Except for activity specifically described in the stop work order as required to abate the violation or condition for which the stop work order was issued, any encroachment or activity that occurs during the stop work period will be a violation of this chapter and punishable as such. Failure to comply with a stop work order may result in suspension or revocation of the encroachment permit. (Ord. 16-16, 4-13-2016, amd. Ord. 19-____, ____ -2019, Effective at 12 noon on January 6, 2020)

8-8-16: ABATEMENT; NOTICE TO SURETY; EXPENDITURE OF CASH GUARANTEE:

A. Notice ~~To~~ to Surety:

1. If a surety bond has been provided, the surety may be given written notice of a violation with a copy provided to the principal. The written notice shall state the nature of the violation, the work to be done to correct the violation, the estimated cost thereof, and the period of time in which the work must be completed.

2. Work must be commenced and diligently pursued, or the surety shall indemnify the city for the cost of doing the work, as set forth in the notice, within a reasonable time following the giving of such notice. In determining a reasonable time, the following will be considered: the exigencies of the situation; the nature of the work; the requirements of public safety; and protection of persons and property.

3. If the work is not commenced and pursued, and the city is not indemnified as set forth in this section, the city may perform the work, cause the work to be performed by contract or both, at the discretion of the city engineer. Suit may be brought against the surety and principal and such other persons as may be liable, to recover the entire amount due to the city, including attorney fees.

B. Expenditure ~~Of~~ of Cash Guarantee:

1. If a cash guarantee has been provided, the permittee may be given written notice of a violation stating the nature of the violation, the work to be done to correct the violation, the estimated cost thereof, and the period of time in which the work must be completed.

2. Work must be commenced and diligently pursued within a reasonable time following the giving of such notice. In determining a reasonable time, the following will be considered: the exigencies of the situation; the nature of the work; the requirements of public safety; and protection of persons and property.

3. If the work is not commenced and pursued as set forth in this section, the city may expend the cash guarantee to perform the work, cause the work to be performed by contract or both, at the discretion of the city engineer. If the cash guarantee is insufficient, suit may be brought to recover the balance due.

C. Judgment ~~For~~ for Costs: In the event city's expenses must be made in court, the city will sue and receive judgment for all expenses incurred in the restoration of the property, together with reasonable attorney fees, interest, and court costs. The city shall execute upon such judgment in the manner provided by law. (Ord. 16-16, 4-13-2016, amd. Ord. 19-____, ____ -2019, Effective at 12 noon on January 6, 2020)

8-8-17: PENALTIES:

A. Criminal:

1. Unless otherwise provided herein or by state or federal law, a violation of this chapter is a class B misdemeanor. Each day that the violation is committed or permitted to continue constitutes a separate offense, and is punishable as such.

2. Any person, either by himself/herself, his/her agents, his/her employees or his/her contractor who barricades a right-of-way, or begins to construct or do any digging, ditching, excavation, trenching or tunneling in, along or across a right-of-way without having in his/her possession a valid encroachment permit is guilty of a class B misdemeanor. Each day that an excavation, or ditch, trench digging or tunnel along, in or across a right-of-way continues without a valid encroachment permit constitutes a separate offense and is punishable as such.

B. Civil: Civil penalties for encroachments occurring without a valid, unexpired encroachment permit are as follows:

1. For an encroachment on a residential street, the penalty is one thousand five hundred dollars (\$1,500.00) per day.

2. For an encroachment on a collector street, the penalty is two thousand five hundred dollars (\$2,500.00) per day.

3. For an encroachment on an arterial street, the penalty is five thousand dollars (\$5,000.00) per day. (Ord. 16-16, 4-13-2016, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

Footnotes - Click any footnote link to go back to its reference.

Footnote 1: See also subsection 12-3-3C of this code for sign permit requirements.

Chapter 9 TELECOMMUNICATIONS USE OF PUBLIC RIGHTS- OF-WAY

8-9-1: DEFINITIONS:

8-9-1: DEFINITIONS:

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

APPLICATION: The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the public rights-of-way of all, or a part, of the City city. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the City city concerning the construction of a telecommunications system over, under, on or through the rights-of-way; the telecommunications services proposed to be provided in the City city by a provider; and any other matter pertaining to a proposed system or service. Also, the process by which a provider submits a request and indicates a desire to place wireless facilities in the public rights-of-way of the City city.

~~**CHIEF EXECUTIVE OFFICER:** Before January 6, 2020, this is the City Manager, and on or after January 6, 2020, this is the Mayor.~~

CITY: The City of West Jordan.

COLLOCATE: 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.

COMPLETION DATE: The date that a provider begins providing services to customers in the City city.

CONSTRUCTION COSTS: All costs of constructing a system, including make ready costs, other than engineering fees, attorney or accountant fees, or other consulting fees.

CONTROL AND CONTROLLING INTEREST: Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than twenty five percent (25%) of any provider (which person or group of persons is hereinafter referred to as the "controlling person"). The term "control" or "controlling interest", as used in this chapter, may be held simultaneously by more than one person or group of persons.

DECORATIVE POLE: A City city-owned utility pole that: a) is specially designed for an aesthetic purpose, and b) 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: Any ROW that is adjacent to a residential zone and has a cross-section of sixty feet (60') wide or less, as depicted in the official plat records.

DISCRETIONARY USE:

- A. The collocation of a large wireless facility in any ROW,
- B. The installation of a wireless support structure in any ROW,
- C. The installation of a new utility pole in discretionary ROW, and
- D. Any use that is not a permitted use.

FCC: The Federal Communications Commission, or any successor thereto.

FRANCHISE: The rights and obligation extended by the **City city** to a provider to own, lease, construct, maintain, use or operate a system in the rights-of-way within the boundaries of the **City city**. Any such authorization, in whatever form granted, shall not mean or include any other permit or authorization required for the privilege of transacting and carrying on a business within the **City city** required by the ordinances and laws of the **City city**; any other permit, agreement or authorization required in connection with operations on rights-of-way or public property, including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the **City city** or a private entity, or for excavating, encroaching, or performing other work in or along the rights-of-way.

FRANCHISE AGREEMENT: A contract entered into in accordance with the provisions of this chapter between the **City city** and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

GROSS REVENUE: Includes all revenues of a provider that may be included as gross revenue within the meaning of Utah Code Annotated section 11-26-1.

INFRASTRUCTURE PROVIDER: A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the rights-of-way.

LARGE WIRELESS FACILITY: Any wireless facility that does not qualify as a small wireless facility or a micro wireless facility.

LOCAL EXCHANGE CARRIER: Local telephone or telecommunications company, according to the Federal Communications Commission definition.

MASTER LICENSE AGREEMENT: An agreement between a provider and the **City city** that sets forth the general terms and conditions pursuant to which the provider may install and operate wireless facilities in **City city**-owned ROW.

MICRO WIRELESS FACILITY: A type of small wireless facility that only provides Wi-Fi service, that does not have exterior antenna longer than eleven inches (11"), and that is no larger in dimension than twenty four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height, not including any antenna.

OPEN VIDEO SERVICE: Any video programming services provided to any person through the use of rights-of-way, by a provider that is certified by the FCC to operate an open video system pursuant to section 651, et seq., of the Telecommunications Act (to be codified at 47 USC title VI, part V), regardless of the system used.

OPEN VIDEO SYSTEM: The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the **City city**.

OPERATOR: Any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

ORDINANCE AND TELECOMMUNICATIONS ORDINANCE: This chapter concerning the granting of franchises in and by the **City city** for the construction, ownership, operation, use or maintenance of a telecommunications system.

PERMITTED RIGHT-OF-WAY (PERMITTED ROW): Any ROW that is not discretionary ROW.

PERMITTED USE:

- A. The collocation of a small wireless facility in any ROW, and
- B. The installation, operation, modification, maintenance, or replacement of: 1) a utility pole in permitted ROW, or 2) equipment required for a provider's collocation of a small wireless facility.

PERSON: Includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the **City city**.

PERSONAL WIRELESS SERVICES FACILITIES: Has the same meaning as provided in section 704 of the Telecommunications Act (47 USC 332(c)(7)(c)), which includes what is commonly known as cellular and PCS services that do not install any system or portion of a system in the rights-of-way.

PROVIDER: An operator, infrastructure provider, reseller, or system lessee; or a person that provides wireless services to customers, and/or builds or installs wireless facilities.

PUBLIC SERVICE COMMISSION (PSC): The Public Service Commission, or any successor thereto.

RESELLER: Any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

RIGHTS-OF-WAY (ROW): 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 city**. ROW does not include **Federal federal** interstate highways, fixed guideways for public transit, or those roads, streets or alleys that are subject to covenants, conditions, restrictions, codes or laws that prohibit such use or that are on **City city** property that have not been formally dedicated for public use.

SIGNAL: Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

SITE LICENSE: 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: 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 wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than twenty eight (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: A utility pole or a wireless support structure.

SYSTEM LESSEE: Refers to any person that leases a system or a specific portion of a system to provide services.

TELECOMMUNICATIONS: The transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information sent and received.

TELECOMMUNICATIONS APPLICATION SPECIALIST: A **City city** employee designated by the **Zoning Administrator zoning administrator** to process applications.

TELECOMMUNICATIONS SERVICES AND SERVICES: Any telecommunications services provided by a provider within the **City city** that the provider is authorized to provide under **Federal federal, State state** and local law, and any equipment and/or facilities required for and integrated with the services provided within the **City city**, except that these terms do not include "cable service", as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 USC 521 et seq.), and the Telecommunications Act of 1996.

TELECOMMUNICATIONS SYSTEM AND SYSTEM: All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. The terms "telecommunications system" and "system" also include an open video system.

UTILITY POLE: A pole or similar structure that is in a right-of-way and is or may be used for: wireline communications, electric distribution, lighting, or the collocation of a small wireless facility. Utility pole does not include traffic control signs, street signs, a wireless support structure, a structure that supports electric transmission lines, or **City city**-owned power poles.

WIRE: Fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

WIRELESS FACILITY: 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: a) between wireless support structures or utility poles, b) not immediately adjacent to or directly associated with a particular antenna, or c) a wireline backhaul facility.

WIRELESS SERVICE: 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: 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 city** or by an interlocal entity. (2001 Code § 82-2-101; amd. Ord. 18-28, 8-22-2018; Ord. 19-___, ___ -2019, Effective at 12 noon on January 6, 2020)

ARTICLE A. FRANCHISES IN PUBLIC RIGHTS-OF-WAY

8-9A-1: GENERAL PROVISIONS:

8-9A-2: FRANCHISE:

8-9A-3: COMPENSATION AND OTHER PAYMENTS:

8-9A-4: FRANCHISE APPLICATION:

8-9A-5: CONSTRUCTION AND TECHNICAL REQUIREMENTS:

8-9A-6: TRANSFER OF FRANCHISE OR LICENSE:

8-9A-7: OVERSIGHT AND REGULATION:

8-9A-8: RIGHTS OF CITY:

8-9A-9: FEDERAL, STATE AND CITY JURISDICTION:

8-9A-1: GENERAL PROVISIONS:

A. Declaration ~~Of of~~ Finding ~~And and~~ Intent:

1. Findings Regarding Rights-~~Of of~~-Way: The ~~City city~~ finds that the rights-of-way within the ~~City city~~:

a. Are critical to the travel and transport of persons and property in the business and social life of the ~~City city~~;

b. Are intended for public uses and must be managed and controlled consistent with that intent;

c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well being of the ~~City 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 upon the public from such facilities' construction, placement, relocation and maintenance in the rights-of-way.

2. Finding Regarding Compensation: The ~~City city~~ finds that the ~~City city~~ should receive fair and reasonable compensation for use of the rights-of-way.

3. Finding Regarding Local Concern: The ~~City city~~ finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights-of-way, Municipal franchising, and vital business and community service, which are of local concern.

4. Finding Regarding Promotion ~~Of of~~ Telecommunications Services: The ~~City city~~ finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for Municipal, educational and community services.

5. Findings Regarding Franchise Standards: The ~~City city~~ finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

- a. Fairly and reasonably compensates the City city on a competitively neutral and nondiscriminatory basis as provided herein;
 - b. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;
 - c. Fully protects the public interests and the City city from any harm that may flow from such commercial use of rights-of-way;
 - d. Protects the police powers and rights-of-way management authority of the City city, in a manner consistent with Federal federal and State state law;
 - e. Otherwise protects the public interests in the development and use of the City city infrastructure;
 - f. Protects the public's investment in improvements in the rights-of-way; and
 - g. Ensures that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting telecommunication services, within the meaning of the Telecommunications Act of 1996 (the Act) (PL no. 104-104).
6. Power ~~To~~ to Manage Rights-Of ~~of~~ of -Way: The City city adopts this article pursuant to its power to manage the rights-of-way, pursuant to common law, the ~~State Constitution~~ state constitution and statutory authority, and receive fair and reasonable compensation for the use of rights-of-way by providers as expressly set forth by section 253 of the Act. (2001 Code § 82-2-102)
- B. Scope ~~Of~~ of Article: This article shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights-of-way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This article shall apply to all future providers and to all providers in the City city prior to the effective date hereof, whether operating with or without a franchise as set forth in subsection 8-9A-9B of this article. (2001 Code § 82-2-103)
- C. Excluded Activity:
1. Cable TV: This article shall not apply to cable television operators otherwise regulated by the City city cable television ordinance.
 2. Wireless Services: This article shall not apply to personal wireless service facilities.
 3. Provisions Applicable ~~To~~ to Excluded Providers: Providers excused by other law that prohibits the City city from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this article through the exercise of the City city police power and not preempted by other law shall be applicable. (2001 Code § 82-2-104)
- D. Obligation ~~To~~ to Notify Owners Prior ~~To~~ to Entering Private Property: Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed. (2001 Code § 82-2-105)
- E. Conflicts: In the event of a conflict between any provision of this article and a franchise entered pursuant to this article, the provisions of this article shall control. (2001 Code § 82-2-106)

- F. Severability: If any provision of this article is held by any Federal federal, State state or local court of competent jurisdiction, to be invalid as conflicting with any Federal federal or State Statute state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the provisions in question are exhausted, such provision shall be considered a separate, distinct and independent part of this article, and such holding shall not affect the validity and enforceability of all other provisions of this article. If such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law, the provision in question shall return to full force and effect and shall again be binding on the City city and the provider; provided, that the City city shall give the provider thirty (30) days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision. (2001 Code § 82-2-107)
- G. New Developments: It shall be the policy of the City city to liberally amend this article, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently or economically serve itself or the public. (2001 Code § 82-2-108)
- H. Notices: All notices from a provider to the City city required under this article or pursuant to a franchise granted pursuant to this article shall be directed to the officer as designated by the Chief Executive Officer mayor. A provider shall provide in any application for a franchise the identity, address and phone number of the person to receive notices from the City city. A provider shall immediately notify the City city of any change in its name, address or telephone number. (2001 Code § 82-2-109; amd. 2009 Code)
- I. Exercise Of of Police Power: To the full extent permitted by applicable law either now or in the future, the City city reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers. (2001 Code § 82-2-110; amd. § 8-9-1, Ord. 18-28, 8-22-2018, Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-9A-2: FRANCHISE:

- A. Nonexclusive Franchise: The City city is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the City city rights-of-way, in accordance with the provisions of this article. The franchise is granted through a franchise agreement entered into between the City city and provider. (2001 Code § 82-2-201)
- B. Provider Required Te to Obtain: Except to the extent preempted by Federal federal or State state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights-of-way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the City city is not preempted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise. (2001 Code § 82-2-202)

- C. Nature ~~Of~~ ~~of~~ Grant: A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right to occupy rights-of-way on a nonexclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned or subleased, except as may be expressly provided in the franchise agreement. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the ~~City's~~ ~~city's~~ property. This subsection shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise. (2001 Code § 82-2-203)
- D. Current Providers: Except to the extent exempted by ~~Federal~~ ~~federal~~ or ~~State~~ ~~state~~ law, any provider acting without a franchise on the effective date hereof shall request issuance of a franchise from the ~~City~~ ~~city~~ within ninety (90) days of the effective date hereof. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of subsection 8-9A-8D of this article. (2001 Code § 82-2-204)
- E. Nature ~~Of~~ ~~of~~ Franchise: The franchise granted by the ~~City~~ ~~city~~ under the provisions of this article shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over and under the rights-of-way in order to provide services. (2001 Code § 82-2-205)
- F. Regulatory Approval Needed: Before offering or providing any services pursuant to the franchise, 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~~ ~~federal~~, ~~State~~ ~~state~~ and local authorities, if required, and shall submit to the ~~City~~ ~~city~~ upon the written request of the ~~City~~ ~~city~~ evidence of all such approvals, permits, authorizations or licenses. (2001 Code § 82-2-206)
- G. Term: No franchise issued pursuant to this article shall have a term of less than five (5) years or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner. (2001 Code § 82-2-207; amd. § 8-9-2, Ord. 18-28, 8-22-2018; ~~Ord. 19- , - -~~ ~~2019, Effective at 12 noon on January 6, 2020~~)

8-9A-3: COMPENSATION AND OTHER PAYMENTS:

- A. Compensation: As fair and reasonable compensation for any franchise granted pursuant to this article, a provider shall have the following obligations:
 - 1. Application Fee: In order to offset the cost to the ~~City~~ ~~city~~ to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the ~~City~~ ~~city~~, at the time of application, the required fee as set forth by the ~~City~~ ~~city~~ uniform fee schedule as a nonrefundable application fee.
 - 2. Franchise Fee: The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or Business License Tax enacted by the ~~City~~ ~~city~~.
 - 3. Encroachment Permits: The provider shall also pay fees required for an encroachment permit as provided in section 8-8-3 of this title. (2001 Code § 82-2-301)
- B. Timing: Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty five (45) days of the close of each calendar month. (2001 Code § 82-2-302)
- C. Fee Statement ~~And~~ ~~and~~ Certification: Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy. (2001 Code § 82-2-303)

- D. Future Costs: A provider shall pay to the City city or to third parties, at the direction of the City city, an amount equal to the reasonable costs and reasonable expenses that the City city incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider initiated renegotiation, or amendment of this article or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the Public Works Department public works department to provide space on City city-owned poles shall be borne by the provider. (2001 Code § 82-2-304)
- E. Taxes And and Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the City city on the use of the City city property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this article. (2001 Code § 82-2-305)
- F. Interest On on Late Payments: If any payment is not actually received by the City city on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent State state taxes. (2001 Code § 82-2-306)
- G. No Accord And and Satisfaction: No acceptance by the City city of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City city may have for additional sums payable. (2001 Code § 82-2-307)
- H. Not In in Lieu Of of Other Taxes Or or Fees: The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this article, or as required by applicable law. By way of example, and not limitation, encroachment permit fees and fees to obtain space on the City city-owned poles are not waived and remain applicable. (2001 Code § 82-2-308)
- I. Continuing Obligation And and Holdover: If a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this article and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City city as a result of such continued operation after the term, including, but not limited to, damages and restitution. (2001 Code § 82-2-309)
- J. Costs Of of Publication: A provider shall assume any publication costs associated with its franchise that may be required by law. (2001 Code § 82-2-310; amd. Ord. 16-39, 9-21-2016; § 8-9-3, Ord. 18-28, 8-22-2018; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-9A-4: FRANCHISE APPLICATION:

- A. Required: To obtain a franchise to construct, own, maintain or provide services through any system within the City city, to obtain a renewal of a franchise granted pursuant to this article, or to obtain City city approval of a transfer of a franchise, as provided in subsection 8-9A-6A2 of this article, granted pursuant to this article, an application must be filed with City city on the form which is on file in the City city as exhibit A, which is hereby incorporated by reference. The application form may be changed by the Chief Executive Officer mayor so long as such changes request information that is consistent with this article. Such application form, as amended, is incorporated by reference. (2001 Code § 82-2-401)

- B. Criteria: In making a determination as to an application filed pursuant to this article, the **City city** may, but shall not be limited to, request or consider the following:
1. Obtaining an order from the PSC granting a certificate of convenience and necessity, if any is necessary for provider's offering of services within the **State state**.
 2. Certification of the provider's financial ability to compensate the **City city** for provider's intrusion, maintenance and use of the rights-of-way during the franchise term proposed by the provider.
 3. Provider's agreement to comply with the requirements of section 8-9A-5 of this article.
 4. Prior to making any attachments to poles, the willingness to enter into a pole attachment agreement with the **City city**. (2001 Code § 82-2-402)
- C. Award ~~Of~~ **of** Franchise: The **City city**, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding. (2001 Code § 82-2-403; amd. § 8-9-4, Ord. 18-28, 8-22-2018, Ord. 19--2019, Effective at 12 noon on January 6, 2020)

8-9A-5: CONSTRUCTION AND TECHNICAL REQUIREMENTS:

- A. General Requirements: No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the **City city** or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with **City city** utilities. A provider shall obtain an encroachment permit, pursuant to the encroachment ordinance, before commencing any work in the rights-of-way. (2001 Code § 82-2-501)
- B. Quality: All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by ~~Federal~~ **federal** law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions. (2001 Code § 82-2-502)
- C. Licenses ~~And~~ **and** Permits: A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including, but not limited to, any necessary approvals from persons and/or the **City city** to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including, but not limited to, encroachment permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required. (2001 Code § 82-2-503)
- D. Relocation ~~Of~~ **of** System:
1. New Grades ~~Of~~ **or** Lines: If the grades or lines of any rights-of-way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the encroachment ordinance.
 2. City Authority ~~To~~ **to** Move System ~~In~~ **in** Case ~~Of~~ **of** Emergency: The **City city** may, at any time, in case of fire, disaster or other emergency, as determined by the **City city** in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights-of-way of the **City city**, in which event the **City city** shall not be liable therefor

to a provider. The **City city** shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection. Notice shall be given as provided in subsection 8-9A-1H of this article.

3. **Provider Required To to Temporarily Move System For for Third Party:** A provider shall, upon prior reasonable written notice by the **City city** or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of such structure. A provider may impose a reasonable charge on any person other than the **City city** for any such movement of its systems.

4. **Rights-Of of -Way Change; Obligation To to Move System:** When the **City city** is changing a right-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the **City city**, to the extent provided in the encroachment ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights-of-way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an encroachment permit. (2001 Code § 82-2-504)

- E. **Protection Of of Structures:** In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the **City city**. A provider shall obtain the prior written consent of the **City city** to alter any water main, power facility, sewerage or drainage system, or any other Municipal structure on, over or under the rights-of-way of the **City city** required because of the presence of the system. Any such alteration shall be made by the **City city** or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the **City city** to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the **City city**, any Municipal structure or any other rights-of-way of the **City city** involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise. (2001 Code § 82-2-505)
- F. **Obstruction Of of Right-Of of -Way:** In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights-of-way of fixed guideway systems, railways, passenger travel, or other traffic to, from or within the **City city** without the prior consent of the appropriate authorities. (2001 Code § 82-2-506)
- G. **Safety Precautions At at Work Sites:** A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable **Federal federal**, **State state** and local requirements, including, but not limited to, the National Electrical Safety Code. (2001 Code § 82-2-507)
- H. **Repair:** After reasonable written notice to the provider, unless, in the sole determination of the **City city**, an eminent danger exists, any rights-of-way within the **City city** which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the **City city** at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the **City city** shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-way intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the **City city** the entire amount thereof. (2001 Code § 82-2-508)
- I. **System Maintenance:** A provider shall:
1. Install and maintain all parts of its system in a safe condition throughout the entire period of its franchise.

2. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the ~~National Electrical Safety Code~~ national electrical safety code and all applicable other ~~Federal~~ federal, ~~State~~ state and local laws or regulations.

3. At all reasonable times, permit examination by any duly authorized representative of the City city of the system and its effect on the rights-of-way. (2001 Code § 82-5-509)

J. Trimming Of of Trees: A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system. (2001 Code § 82-2-510; amd. § 8-9-5, Ord. 18-28, 8-22-2018; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-9A-6: TRANSFER OF FRANCHISE OR LICENSE:

A. Notification Of of Sale:

1. PSC Approval: When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the City city of the nature of the transaction and, if applicable, request a transfer of the franchise to the successor entity. A request for a transfer shall include a certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement.

2. Transfer Of of Franchise: Upon receipt of a request to transfer a franchise, the City city designee, as provided in subsection 8-9A-8A1 of this article, may send notice approving the transfer of the franchise to the successor entity. Such approval shall not be unreasonably withheld. If the City city has reason to believe that the successor entity may not comply with this article or the franchise agreement, it may require an application for the transfer. The application shall comply with section 8-9A-4 of this article. (2001 Code § 82-2-601)

B. If PSC Approval No Longer Required: If the PSC no longer exists, or if its regulations or State state law no longer require approval of transactions described in subsection A of this section, then the following events shall be deemed to be a sale, assignment or other transfer of the franchise requiring compliance with subsection A of this section:

1. The sale, assignment or other transfer of all or a majority of a provider's assets to another person;

2. The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider;

3. The issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or

4. The entry by a provider into an agreement with respect to the management or operation of such provider or its system. (2001 Code § 82-2-602; amd. § 8-9-6, Ord. 18-28, 8-22-2018; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-9A-7: OVERSIGHT AND REGULATION:

- A. Insurance, Indemnity ~~And~~ ~~and~~ Security: Prior to the execution of a franchise, a provider will deposit with the City city an irrevocable, unconditional letter of credit or surety bond as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the franchise. A provider shall also indemnify the City city as set forth in the franchise. (2001 Code § 82-2-701)
- B. Oversight: The City city shall have the right to oversee, regulate and periodically inspect the construction, maintenance and upgrade of the system, and any part thereof, in accordance with the provisions of the franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the City city at all times throughout the term, that a provider is in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations. (2001 Code § 82-2-702)
- C. Maintain Records: A provider shall at all times maintain:
1. On file with the City city, a full and complete set of plans, records and as built hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's city's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights-of-way where work will be undertaken. As used in this section, as built maps include file construction prints. Maps shall be drawn to scale. As built maps, including the compatible electronic format, as provided in this subsection, shall be submitted within thirty (30) days of completion of work or within thirty (30) days after completion of modification and repairs. As built maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.
 2. Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the City city at all times to determine whether a provider is in compliance with the franchise. Should the City city reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this subsection. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State state, and generally accepted accounting principles, shall be deemed to be acceptable under this section. (2001 Code § 82-2-703)
- D. Confidentiality: If the information required to be submitted is proprietary in nature or must be kept confidential by ~~Federal federal~~, State state or local law, upon proper request by a provider, such information shall be classified as a protected record within the meaning of the Utah Government Records Access and Management Act (GRAMA), making it available only to those who must have access to perform their duties on behalf of the City city; provided, that a provider notifies the City city of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider. (2001 Code § 82-2-704)
- E. Provider's Expense: All reports and records required under this article shall be furnished at the sole expense of a provider, except as otherwise provided in this article or a franchise. (2001 Code § 82-2-705)

- F. **Right Of of Inspection:** For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City city at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records. The provider agrees to reimburse the City city the reasonable costs of an audit if the audit discloses that the provider has paid ninety five percent (95%) or less of the compensation due the City city for the period of such audit. If the accounting rendered to the City city by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City city may accept any amount offered by the provider, but the acceptance thereof by the City city shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect. (2001 Code § 82-2-706; amd. § 8-9-7, Ord. 18-28, 8-22-2018; Ord. 19- , -2019, Effective at 12 noon on January 6, 2020)

8-9A-8: RIGHTS OF CITY:

- A. **Enforcement And and Remedies:**
1. **Enforcement; City Designee:** The City city is responsible for enforcing and administering this article, and the City city or its designee, as appointed by the Chief Executive Officer mayor, is authorized to give any notice required by law or under any franchise agreement.
 2. **Enforcement Provision:** Any franchise granted pursuant to this article shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this article, including, but not limited to, defining events of default, procedures for accessing the bond/Security Fund, and rights of termination or revocation. (2001 Code § 82-2-801)
- B. **Force Majeure:** In the event a provider's performance of any of the terms, conditions or obligations required by this article or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires. (2001 Code § 82-2-802)
- C. **Extended Operation And and Continuity Of of Services:**
1. **Continuation After Expiration:** Upon either expiration or revocation of a franchise granted pursuant to this article, the City city shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time, not to exceed six (6) months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this article and the franchise granted pursuant to this article.
 2. **Continuation By by Incumbent Local Exchange Carrier:** If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith. (2001 Code § 82-2-803)
- D. **Removal Of or Abandonment Of of Franchise Property:**
1. **Abandoned System:** In the event that:

a. The use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City city to the last known address of provider;

b. Any system has been installed in the rights-of-way without complying with the requirements of this article or franchise; or

c. The provisions of section 8-9A-3 of this article are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.

2. Removal ~~Of of~~ Abandoned System: The City city, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this article, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness. If a provider removes structures and equipment, the provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City city shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article and any Security Fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.

3. Transfer ~~Of of~~ Abandoned System ~~Te to~~ City: Upon abandonment of any system in place, a provider, if required by the City city, shall submit to the City city a written instrument, satisfactory in form to the City city, transferring to the City city the ownership of the abandoned system.

4. Removal ~~Of of~~ Aboveground System: At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this article, in any such case without renewal, extension or transfer, the City city shall have the right to require a provider to remove, at its expense, all aboveground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.

5. Leaving Underground System: Notwithstanding anything to the contrary set forth in this article, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person. (2001 Code § 82-2-804)

E. Construed According ~~Te to~~ State Law: This article and any franchise granted pursuant to this article shall be construed and enforced in accordance with the substantive laws of the State state. (2001 Code § 82-2-805; amd. § 8-9-8, Ord. 18-28, 8-22-2018; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-9A-9: FEDERAL, STATE AND CITY JURISDICTION:

A. Construction: This article shall be construed in a manner consistent with all applicable Federal federal and State Statutes state statutes. (2001 Code § 82-2-901)

B. Applicability ~~Of of~~ Article: This article shall apply to all franchises granted or renewed after the effective date hereof. This article shall further apply, to the extent permitted by applicable Federal federal or State state law to all existing franchises granted prior to the effective date

hereof and to a provider providing services, without a franchise, prior to the effective date hereof. (2001 Code § 82-2-902)

- C. Other Applicable Articles **And and** Chapters: A provider's rights are subject to the police powers of the **City city** to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the **City city** pursuant to its police powers. In particular, all providers shall comply with the **City city** zoning and other land use requirements. (2001 Code § 82-2-903)
- D. Failure **Of of City To to** Enforce: A provider shall not be relieved of its obligation to comply with any of the provisions of this article or any franchise granted pursuant to this article by reason of any failure of the **City city** to enforce prompt compliance. (2001 Code § 82-2-904; amd. § 8-9-9, Ord. 18-28, 8-22-2018, Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

ARTICLE B. WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

- 8-9B-1: DECLARATION OF FINDING AND INTENT:**
- 8-9B-2: PURPOSE AND GOALS:**
- 8-9B-3: SCOPE AND APPLICABILITY:**
- 8-9B-4: LICENSE AND OTHER REQUIREMENTS FOR USE OF THE ROW:**
- 8-9B-5: NATURE OF LICENSE:**
- 8-9B-6: MASTER LICENSE AGREEMENTS:**
- 8-9B-7: SITE LICENSE APPLICATION:**
- 8-9B-8: STANDARDS APPLICABLE TO WIRELESS FACILITIES IN RIGHTS-OF-WAY:**
- 8-9B-9: LICENSE APPROVAL OF PERMITTED USES:**
- 8-9B-10: LICENSE APPROVAL OF DISCRETIONARY USES:**
- 8-9B-11: MODIFICATIONS OF WIRELESS FACILITIES:**
- 8-9B-12: APPLICATION PROCESSING:**
- 8-9B-13: APPEAL OF ADMINISTRATIVE DECISIONS:**
- 8-9B-14: INTERPRETATION AND APPLICATION OF ARTICLE:**

8-9B-1: DECLARATION OF FINDING AND INTENT:

- A. Findings Regarding Rights-Of of-Way: The **City city** finds that the public rights-of-way within the **City city**:
 - 1. Are critical to the travel and transport of persons and property in the business and social life of the **City 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 city** and its citizens; and

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. This includes placing wires and equipment inside poles and below ground.
- B. Finding Regarding Compensation: The City 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 city and its taxpayers, and, therefore, the taxpayers of the City city should receive fair and reasonable compensation for use of the rights-of-way.
- C. Finding Regarding Local Concern: The City city finds that while wireless facilities are in part an extension of interstate commerce, their operations also involve public rights-of-way, Municipal municipal zoning, and vital business and community service, which are of local concern. The City city also finds that it has the proprietary right to determine what persons and entities are granted permission to use City city rights-of-way, and to determine the reasonable and nondiscriminatory terms and conditions of such use.
- D. Finding Regarding Promotion Of of Wireless Services: The City city finds that it is in the best interests of its taxpayers and citizens to promote the development of wireless services, on a nondiscriminatory basis, responsive to community and public interest, and to assure availability for Municipal municipal, educational and community services.
- E. Findings Regarding Minimization Of of Impacts: The City 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 city finds entering a Master License Agreement master license agreement with providers:
1. Fairly and reasonably compensates the City 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 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 city with respect to its rights-of-way, in a manner consistent with Federal federal and State state law;
 5. Otherwise protects the public interests in the development and use of the City city infrastructure; and
 6. Protects the public's investment in improvements in the public rights-of-way. (Ord. 18-28, 8-22-2018; amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-9B-2: PURPOSE AND GOALS:

- A. The purpose of this article is to establish requirements for the siting and use of wireless facilities in public rights-of-way in a manner that facilitates the delivery of wireless services within the City city, while minimizing associated adverse impacts. The goals of this article are to:

1. Provide for the managed development and installation, maintenance, modification, and removal of wireless services infrastructure in the City 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. (Ord. 18-28, 8-22-2018, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-9B-3: SCOPE AND APPLICABILITY:

- A. This article shall provide the basic local scheme for providers of wireless services and systems that require the use of public 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 article shall apply to all wireless facilities and structures located within public right-of-way, and to all applications to locate or modify wireless facilities and structures within public right-of-way. This article shall apply to all future providers and to all providers in the City city prior to the effective date hereof, whether operating with or without a license. Title 13, chapter 16 of this Code code addresses wireless telecommunications facilities in areas inside and outside of public rights-of-way. (Ord. 18-28, 8-22-2018, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-9B-4: LICENSE AND OTHER REQUIREMENTS FOR USE OF THE ROW:

- A. Except to the extent exempted by Federal federal or State 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 city have not already executed a Master License Agreement, the City city will provide the provider with a copy of the City's city's standard Master License Agreement master license agreement. The City city will not issue any site licenses to a provider until the provider and the City city have executed a Master License Agreement 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 federal, State state and local authorities, if required, and shall submit to the City city upon the written request of the City 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: 1) any other permit or authorization required for the privilege of transacting and carrying on a business within the City city required by the ordinances and laws of the City city; 2) any other permit, agreement or authorization required in connection with the use of property or facilities owned by third parties; or 3) any encroachment permit or other permit or authorization required in connection with excavating, encroaching, or performing other work in or along the ROW. (Ord. 18-28, 8-22-2018; ~~amd. Ord. 19- , -2019~~, Effective at 12 noon on January 6, 2020)

8-9B-5: 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~~ 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 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. (Ord. 18-28, 8-22-2018; ~~amd. Ord. 19- , -2019~~, Effective at 12 noon on January 6, 2020)

8-9B-6: MASTER LICENSE AGREEMENTS:

- A. Authority: The City 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 article. Any such licenses will be granted through a ~~Master License Agreement~~ master license agreement entered into between the City city and provider, and subsequent site licenses that apply and extend the terms of the ~~Master License Agreement~~ master license agreement to specific locations in the ROW.
- B. Non-Discrimination: The City city shall enter into ~~Master License Agreements~~ master license agreements with providers on a non-discriminatory basis. Notwithstanding the foregoing, the City city may negotiate additional or different terms with different providers, in the exercise of the City's city's reasonable discretion and pursuant to the City's city's reserved police powers and the City's city's proprietary rights in the ROW.
- C. Term: ~~Master License Agreements~~ master license agreements will be for a term of five (5) to fifteen (15) years (the "term"), and shall be granted in a nondiscriminatory manner. Site licenses will be for a term of the remainder of the current ~~Master License Agreement~~ master license agreement, and will be subject to all the terms and conditions of the ~~Master License Agreement~~ master license agreement in effect when the site license is granted.
- D. Compensation: The ~~Master License Agreement~~ master license agreement will require the provider to pay fair and reasonable compensation to the City city, as determined by the City Council city council, for: 1) the administrative expenses associated with entry into the ~~Master License Agreement~~ master license agreement and individual site licenses, 2) the provider's use of ROW, including the City's city's expenses associated with maintenance and management of the provider's use of ROW, and 3) other applicable fees. Specifically, providers must pay the following fees:
1. Application Fee: In order to offset the cost to the City 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 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 one hundred dollars (\$100.00) per collocation. The application fee for installing,

modifying, or replacing a utility pole in connection with a permitted use shall be not more than two hundred fifty dollars (\$250.00) 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 one thousand dollars (\$1,000.00) per utility pole. The application fee must be paid at the time the application is submitted to the City city.

2. Site License Fee: In order to offset the cost to the City city of inspecting and managing licensed wireless facilities, and to compensate the City 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: a) 3.5 percent of all gross revenue related to the provider's use of ROW for small wireless facilities, or b) two hundred fifty dollars (\$250.00) annually for each small wireless facility. For small wireless facilities collocated on City city-owned utility poles, the site license fee shall be fifty dollars (\$50.00) annually. 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 Annotated section 10-1-401 et seq.

3. Other Fees: Providers must also pay all other applicable fees established in this Code code, specifically including but not limited to fees for encroachment permits and business licensing.

E. Insurance, Indemnity, And and Security: Prior to the execution of Master License Agreement master license agreement, a provider must deposit with the City city an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Master License Agreement master license agreement, and shall obtain and provide proof of the insurance coverage required by the Master License Agreement master license agreement. A provider shall also indemnify the City city as set forth in the Master License Agreement master license agreement. (Ord. 18-28, 8-22-2018, amd. Ord. 19- . . . -2019, Effective at 12 noon on January 6, 2020)

8-9B-7: SITE LICENSE APPLICATION:

A. Application Requirements: To be considered for a site license, a provider must submit an application to the telecommunications application specialist, on a form provided by the City 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 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 article, specifically including information concerning structure height and location within the ROW, compliance with the City's 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.

- B. **Avoiding Redundant Submittals:** The telecommunications application specialist may allow a provider to maintain on file with the telecommunications application specialist 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.
- C. **Site License Fee Exemption:** 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 Annotated section 10-1-401 et seq.
- D. **Additional Information:** The **City city** may require the applicant to submit additional information for any application for a site license for a discretionary use.
- E. **Encroachment Permit:** The applicant shall simultaneously submit an application for an encroachment permit pursuant to chapter 8 of this title. (Ord. 18-28, 8-22-2018; amd. Ord. 19-
-2019, Effective at 12 noon on January 6, 2020)

8-9B-8: STANDARDS APPLICABLE TO WIRELESS FACILITIES IN RIGHTS-OF-WAY:

In addition to the standards set forth in title 13, chapter 16 of this **Code code**, the following standards, requirements, and prohibitions apply to all wireless facilities licensed pursuant to this article.

- 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 fifty feet (50') above ground level at the point of installation. The antenna of a wireless facility may not extend more than ten feet (10') above the top of an existing structure. All equipment mounted on new or existing structures must be mounted at least eight feet (8') above ground level.
- B. **Placement:** Wireless facilities and new structures must be placed in locations that will not: 1) obstruct or hinder the usual travel or public safety on the ROW; 2) create a public health or safety hazard, 3) obstruct, damage, or interfere with another utility facility in the ROW, or the use of such other utility facilities, 4) materially interfere with the safe operation of traffic control equipment, 5) materially interfere with a sight line or a clear zone for transportation or pedestrians, 6) materially interfere with compliance with the Americans With Disabilities Act, and 7) 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 two feet (2'). New structures must be of monopole-type design; lattice structures will not be permitted. New structures must not be made of wood, and must comply with all **City city** design standards, including the applicable design standards identified in title 13, chapter 16 of this **Code code**.
- D. **Additional Design Requirements ~~in~~ in City Center ~~And and~~ Transit Station Overlay District Zones:** In order to maintain the high quality design and character of the **City Center Zoning District city center zoning district**, all wireless facilities and new structures in the **City Center Zone city 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 of~~ Lines:** All fiber backhaul lines and electrical distribution lines serving wireless facilities must be located underground.

- G. Compliance ~~With~~ with Law: All wireless facilities must at all times comply with all applicable ~~Federal~~ federal, ~~State~~ state, and local ~~Building Codes~~ building codes and ~~Safety Codes~~ safety codes and regulations.
- H. Additional Requirements: Wireless facilities will be subject to any additional requirements set forth in the applicable ~~Master License Agreement~~ master license agreement and site license.
- I. Decorative Poles: New or replacement utility poles must be designed to conform to current ~~City~~ city standards. (Ord. 18-28, 8-22-2018; ~~amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020~~)

8-9B-9: LICENSE APPROVAL OF PERMITTED USES:

- A. The telecommunications application specialist has authority to approve applications for permitted uses. The telecommunications application specialist may deny an application for a permitted use that does not comply with the requirements of this article, specifically including but not limited to section 8-9B-8 of this article. The telecommunications application specialist shall forward any applications for discretionary uses to the ~~City Engineer~~ city engineer and to the ~~Engineering Manager~~ engineering manager for capital projects. (Ord. 18-28, 8-22-2018)

8-9B-10: LICENSE APPROVAL OF DISCRETIONARY USES:

- A. The ~~Zoning Administrator~~ 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~~ zoning administrator, following a public meeting.
- C. The ~~Zoning Administrator~~ 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~~ zoning administrator may still approve an application for a site license for discretionary use, if the ~~Zoning Administrator~~ zoning administrator finds that it is in the best interests of the ~~City~~ city to do so, based on considerations of health, safety, or welfare. In making that determination, the ~~Zoning Administrator~~ 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~~ zoning administrator may approve an application for a site license with conditions that further the goals of this article, specifically including conditions that minimize any adverse effect of the wireless facility or structure on adjacent properties. (Ord. 18-28, 8-22-2018; ~~amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020~~)

8-9B-11: 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~~ city. To obtain such consent, the provider must submit an application in accordance with section 8-9B-7 of this article.
- 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 city for the following activities: 1) routine maintenance on a small wireless facility or utility pole, 2) replacement of a small wireless facility with a small wireless facility that is substantially similar or smaller in size, and 3) 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 city with advance written notice of any such activity.
- D. A provider must apply for an encroachment permit in accordance with this Code code for any work that requires excavation or the closure of sidewalks or vehicular lanes, etc. The requirement to obtain an encroachment permit applies even for work that is exempted from the application process pursuant to subsection C of this section.
- E. Any approved modifications will be documented in a new or amended site license. (Ord. 18-28, 8-22-2018; amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-9B-12: APPLICATION PROCESSING:

- A. Consolidated Applications: A provider may submit a consolidated application for the collocation of up to twenty five (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 twenty five (25) structures. In any thirty (30) day period, a provider may not file more than: 1) one consolidated application, or 2) multiple applications that collectively seek site licenses for a combined total of more than twenty five (25) wireless facilities and structures.
- B. Completeness: Within thirty (30) days after the date when an application is submitted to the City city, the City city shall determine whether the application is complete, and shall notify the provider of that determination in writing. If the City city determines that an application is incomplete, the City city shall specifically identify the missing information in the written notification. The processing deadline will be tolled from the date when the City 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 ninety (90) days after the date of the written notification, the application will expire.
- C. Processing Deadlines: The City 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 sixty (60) days after the day when the City city receives a complete application. The City city may extend the deadline by a single additional period of ten (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 one hundred five (105) days after the day when the City city receives a complete application. The City city may extend the deadline by a single additional period of ten (10) business days by sending the applicant written notice of the extension before the applicable deadline.
 - 3. Applications for the collocation of large wireless facilities in the ROW shall be approved or denied within ninety (90) days after the day when the City city receives a complete application.
 - 4. Applications for the installation of wireless support structures in the ROW shall be approved or denied within one hundred fifty (150) days after the day when the City city receives a complete application.

- D. Denial: If the City city denies an application, the City 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 city denies the application. If the City city denies an application for one or more utility poles, or one or more small wireless facilities in a consolidated application, the City 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 thirty (30) days after the day on which the City city denies an application, the applicant may cure the deficiencies noted in the denial and resubmit the application without paying an additional application fee. The City city shall approve or deny the resubmitted application within thirty (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 two hundred seventy (270) days after approval if the licensed small wireless facility or utility pole is not installed and operational. (Ord. 18-28, 8-22-2018; amd. Ord. 19-____ - ____-2019, Effective at 12 noon on January 6, 2020)

8-9B-13: APPEAL OF ADMINISTRATIVE DECISIONS:

- A. The ~~Administrative Law Judge~~ administrative law judge, appointed pursuant to title 16 of this Code code, shall hear and decide appeals from administrative decisions applying the provisions of this article, specifically including appeals from the denial of a site license application by the telecommunications application specialist or the ~~Zoning Administrator~~ zoning administrator.
- B. An applicant for a site license may appeal the denial of the application to the ~~Administrative Law Judge~~ administrative law judge, as provided in subsection C1 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 ~~Zoning Administrator~~ zoning administrator along with the fee established by the City city in its uniform 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~~ zoning administrator shall schedule a hearing before the ~~Administrative Law Judge~~ administrative law judge within thirty (30) days of the date the notice of appeal is filed, unless otherwise agreed to in writing by the City city and the appellant. At least ten (10) days prior to the hearing, the ~~Administrative Law Judge~~ administrative law judge shall give public notice of the hearing and shall notify the parties in interest. Prior to the hearing, the ~~Zoning Administrator~~ zoning administrator shall transmit to the ~~Administrative Law Judge~~ administrative law judge all papers constituting the record of the action which is appealed.

3. An appeal to the ~~Administrative Law Judge~~ administrative law judge shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the ~~Zoning Administrator~~ zoning administrator. An appellant may request a stay by submitting to the ~~Zoning Administrator~~ 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~~ 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~~ zoning administrator. The ~~Zoning Administrator~~ 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 ~~Administrative Law Judge~~ administrative law judge 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 ~~Administrative Law Judge~~ administrative law judge 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 ~~Administrative Law Judge~~ administrative law judge 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 ~~Administrative Law Judge~~ administrative law judge makes a decision, the ~~Zoning Administrator~~ zoning administrator shall give the applicant written notice of the decision. The decision takes effect on the date when the ~~Administrative Law Judge's~~ administrative law judge's written decision is received by certified mail by the appellant.

6. A record of all appeals shall be maintained in the ~~Office of the Zoning Administrator~~ office of the zoning administrator. (Ord. 18-28, 8-22-2018, ~~amd. Ord. 19- - -2019,~~ Effective at 12 noon on January 6, 2020)

8-9B-14: INTERPRETATION AND APPLICATION OF ARTICLE:

A. The provisions of title 13, chapter 16 of this ~~Code~~ code apply to wireless facilities licensed under this article, and to applications made under this article. In applying title 13, chapter 16 of this ~~Code~~ code or article A of this chapter to this article, 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 article and the provisions of title 13, chapter 16 of this ~~Code~~ code or article A of this chapter, the terms of this article will govern.

B. The ~~Zoning Administrator~~ zoning administrator is authorized to interpret the provisions of this article and the application of title 13, chapter 16 of this ~~Code~~ code and article A of this chapter to this article, in his or her reasonable discretion. The ~~City Engineer~~ city engineer is authorized to resolve ambiguities arising out of the application of this article, specifically including the designation of ROW as permitted or discretionary. (Ord. 18-28, 8-22-2018, ~~amd. Ord. 19- - -2019,~~ Effective at 12 noon on January 6, 2020)

Chapter 10

HILLSIDE DEVELOPMENT STANDARDS

8-10-1: GRADING STANDARDS:

8-10-2: PRESERVATION OF EXISTING VEGETATION:

8-10-3: REVEGETATION:

8-10-1: GRADING STANDARDS:

Buildings and other improvements should be designed to fit the site and to leave natural massing, topography, and natural features of the landscape intact. The following standards are established in order to help meet this goal:

- A. Land Disturbance Permit Required: No grading, excavation, or tree/vegetation removal shall be permitted, whether to provide for a building site for on site utilities or services, or for any roads or driveways, prior to issuance of a land disturbance permit issued by the city.
- B. Cutting ~~To~~ to Create Benches: Cutting and grading to create benches or pads for larger building sites shall be avoided to the maximum extent feasible.
- C. Limits ~~On~~ on Changing Natural Grade: The original, natural grade of a lot shall not be raised or lowered more than four feet (4') at any point for construction of any structure or improvement, except:
 - 1. The site's original grade may be raised or lowered six feet (6') if a retaining wall is used to reduce the steepness of manmade slopes; provided, that the retaining wall complies with the provisions of subsection G of this section.
 - 2. The site's original grade may be raised or lowered more than six feet (6') with terracing, as specified in subsection G of this section.
- D. Grading ~~For~~ for Accessory Building Pads: Grading to create separate building pads for accessory buildings and structures other than garages, such as tennis courts, swimming pools, outbuildings, and similar facilities is prohibited on natural slopes over twenty percent (20%).
- E. Grading ~~For~~ for Road Construction:
 - 1. Topsoil on proposed road rights of way shall be removed prior to establishing finished road grades, shall be stockpiled at the location identified on the approved grading plan for use in revegetation, and shall be redistributed on disturbed areas prior to revegetation.
 - 2. Excess cut material resulting from road construction or utility installation shall be removed from the site.
 - 3. Where permanent roads or roadbeds are to be used during construction and stormwater inlets have already been installed, such inlets shall be protected to prevent sediment from entering the storm drainage system.

F. Limits **On** **on** Graded **Or** **or** Filled Manmade Slopes:

1. The grade of manmade slopes shall not generally exceed twenty five percent (25%).
2. In no case shall the grade of cut or fill slopes exceed fifty percent (50%) unless it is substantiated, on the basis of a site investigation and submittal of a soils engineering or geotechnical report prepared and certified by a qualified professional, that a cut at a steeper slope will be stable and will not create a hazard to public or private property.
3. All cut, filled and graded slopes shall be recontoured to blend into the natural grade of surrounding land.
4. All permanent fills shall be constructed and stabilized to prevent settlement, sliding, or erosion damage to streets, curbs, gutters, sidewalks or buildings.

G. Terracing **And** **and** Retaining Walls: Use of retaining walls is encouraged to reduce the steepness of manmade slopes and to provide planting pockets conducive to revegetation.

1. Retaining walls may be permitted to support steep slopes but shall not exceed six feet (6') in height measured from finished grade.
2. Terracing shall be limited to two (2) tiers. The width of the terrace between any two (2) four foot (4') vertical retaining walls shall be at least three feet (3'). Retaining walls higher than four feet (4') shall be separated from any other retaining wall by a minimum distance of five (5) horizontal feet. Terraces created between retaining walls shall be permanently landscaped or revegetated.
3. Retaining walls shall be faced with stone or earth colored materials similar to the surrounding natural landscape.

H. Repair **Of** **of** Disturbed Areas: All repair measures for disturbed areas shall be made not later than thirty (30) days after the disturbance is made, except revegetation, which shall take place at the earliest planting season thereafter.

I. Stabilization **And** **and** Maintenance: The developer, builder or property owner shall provide interim stabilization of all disturbed areas during construction and final stabilization once construction is completed. The developer, builder or property owner may be held responsible for slope failure resulting from defective workmanship or failure to follow approved plans. Upon taking possession of such lots or common areas, subsequent property owners shall maintain stabilization and erosion control. (2001 Code § 89-4-504; amd. 2009 Code, **Ord. 19-** **-2019, Effective at 12 noon on January 6, 2020**)

8-10-2: PRESERVATION OF EXISTING VEGETATION:

Existing concentrations of significant trees and vegetation shall be preserved. For the purposes of this section, "significant trees and vegetation" means trees of six inch (6") caliper or greater, groves of five (5) or more smaller trees, or clumps of shrubs covering an area of fifty (50) square feet or more measured at the drip lines. (2001 Code § 89-4-504; amd. 2009 Code)

8-10-3: REVEGETATION:

Any slope exposed or created in new development shall be landscaped or revegetated with native or adapted trees and other native or adapted plant material. New vegetation shall be equivalent to or exceed the density and erosion control characteristics of the original vegetation cover in order to mitigate adverse environmental and visual effects. Use of fire resistant plants for revegetation is strongly encouraged. (2001 Code § 89-4-504; amd. 2009 Code)

Chapter 11

STORMWATER DISCHARGES AND QUALITY MANAGEMENT

8-11-1: PURPOSE AND APPLICABILITY:

8-11-2: DEFINITIONS:

8-11-3: PROHIBITED DISCHARGES:

8-11-4: USE OF BEST MANAGEMENT PRACTICES:

8-11-5: STORM DRAIN MASTER PLAN:

8-11-6: ILLICIT CONNECTIONS PROHIBITED:

8-11-7: CONNECTION PERMIT:

8-11-8: POSTCONSTRUCTION BMPs:

8-11-9: INDUSTRIAL AND CONSTRUCTION ACTIVITY DISCHARGES:

8-11-10: WATERCOURSE PROTECTION:

8-11-11: PROHIBITED OBSTRUCTIONS:

8-11-12: INSPECTIONS, TESTING AND MONITORING:

8-11-13: ENFORCEMENT:

8-11-1: PURPOSE AND APPLICABILITY:

A. Purpose: The purpose of this chapter is to protect the health, safety and welfare of the City and its inhabitants, improve the City's storm drain system, and protect property by:

1. Minimizing entrance of pollutants to the City's storm drain system.
2. Prohibiting illicit discharges and connections to the City's storm drain system.
3. Minimizing nonpoint source pollution caused by stormwater runoff.
4. Reducing the amount and increasing the quality of stormwater runoff and requiring implementation of Best Management Practices for those purposes.
5. Ensuring that stormwater management controls are properly maintained.
6. Establishing authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this chapter.
7. Establishing penalties for violation(s) of this chapter.

B. Applicability: The provisions of this chapter shall apply to all real property within the incorporated area of the City and all water entering the City's storm drain system generated on any developed and undeveloped lands, unless exempted by the provisions of this chapter. (Ord. 10-21, 7-28-2010, amd. Ord. 19- , -2019, Effective at 12 noon on January 6, 2020)

8-11-2: DEFINITIONS:

BEST MANAGEMENT PRACTICES (BMP OR BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CONNECTION PERMIT, PERMIT OR STORM DRAIN CONNECTION PERMIT: A permit issued by the **City city** pursuant to this chapter authorizing connection to the **City's city's** storm drain system.

DISCHARGE: Any addition or potential addition of stormwater or nonstormwater to the **City's city's** storm drain system, regardless of method of conveyance (i.e., by surface runoff, channel, pipe or otherwise).

HAZARDOUS MATERIALS: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLCIT CONNECTION: Either of the following: a) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any nonstormwater to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the **City city**; or b) any drain or conveyance connected to the storm drain system which has not been approved by the **City city**.

ILLCIT DISCHARGE: Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in section 8-11-3 of this chapter.

INDUSTRIAL ACTIVITY: Any activity subject to UPDES industrial permits as defined by the State of Utah.

LAND DISTURBANCE PERMIT: A permit issued by the **City city** pursuant to title 11 of this **Code code**.

LOW IMPACT DEVELOPMENT (LID): A versatile stormwater management approach that utilizes principles and practices that integrate Best Management Practices into the design and construction of stormwater management facilities that will: a) mimic a site's predevelopment hydrology; b) utilize natural processes (such as: infiltration, evapotranspiration, filtration, bioretention, rainwater harvesting, retention and detention); and c) reduce the potential for degrading the water quality of stormwater runoff.

NONSTORMWATER DISCHARGE, NONSTORMWATER RUNOFF: Any discharge to the storm drain system that is not composed entirely of stormwater.

OWNER OR OPERATOR: The owner or operator of any facility or activity subject to regulation under the stormwater management regulations.

POLLUTANT: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

RESPONSIBLE PERSON: Any person engaged in any land use, activity, business or operations utilizing a storm drain connection, or owning or responsible for the property served by the connection, whether temporary or permanent, including, but not limited to, property owners, developers, builders, tenants, and facility operators. If there is more than one (1) responsible person, they shall be jointly and severally responsible and liable for compliance with or violation of this chapter and the connection permit.

SITE: Real property where stormwater is generated; the land or water area where any regulated facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

STORM DRAIN SYSTEM, CITY'S STORM DRAIN SYSTEM, CITY STORM DRAIN SYSTEM OR CITY SYSTEM: Publicly-owned facilities by which stormwater is collected or conveyed, including, but not limited to, any roads with drainage systems, Municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and humanmade or altered drainage channels, reservoirs, and other drainage structures identified on the City's city's storm drain master plan.

STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT REGULATIONS: Any and all Federal federal, State state and local laws, ordinances and regulations, City city standards, City city specifications and master plans, and Federal federal, State state and local permits, including, but not limited to, UPDES permit number UTS000001, which are related to stormwater and storm drain management.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP): A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, storm drain systems and receiving waters to the maximum extent practicable.

UPDES: Utah pollutant discharge elimination system per Utah Administrative Code R317-8.

WATERCOURSE: A natural or artificial channel through which water can flow.

WATERS OF THE STATE: All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Utah or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitutes a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be waters of the State state. The exception for confined bodies of water does not apply to waters of the United States. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State state includes wetlands as defined in the Federal Clean Water Act.

WATERS OF THE UNITED STATES (WATERS OF THE U.S.): Waters of the United States as defined in 40 CFR 230.3(s). (Ord. 10-21, 7-28-2010; amd. Ord. 16-39, 9-21-2016; Ord. 17-22, 4-26-2017; Ord. 19- , -2019, Effective at 12 noon on January 6, 2020)

8-11-3: PROHIBITED DISCHARGES:

- A. **Illicit Discharges Prohibited:** No person shall deliberately or mistakenly discharge, or cause or allow to be discharged into the City city storm drain system or watercourses any materials other than stormwater, including, but not limited to, pollutants or waters containing pollutants, whether by direct or indirect connection.

- B. Exceptions: The following discharges to the storm drain system shall be exempt from the prohibitions of this section:
1. Discharges regulated under a valid State state pollutant discharge elimination system (UPDES) permit, provided that the discharge complies with the terms of the permit.
 2. Discharges from water line flushing or other potable water sources.
 3. Discharges from sprinkled landscape irrigation or sprinkled lawn watering.
 4. Discharges from individual residential vehicle or watercraft washing.
 5. Discharges from natural riparian habitat or wetland flows.
 6. Discharges from natural groundwater flows directly to a piped storm drain system.
 7. Discharges from emergency firefighting activities or emergency management activities.
 8. Discharges of dechlorinated water from swimming pools.
 9. Discharges from foundation drains, footing drains, or crawl space or basement pumps if the discharges have been approved in writing by the City city.
 10. Other discharges approved pursuant to a permit issued by the City city.
- C. Discontinue Discharge: After written notification is mailed, personally delivered or posted, the City city may require a responsible person to immediately, or by a specified date, eliminate or discontinue the illicit discharge, and the City city, if necessary as the result of an imminent or pending storm event, may take immediate measures to eliminate the source of the illicit discharge. If the discharge is not discontinued in the time specified, the City city may take any enforcement measure described in this chapter and steps reasonably necessary to eliminate the source of the illicit discharge or to prevent the reoccurrence of future illicit discharges. (Ord. 10-21, 7-28-2010; amd. Ord. 16-39, 9-21-2016; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-11-4: USE OF BEST MANAGEMENT PRACTICES:

- A. Required: Any person engaged in any land use, activity, business or operations utilizing a storm drain connection, or owning or responsible for the property served by the connection, whether temporary or permanent, including, but not limited to, property owners, developers, builders, tenants, and facility operators, shall employ LID principles and other Best Management Practices and comply with an individualized BMP plan or preapproved BMPs promulgated by the City city, to: 1) mimic a site's predevelopment hydrology; and 2) reduce to the maximum extent practicable the discharge of pollutants.
- B. Commercial And and Industrial Establishments: The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of pollutants, prohibited materials or other wastes into the storm drain system or watercourses through the use of structural and nonstructural BMPs.
- C. Permitted Discharge: Compliance with all terms and conditions of a valid UPDES permit authorizing the discharge of nonstormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section, provided that BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the UPDES permit.

- D. City Requirements: The City city may adopt requirements identifying appropriate BMPs, and the terms and content of a BMP plan for any land use, activity, business, operation, or facility which may cause or contribute to the discharge of a pollutant to, or contamination of, the storm drain system. If BMPs have been prepared and promulgated by the City city, or any Federal federal, State state or regional agency, for certain activities, operations, or facilities, every person undertaking such a designated activity or operation, or owning or operating such facility shall comply with relevant BMPs. (Ord. 10-21, 7-28-2010; amd. Ord. 16-39, 9-21-2016; Ord. 17-22, 4-26-2017; Ord. 19- -2019, Effective at 12 noon on January 6, 2020)

8-11-5: STORM DRAIN MASTER PLAN:

- A. Compliance With with Master Plan: Stormwater shall be controlled and directed in accordance with the City city storm drain master plan to eliminate potential damage and hazards to people and property within the City city. (2001 Code § 90-3-101; amd. 2009 Code § 8-11-1; Ord. 10-21, 7-28-2010)
- B. Extensions And and Connections Generally:
1. Payment of storm drain impact and other fees does not guarantee existence of storm drain lines to the property boundaries where the storm drain connection is to be made and does not relieve the developer, builder or property owner of the responsibility to provide and maintain the necessary storm drain improvements between the property requiring drainage and the nearest defined natural drainage channel or other existing storm drain system improvements. Prior to connecting to the City city storm drain system, the developer, builder or property owner shall be required to extend the then existing City city system to an appropriate connection location as determined by the City Engineer city engineer.
 2. All storm drain improvements, extensions and connections shall be constructed in accordance with the County county flood control master plan, City city master plan, standards and specifications.
 3. All permits necessary for discharging water into, crossing, or in any other way impacting natural drainage channels, waterways, canals or rivers, shall be issued and submitted to the City Engineer city engineer prior to final development or connection approval. Documentation may include, but is not limited to, the preparation of a stormwater pollution prevention plan and notice of intent required by the State state. (2009 Code § 8-11-3; amd. Ord. 10-21, 7-28-2010)
- C. On Site Installations:
1. Prior to connecting to a City city-owned storm drain line, the developer, builder or owner of real property shall obtain a connection permit pursuant to this chapter and provide, at its own expense, on site installations capable of handling the stormwater runoff generated by, within and upstream of any real property that is developed, graded or altered in any manner that affects stormwater runoff upon, over, across or from such real property, including, without limitation, the construction of structures or other increase of impervious surface area. At a minimum, LID BMPs (where feasible) and detention shall be provided to meet the stormwater management regulations as outlined in the City's Storm Drain Design Standards city's storm drain design standards.
 2. Detention requirements may be met by connection to a City city storm drain facility for flag lots or subdivisions less than five (5) acres in size, provided that a City city storm drain facility exists, additional capacity is available, the City Engineer city engineer determines that connection is appropriate, and the City city receives payment in an amount determined by the City Engineer city engineer. (2001 Code § 90-3-102; amd. 2009 Code § 8-11-4; Ord. 10-21, 7-28-2010; Ord. 17-22, 4-26-2017)

D. Temporary Storm Drain Structures:

1. Permitted: The City city may allow temporary drainage solutions providing for on site detention or retention that will allow development grading or alteration of property requiring drainage, pending completion of the permanent storm drainage improvements. The temporary solutions shall provide the same level of flood protection at all times that will be provided by the completed systems. All costs of temporary solutions shall be paid by the developer, builder or property owner, in addition to the other costs and fees.

2. Required Facilities Determined By by City: The City city shall make the determination of the required scope of temporary facilities or improvements prior to the issuance of a building permit or development approval, whichever first occurs.

3. Maintenance: The developer, builder and property owner shall be responsible for maintenance and cleaning of the temporary storm drain facility. This maintenance responsibility shall continue until such time as permanent or alternate facilities are installed and approved by the City city. The developer, builder or property owner shall also, if required by the City city, file with the City city a ten (10) year financial guarantee for maintenance, in a form acceptable to the City city, to guarantee proper maintenance of the facility. (2001 Code § 90-3-105; amd. 2009 Code § 8-11-6; Ord. 10-21, 7-28-2010)

E. Off Site Installations:

1. The developer, builder or property owner shall obtain, at its expense, easements as are necessary for the installation of off site storm drain improvements to ensure future access for operation, maintenance, repair and removal. If the storm drain improvements are required by the City city to be public improvements and part of the City's city's storm drain system, a perpetual easement shall also be dedicated to the City city authorizing the City city to operate, maintain and repair the storm drain facilities so dedicated.

2. Storm drain facilities that are required by the City city to be public improvements, and that are dedicated to the City city shall become the property of the City city upon written acceptance of the City city. Only after such acceptance the City city shall operate and maintain the facilities or appurtenances. (2001 Code § 90-3-106; amd. 2009 Code § 8-11-7; Ord. 10-21, 7-28-2010)

F. Storm Drain System In in New Developments: For all new developments, the developer shall install a storm drain system which is constructed in compliance with the stormwater management regulations and the connection permit as required by this chapter. If the City city storm drain master plan shows a pipeline larger than that required to serve the proposed development, the developer shall comply with the master plan. (2001 Code § 87-5-111; amd. 2009 Code § 8-11-8; Ord. 10-21, 7-28-2010; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-11-6: ILLICIT CONNECTIONS PROHIBITED:

A. Violation: It is a violation of this chapter for any person to make or allow to be made, or use or allow to be used any connection to the City's city's storm drain system without City city approval.

- B. Prohibited Connections: The construction, use, maintenance or continued existence of illicit connections to the City's city's storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. No person shall act, cause, or permit any agent, employee, or contractor to construct, maintain, operate or utilize an illicit connection, or cause, allow or facilitate an illicit discharge. A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the City city storm drain system, or allows such a connection to continue.
- C. Discontinue Connection: A connection that violates this chapter shall be addressed through a notice of violation and an emergency order issued and processed under title 16 of this Code code. If, subsequent to eliminating a connection found to be in violation of this chapter, the person can demonstrate that an illicit discharge will no longer occur, said person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the City's city's discretion and shall be subject to such conditions as the City city may determine; such reconnection or reinstallation shall be at the requesting person's sole expense. (2009 Code § 8-11-2; amd. Ord. 10-21, 7-28-2010; Ord. 12-10, 4-25-2012, eff. 7-1-2012, Ord. 19- -2019, Effective at 12 noon on January 6, 2020)

8-11-7: CONNECTION PERMIT:

- A. Required For for New And and Modified Connections:
1. It is a violation of this chapter for any person to make or allow to be made a new connection, or to modify or allow to be modified any existing connection to the City's city's storm drain system without first obtaining a storm drain connection permit from the City city.
 2. The requirement to obtain a connection permit applies to direct connections to the storm drain system (e.g., a piped connection to a piped portion of the storm drain system) and indirect connections to the storm drain system (e.g., overland discharges to any part of the storm drain system). The approval of the long term connection is different than a land disturbance permit issued pursuant to title 11 of this Code code.
 3. Connections from a detached single-family residence are exempt, provided that the runoff from the residence is handled according to a plat or site plan approved by the City city. However, any person desiring to install a basement pump, foundation drain, or other related fixture directly or indirectly connecting to the storm drain system must obtain a connection permit.
 4. The connection permit shall run with the land and shall be binding on the original property owners, applicants, and their respective heirs, successors, and assigns. The City city may, in the City's city's sole discretion, record the connection permit or notice thereof at the Office of the County Recorder office of the county recorder.
 5. Connections made by the City city are exempt from the connection permit requirement.
- B. Timing: Any person beginning any type of construction requiring a building permit shall obtain a storm drain connection permit before or concurrent with the building permit. If site plan or subdivision approval is sought, the application for a storm drain connection permit shall be submitted with the earlier of the submittal for final site plan or final subdivision approval and shall be issued prior to or concurrent with the final approval.
- C. Requirements Of of Connection Permit Application:
1. Required: Each person desiring to connect to the City's city's storm drain system or to modify an existing connection shall submit an application to the City city for a storm drain connection permit.

2. BMP Plan: A Best Management Practices plan shall be submitted with the application and shall designate specific BMPs that the applicant will use to regulate, control, and facilitate discharges as specified in the City's Storm Drain Design Standards city's storm drain design standards. The BMP plan shall be incorporated in the connection permit. All BMP plans shall provide for pretreatment of discharge unless the applicant demonstrates to the satisfaction of the City city that pretreatment is not necessary because of: a) lack of potential pollutants in the discharge from the site, and b) insufficient quantity of discharge from the site.

a. The BMPs shall be designed to ensure that the quality and quantity discharge to the City's city's storm drain system meet the stormwater management regulations. The BMPs shall ensure that the quality of receiving water is not degraded by stormwater runoff and that the quantity of discharge does not exceed the designed capacity, or jeopardize the integrity of the storm drain system.

b. The BMPs may be structural or nonstructural, depending on the needs of the site. The proposed BMPs shall be designed specifically for a given site; provided that, if the City city has established preapproved BMPs, the preapproved BMPs shall be used.

c. City shall not issue a storm drain connection permit until the BMP plan has been submitted to and accepted by the City city.

3. Maintenance Plan: For storm drain improvements and postconstruction BMPs located on private property and not dedicated to the City city, a maintenance plan shall be submitted to the City city outlining how the storm drain improvements and postconstruction BMPs will be maintained to ensure the upkeep of the connection and on site storm drain improvements. The maintenance plan shall be incorporated in the connection permit. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan and shall be part of the connection permit. At a minimum, the maintenance plan shall contain the following provisions:

a. The name(s) of the owner(s) for all components of the storm drain facilities;

b. The name(s) and address(es) of the person or persons responsible for maintenance;

c. The person(s) responsible for financing maintenance and emergency repairs;

d. A maintenance schedule and record keeping requirements for all storm drain improvements and postconstruction BMPs, including, but not limited to, swales, separators, pipes and ponds;

e. A list of easements with the purpose and location of each; and

f. The signature(s) of the property owner(s).

4. Engineering Plans: Engineering plans, stamped by an engineer registered in the State of Utah, shall be submitted to the City city showing permanent storm drain improvements and the connection to the City city system. City shall not issue a connection permit until the plans are submitted to the City city, City city comments have been addressed, and the City city has accepted the engineering plans.

5. Fees: The applicant for a connection permit shall pay a fee as adopted by resolution of the City Council city council.

D. Approval Of of Connection Permit: When deciding whether to approve, conditionally approve, or not approve a connection permit, the following factors may be considered:

1. Connection will only be allowed for stormwater, surface drainage, subsurface drainage, groundwater, irrigation tail water, roof runoff and cooling water. Such water may be discharged only into the storm drain system that has adequate capacity for the accommodation of such water. Such discharged water shall comply with the stormwater management regulations.
 2. Whether the requested connection complies with the stormwater management regulations.
 3. Whether the requested connection complies with the storm drain master plan.
 4. Whether the BMP plan, maintenance plan, and engineering plans have been submitted, City city comments have been addressed, and City city has accepted the plans.
 5. Whether the proposed connection introduces or will potentially introduce pollutants into the storm drain system.
 6. Whether the proposed connection creates a safety hazard.
 7. Whether the proposed connection affects the integrity of the storm drain system infrastructure.
 8. Whether the proposed connection endangers the City's city's drinking water.
- E. Compliance With with Plans: Failure to construct or maintain the stormwater improvements in accordance with the accepted plans (including the BMP plan, the maintenance plan, and engineering plans) shall be a violation of the connection permit and this chapter.
- F. As Built: Any person connecting to the storm drain system shall provide "as built" plans showing the details and the location of the connection. The plans shall be in a format that is acceptable to the City Engineer city engineer. (Ord. 10-21, 7-28-2010; amd. Ord. 17-22, 4-26-2017; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-11-8: POSTCONSTRUCTION BMPs:

- A. Condition Of of Connection Permit: It shall be a condition of each connection permit and continued use of any connection to the City's city's system, whether by permit or other approval, that long term maintenance of all privately-owned structural and nonstructural postconstruction BMPs be continued after construction.
- B. Annual Postconstruction BMP Certification: It shall be a condition of continued operation and use of any new or existing connection to the City's city's storm drain system that annual certification be provided to the City city of privately-owned postconstruction BMPs, including, but not limited to, inspection, maintenance, repair and cleaning sufficient to maintain the integrity of the storm drain system. Each structural BMP shall be cleaned a minimum of once per year or more frequently as required. If cleaning does not occur, the City city may perform the cleaning on behalf of the responsible person, and the responsible person shall reimburse the City city actual costs of such performance.
- C. Records: Records of maintenance activities performed on all BMPs shall be kept by the responsible person for not less than three (3) years. These records shall be made available to the City city upon written or verbal request. If cleaning is not performed in accordance with this section, the City city may perform the cleaning on behalf of the responsible person, and the responsible person shall reimburse the City city actual costs of such performance.

- D. Design **And and** Planning: The design and planning of all stormwater management facilities and BMPs shall include detailed maintenance and repair procedures to ensure their continued functioning. These procedures shall identify the parts and components of the stormwater management facilities and BMPs that need to be maintained, and the equipment, skills and training necessary. The current and future responsible persons, including, but not limited to, all subsequent owners of property on which such measures have been taken, shall maintain all temporary and permanent measures.
- E. Abatement: In the event of failure to adequately maintain temporary or permanent BMPs, the **City city** may authorize completion of all temporary and permanent BMPs. The responsible person shall be liable to the **City city** for all costs and expenses that may be incurred or expended by the **City city** in bringing the property into compliance with the stormwater management regulations. The responsible person shall further be liable to the **City city** for any collection costs, including legal fees, incurred by the **City city**. The **City city** may recover these costs through appropriate legal action.
- F. Requirements: Maintenance and repair requirements may include, but not be limited to, the following:
1. Removal of silt, litter and other debris from all catch basins, inlets and drainage pipes;
 2. Grass cutting and vegetation removal; and
 3. Replacement of landscape vegetation. (Ord. 10-21, 7-28-2010; **amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020**)

8-11-9: INDUSTRIAL AND CONSTRUCTION ACTIVITY DISCHARGES:

- A. Compliance **With with** Permit: Any person subject to a permit issued under UPDES or the **City's city's** land disturbance ordinance shall comply with all provisions of such permit. Proof of compliance may be required in a form acceptable to the **City city** prior to allowing any new or continued discharge to the **City's city's** storm drain system.
- B. Accidental Discharge:
1. Training: The responsible person shall train personnel, maintain records of training and maintain notification procedures to assure that immediate notification is provided to the **City city** upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste that may enter the storm drain system.
 2. Containment: As soon as any responsible person, or other person responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants entering the storm drain system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
 3. Notification Required: The responsible person or person responsible for emergency response shall immediately notify emergency response agencies of any release of hazardous materials via emergency dispatch services. In the event of a release of nonhazardous materials, the responsible person or person responsible for emergency response shall notify the city in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three (3) business days of the phone notice. If the illicit discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

4. Effect ~~On~~ **on** Other Requirements: The notification shall be in addition to any other notification requirements set forth in federal, state and local regulations and laws.

5. Additional BMPs: The city may require implementation, at the expense of the responsible person, of additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm drain system. (Ord. 10-21, 7-28-2010; amd. Ord. 16-39, 9-21-2016; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-11-10: WATERCOURSE PROTECTION:

- A. Property Near Watercourses: Every person owning property through which a watercourse passes shall comply with applicable stormwater management regulations including, but not limited to, keeping and maintaining that part of the watercourse within the property free of trash, debris, excessive vegetation, silt and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.
- B. Alteration Prohibited: Except as performed in strict accordance with written city approval, no person shall block or modify the natural flow of water in the city's storm drain system or alter, enlarge, change or remove any part of the city's storm drain system. (Ord. 10-21, 7-28-2010; amd, Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-11-11: PROHIBITED OBSTRUCTIONS:

- A. Unlawful Obstructions: It is unlawful for any person to:
1. Obstruct the flow of water in the storm drain system.
 2. Contribute to the obstruction of the flow of water in the storm drain system.
 3. Cover or obstruct any drain inlet, except that drain inlets may be temporarily obstructed in emergency situations in order to prevent contaminants from entering the storm drain system.
- B. Exceptions: The following obstructions are exempt from the prohibitions of this section:
1. Street and storm drain improvement projects authorized by the city.
 2. Flood control and prevention activities performed by the city.
 3. Obstructions approved by the city as part of a site's stormwater drainage plan. (Ord. 10-21, 7-28-2010)

8-11-12: INSPECTIONS, TESTING AND MONITORING:

- A. Inspections: All new and existing stormwater management facilities shall be subject to periodic inspection by the city to document maintenance and repair needs and to ensure compliance with the stormwater management regulations.
- B. Compliance Assessments: The city may inspect property for the purpose of verifying compliance with this chapter, including, but not limited to, the following:
1. Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;
 2. Identifying point(s) of discharge of all wastewater, process water systems and pollutants;

3. Investigating the natural slope at the location, including drainage patterns and manmade conveyance systems (including roads with drainage systems, catch basins, curbs, gutters, channels and storm drains);

4. Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;

5. Locating any illicit connection or the source of any illicit discharge;

6. Evaluating compliance with any stormwater pollution control plan;

7. Evaluating compliance with any permit issued pursuant to this chapter.

C. Records Review: The city may demand the production of such records as necessary to determine compliance with the provisions of this chapter and for the purpose of examination and copying.

D. Sample And and Test:

1. For the purpose of determining the potential for contribution of pollutants to the storm drain system, the city may inspect, sample and test any of the following: area runoff; soils within the source property; liquids, discharge, or materials within any storage area (including any container contents); and treatment system discharge.

2. The city may investigate the structural integrity and condition of all new and existing storm drains, sanitary sewer facilities/systems or other tanks, reservoirs or pipelines on the property using appropriate tests, including, but not limited to, smoke and dye tests and video surveys. The city's authorized representative may take photographs or videotape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

3. The responsible person shall provide copies of test results to the city and, on submission of a written request to the city, be entitled to a copy of the test results conducted by the city.

E. Monitoring:

1. For the purpose of measuring any discharge or potential source of discharge to the storm drain system, the city may undertake a monitoring program and other analysis, which may include both the installation and maintenance of monitoring devices.

2. Whenever the city determines that there is any illicit discharge to the storm drain system, the city may, by written notice, order that the responsible person undertake such monitoring activities or analyses and furnish such reports as the city may recommend. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and analyses and reports required. The responsible person shall be responsible for the costs of these activities, analysis and reports. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

3. In the event that a responsible person fails to conduct the monitoring and analyses and furnish the reports required by the order in the time frames set forth therein, the city may cause such monitoring and analyses to occur and assess all costs incurred, including reasonable administrative costs and attorney fees, to the responsible person. The city may pursue judicial action to enforce the order and recover all costs incurred.

F. Right ~~To~~ to Enter ~~To~~ to Inspect, Monitor ~~And~~ and Test:

1. New Facility ~~Or~~ or Connection: When any new stormwater management facility is installed on private property, or when any new connection is made between private property and the city's storm drain system, the property owner shall grant to the city the right to enter the private property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter the property for compliance assessments and when the city has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.

2. Notice ~~Of~~ of Entry: Upon presenting identification and an oral request to enter made to any person who appears to be in possession or control of any operation, business or real property, or where no such person is present, after a written request to enter is mailed, personally delivered, or faxed to a responsible person, the city has the right to, and is hereby granted the power and right to, enter onto the exterior/out of doors (or areas not being within a fully enclosed structure) of private property within the city solely for the purpose to inspect, monitor or investigate the possible or potential source of an illicit discharge to the storm drain system or watercourses. Except for occupied residential property, such right to enter shall be exercisable at any time. For an occupied residential property, such entry shall be made only during daylight hours.

3. Industrial Activity: The City city shall be permitted to enter and inspect facilities as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City city. Facility operators shall allow the City city ready access to all parts of the premises for the purpose of inspection, sampling, examination and copying of records that must be kept under the conditions of a UPDES permit, and the performance of any additional duties as defined by State state and Federal federal law.

4. Unreasonable Delays: Unreasonable delays in allowing the City city access to a permitted facility is a violation of any storm drain connection permit and this chapter. A person who is the operator of a facility with a UPDES permit associated with industrial activity is in violation of this chapter if the person denies the City city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

5. Obstructions: Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled shall be promptly removed by the operator at the written or oral request of the City city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Search Warrants: If the City city has been refused access to a building, structure, property or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect, monitor or sample as part of a routine inspection and sampling program of the City city designed to verify compliance with this chapter or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City city may seek issuance of an administrative inspection or criminal search warrant from any court of competent jurisdiction.

G. Correction ~~Of~~ of Deficiencies: Any maintenance and repair deficiencies shall be corrected within such time period as is determined to be reasonable by the City city, and the inspection and maintenance requirements may be increased as deemed necessary to ensure proper functioning of the stormwater management facility. Additional inspections may be required as determined to be appropriate by the City city. (Ord. 10-21, 7-28-2010; amd. Ord. 16-39, 9-21-2016; Ord. 19-____, ____-2019. Effective at 12 noon on January 6, 2020)

8-11-13: ENFORCEMENT:

- A. Remedies: This chapter may be enforced by administrative enforcement under title 16 of this Code or criminal actions as provided by law. The **City city** has sole discretion to decide whether to proceed administratively or through criminal process, or both, for a violation. If the **City city** chooses to pursue both administrative and criminal enforcement for the same violation, no court imposed civil penalties may be assessed, but all other remedies are available.
- B. Violations Deemed **A a** Public Nuisance: In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the responsible person's expense through an administrative enforcement process, or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- C. Notice **Of of** Violation: Whenever an enforcement official finds that there has been a violation or failure to meet a requirement of this chapter, the enforcement official may order compliance by written notice of violation to the responsible person.
1. Such notice may require without limitation: a) the performance of monitoring, analyses, and reporting; b) the elimination of illicit connections or discharges; c) that violating discharges, practices, or operations shall cease and desist; d) the abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and e) the implementation of source control or treatment BMPs.
 2. If abatement of a violation or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the responsible person fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the responsible person.
 3. Failure to comply with an emergency order and/or a notice of violation shall constitute a separate violation.
- D. Cease **And and** Desist Order: Whenever an ~~Administrative Hearing Officer~~ **administrative hearing officer** finds that there has been a violation or failure to meet a requirement of this chapter, or the ~~Administrative Hearing Officer~~ **administrative hearing officer** determines that a responsible person's past violations are likely to recur, the ~~Administrative Hearing Officer~~ **administrative hearing officer** may order the responsible person to cease and desist all such violations and direct the responsible party to:
1. Immediately comply with all requirements; and
 2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations, implementing additional BMPs, and terminating the discharge.
- Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the responsible party.
- E. Criminal Prosecution: The violation of any of the provisions of this chapter shall be a Class C misdemeanor. Each day that a violation occurs shall constitute a separate offense.
- F. Additional Sanctions Against Corporation **Or or** Association:

1. When a corporation or association is found to have violated any of the provisions of this chapter, the ~~Administrative Hearing Officer~~ administrative hearing officer or court may, in addition to or in lieu of imposing other authorized penalties, require the corporation or association to give appropriate publicity of the conviction by notice to the class or classes of persons or sections of the public interested in or affected by the conviction, by advertising in designated areas, or by designated media or otherwise.

2. When an executive or high managerial officer of a corporation or association is found to have violated any of the provisions of this chapter, committed in furtherance of the affairs of the corporation or association, the ~~Administrative Hearing Officer~~ administrative hearing officer or court may disqualify him or her from exercising similar functions in the same or other corporations or associations for a period not exceeding five (5) years if it finds the scope or wilfulness willfulness of his illegal actions make it dangerous or inadvisable for such functions to be entrusted to him.

G. Cost Of of Abatement: After abatement of a violation, the property owner will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment as provided in title 16 of this Code code. If the amount due is not paid within a timely manner as determined by the City city or by the expiration of the time provided in which to challenge the cost assessment, the cost assessment shall be processed as a lien against the property for the amount of the assessment.

H. Cost Of of Enforcement: The City city may recover all attorney fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring costs.

I. Injunctive Relief: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the City city may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

J. Emergency Suspensions: The ~~City Manager~~ city administrator or designee may order the immediate suspension or shutoff of a responsible person's discharge or storm drain system access according to the provisions of title 16, chapter 2, article B of this Code code whenever such suspension or shutoff is necessary in order to stop an actual or threatened discharge which reasonably appears or presents or causes a risk of an imminent or substantial:

1. Damage to the storm drain system or harm to the receiving waters;
2. Endangerment to the health, safety or welfare of any residents served by the storm drain system;
3. Interference with the operation of the storm drain system;
4. Violation of the UPDES permit number UTS000001;
5. Endangerment to the environment.

Any responsible person notified of a suspension of its discharge privilege shall immediately stop or eliminate its contribution or discharge. In the event of a responsible person's failure to immediately comply voluntarily with the suspension order, the authorized enforcement official may take such steps as deemed necessary, including immediate severance of the storm drain system connection, to enforce such order. The authorized enforcement official shall allow the responsible person to recommence its discharge when the responsible person has demonstrated to the satisfaction of the authorized enforcement official that the period of endangerment has passed, unless the termination proceedings set forth in subsection K of this section are initiated against the responsible person. A responsible person that is

responsible in whole or in part, for any discharge presenting imminent endangerment, shall submit to the ~~City Manager~~ ~~city administrator~~ a detailed written statement describing the cause of the harmful contribution and the measures taken to prevent any future occurrence, prior to the date of any termination of discharge hearing under subsection K of this section. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

- K. ~~Of~~ ~~of~~ Storm Drain Connection Permit: Violation by the holder of a storm drain connection permit of any of the provisions thereof, or any of the provisions of this chapter, shall be grounds for termination and revocation of such permit by the ~~City~~ ~~city~~. Such termination or revocation shall be processed through the procedures of title 16 of this ~~Code~~ ~~code~~.
- L. ~~Of~~ ~~of~~ Obstructions: In addition to any penalties which may be imposed pursuant to this chapter, the ~~City~~ ~~city~~ may do the following:
1. Remove any prohibited obstructions and also, any pipelines or other devices installed in violation of the provisions of this chapter.
 2. Bring an action for the abatement of the nuisance caused by the offending installation and for the recovery of the ~~City's~~ ~~city's~~ costs and expenses incurred in removing the offending installation pursuant to this section.
- M. Remedies Not Exclusive: The remedies listed in this chapter are not exclusive of any other remedies available under any applicable ~~Federal~~ ~~federal~~, ~~State~~ ~~state~~ or local law and it is within the discretion of the ~~City~~ ~~city~~ to seek cumulative remedies. (Ord. 10-21, 7-28-2010; Ord. 12-10, 4-25-2012, eff. 7-1-2012, ~~Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020~~)

Chapter 12 RESERVED

(Ord. 10-30, 10-13-2010)

Chapter 13 PARKS AND RECREATION

8-13-1: DESIGNATION OF PARKS AND OTHER RECREATIONAL FACILITIES:

8-13-2: HOURS OF OPERATION AND SEASON:

8-13-3: RESERVATIONS FOR USE:

8-13-4: BANNERS AND SIGNS:

8-13-5: FEES:

8-13-6: PROHIBITED ACTIVITIES IN CITY PARKS AND RECREATIONAL FACILITIES:

8-13-7: ADMINISTRATIVE REGULATIONS:

8-13-8: SMOKING PROHIBITED IN CERTAIN AREAS OF PUBLIC PARKS:

8-13-1: DESIGNATION OF PARKS AND OTHER RECREATIONAL FACILITIES:

A. Name And and Location Of of City Parks: For purposes of this chapter, the following are city parks:

Bateman Pond	7140 South 1100 West
Beargrass Park	5113 West Crus Corvi Road
Bicentennial Park	1900 West 7000 South
Brigadoon Park	9331 South Mac Duff (1450 West)
Brown's Meadow Park	2490 West 9160 South
Camelot Park	1975 West 7225 South
Colonial Estates Park	2000 West 6888 South
Constitution Park	3330 West 7010 South
Country Squire Park	3756 West Saddler Drive (8550 South)
Crus Corvi Park	5294 West Crus Corvi Road
Dixie Valley Park	3620 West 6449 South
Dora Lee Park	4480 West Bingham View Drive (8583 South)
Eagle Park	5200 West 7530 South
Facet Way Park	8140 South 5300 West
Grizzly Park	7400 South Grizzly Way
Handcart Park	2868 West 6620 South
Harvest Estates Park	2304 West 6855 South
Jordan Meadow Park	2200 West 7550 South
Lindsey Park (Henderson)	3850 West 8015 South
Lobelia Park	6466 South Lobelia Drive (5030 West)
Maples Park #1	7800 South 6650 West
Maples Park #2	7498 South Valley Maple Drive (6730 West)
McHeather Park	1440 West 6935 South

Meadow Green Farms Park	3000 West 8400 South
Noble Heights Park	3774 West 7910 South
Oaks Park East	8200 South Fall Oak Drive (6180 West)
Oaks West Park	8200 South 6700 West
Park Village Park	4800 West 7030 South
Plum Creek Park	8300 South Stratford Lane (1470 West)
Pocket Park	2200 West 7800 South
Railroad Park	4600 West New Bingham Highway
Ranches Park #1 / Commons	5268 West Ranches Park Lane (7350 South)
Ranches Park #2	5180 West Swiftwater Way (7910 South)
Ron Wood Memorial Park	6000 West New Bingham Highway
Ron Wood Park Phase II	6000 West New Bingham Highway
Senior Housing Park	2200 West Sugar Factory Road (8200 South)
Shadow Mountain Park	5065 West 7400 South
Siena Vista	5600 West 7000 South
Stone Creek Park	4860 West Amethyst Drive (8030 South)
Stone Creek Park Phase II	5196 West Amethyst Drive (8030 South)
Sunset Cove Park	4810 West New Bingham Highway
Sycamore Ridge Park	7398 West New Sycamore Drive
Sycamore Trail Park	7208 West New Sycamore Drive
Teton Estates Park	9339 South Targee Drive (4160 West)
Utah Youth Sports Complex	4000 West 7900 South
Veterans Memorial Park	1985 West 7800 South
Vista West Park	9098 South Winthrop Drive (3695 West)
West Jordan Meadows A Park	7530 South Bridle Creek Drive (5200 West)
West Jordan Meadows B Park	5360 West 7530 South
Wildflower Detention Park	9200 South 5200 West

- B. Name **And and** Location **Of of** Other Recreational Facilities: For purposes of this chapter, the following are city recreational facilities:

Arena	8035 South 2200 West
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- C. Definitions: The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

APPLICANT: The person or entity that applies for a reservation or permit to reserve a city park or recreational facility.

ARENA: The city's rodeo arena, located at the address stated in this section.

CITY EVENT: An event that:

1. Is planned, organized and controlled by: a) city personnel; b) city contractors; c) elected city officials; or d) city committee members or other volunteers; and
2. Is funded pursuant to a budget adopted by the city council; and
3. For purposes of liability, the city has either: a) determined the event to fall within the purview of city insurance or other similar city coverage; or b) required another person or entity to indemnify the city; and
4. Is not a "city sponsored event" as defined herein.

CITY PARKS: Those facilities identified in this section and their environs, including, but not limited to, athletic fields, pavilions, picnic areas, concession stands, traveled ways, sidewalks, parking lots, restrooms, and tot lots.

CITY RECREATIONAL FACILITIES: Those facilities identified in this section and their environs, including, but not limited to, concession stands, traveled ways, sidewalks, parking lots and restrooms.

CITY SPONSORED EVENT: An event where the city's involvement is limited to lending of the city's name or financial or in-kind support.

CONCESSION STAND: A permanent structure, owned by the city, where food and beverages may be sold or served. Concession stands are equipped with hot and cold running water and sinks. There are no grills or vents, except a full kitchen is available at the concession stand located within the arena. Where there is a full kitchen, a fire extinguisher is provided.

SPECIAL EVENT: Any activity for which a city building, park or recreational facility is being reserved, or a permit is being issued, and which meets at least one of the following criteria: 1) two hundred (200) or more attendees are expected; 2) additional city services are required; 3) the activity is an athletic tournament; 4) inflatable toys or similar items will be set up; or 5) a fee will be charged for admission or participation.

SPECIAL EVENT PERMIT: A permit issued pursuant to city policy for a special event.

USERS OR VISITORS: Any person who is present in a city park or recreational facility, whether by reservation, permit or otherwise. (2001 Code § 58-1-101; amd. Ord. 10-26, 9-8-2010; Ord. 11-29, 9-14-2011; Ord. 15-04, 1-28-2015; **Ord. 19- , -2019, Effective at 12 noon on January 6, 2020**)

8-13-2: HOURS OF OPERATION AND SEASON:

- A. Open Season: City parks are open to the public starting the first Monday in April and are closed to the public starting the first Sunday in October until the following first Monday in April. City recreational facilities and concession stands are not open to the public and may be occupied and used only by reservation or permit, except that the city may reserve the arena for designated periods of public access.
- B. Open Hours: Except Veterans Memorial Park, city parks are open to the public from six o'clock (6:00) A.M. to ten o'clock (10:00) P.M. during the open season. The Veterans Memorial Park is open from six o'clock (6:00) A.M. to eleven o'clock (11:00) P.M. during the open season. City parks are closed during all other hours of the day.
- C. Other Park Closures: At the sole discretion of the city, any city park or any area within a city park may be closed during open season or hours for any reason for the convenience of the city or to provide for the public health and safety. Reasons for closures may include, but are not limited to, safety, preservation of landscaping, protection of athletic field conditions, construction or performance of maintenance or repair work.
- D. Public Use Subject ~~To~~ to Reservations: When a city park, recreational facility, or any area therein, is reserved, it will not be open to the public during the reserved time. Any person or entity that has reserved a city park, recreational facility, or area therein may exclude the public from the reserved area and may request assistance from the city in doing so. The reserved area will be considered closed to the public during the times expressly specified in a reservation or permit approved or issued by the city **manager administrator** or designee.
- E. Entry Prohibited; Exceptions: Use, occupancy or entry into city parks, recreational facilities, or any area therein during seasonal, daily or other closures or reservations is prohibited, except by a reservation or permit holder during times expressly specified in the reservation or permit. Use, occupancy or entry into city recreational facilities and concession stands is prohibited, except by reservation or permit approved or issued by the city **manager administrator** or designee in accordance with city code and applicable city rules, policies and procedures. (2001 Code § 58-1-102; amd. 2009 Code; Ord. 15-04, 1-28-2015, **Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020**)

8-13-3: RESERVATIONS FOR USE:

- A. Permitted: City parks, recreational facilities, concession stands, and areas therein, may be reserved in accordance with this chapter and applicable city rules, policies and procedures. Tot lots, traveled ways, sidewalks and restrooms may not be reserved. Limited space within parking lots may be reserved if expressly specified in a reservation or permit approved or issued by the city **manager administrator** or designee.
- B. Reservation Procedure:
 - 1. General: The city **manager administrator** or designee will receive, and approve or deny, reservation requests. Reservation requests must be made and paid at least twenty four (24) hours prior and weekend reservation must be made and paid in full at least one week prior to the time and date of the reservation but no more than eleven (11) months prior to the time and date of the reservation; except for special events, seasonal reservations and athletic tournaments, as set forth below. The city **manager administrator** may, but is not required to, consider late reservations.

2. Other City Property: Unless listed in section 8-13-1 of this chapter, city-owned properties such as unimproved open space, public streets, sidewalks, plazas and the city cemetery are not city parks. A reservation for use of open space or cemetery may be available through a special event permit. Use of public streets and sidewalks may require an encroachment permit pursuant to city code.

3. Special Events: Special events must be scheduled through the special event permit rules, policies and procedures prescribed and adopted by the city ~~manager~~ administrator.

4. Seasonal Reservations ~~And and~~ Athletic Tournaments:

a. Seasonal reservations may be requested for athletic fields, concession stands and the arena. Application for seasonal reservations during the current calendar year may be made on or after the first business day in January.

b. Reservations for athletic tournaments may be requested for athletic fields. Application for tournament reservations may be made on or after the first business day in October for the next calendar year.

c. Applications must comply with this chapter and applicable rules, policies and procedures. For seasonal reservations of athletic fields, compliant applications must be received by the city ~~manager~~ administrator or designee no later than five o'clock (5:00) P.M. on the last business day in February. For athletic tournaments, compliant applications must be received by the city ~~manager~~ administrator or designee no later than five o'clock (5:00) P.M. on the last business day in November. Late applications may be reviewed by the city ~~manager~~ administrator. Timely applications will be reviewed and, if approved, reservations will be scheduled before late applications may be reviewed or considered. Noncompliant applications will not be approved and, if resubmitted as compliant applications, may be treated as untimely.

d. The various athletic fields will be scheduled according to applicable city rules, policies and procedures, and the applicants will be notified of the schedule not later than the last business day in March.

5. Cancellation ~~Of of~~ Reservations:

a. Except for seasonal reservations and tournaments, reservations may be canceled at any time up to twenty four (24) hours before the reserved date and time. Reservation fees will be refunded at the following rates: 1) one hundred percent (100%) refund for a cancellation that is received by the events coordinator in writing at least ninety (90) days before the reserved date and time; 2) fifty percent (50%) refund for a cancellation that is received by the events coordinator in writing between eighty nine (89) days and thirty (30) days before the reserved date and time; 3) twenty five percent (25%) refund for a cancellation that is received by the events coordinator in writing less than thirty (30) days and more than twenty four (24) hours before the reserved date and time. Reservations will not be canceled and a refund will not be available if the cancellation is not received by the city ~~manager~~ administrator or designee in writing more than twenty four (24) hours before the reserved date and time. Fees other than reservation fees are nonrefundable unless otherwise expressly stated.

b. Reservations for seasonal reservations and tournaments will not be canceled and a refund will not be available.

C. Rules, Policies ~~And and~~ Procedures: The city ~~manager~~ administrator or designee is authorized to prescribe and adopt rules, policies and procedures for the effective implementation of this section, provided such rules, policies and procedures are not inconsistent with the provisions of this section. (2001 Code § 58-1-103; amd. Ord. 15-04, 1-28-2015; ~~Ord. 19-~~ - -2019 Effective at 12 noon on January 6, 2020)

8-13-4: BANNERS AND SIGNS:

Notwithstanding the prohibition of section 12-3-6 of this code, banners and signs may be displayed by a reservation or permit holder in the area, provided that the display is expressly specified in the reservation or permit and all banners and signs comply with other applicable provisions of city code. (Ord. 15-04, 1-28-2015)

8-13-5: FEES:

- A. Rental Fees: The fees for city park and recreational facility use shall be set forth in a fee schedule established by resolution of the city council.
- B. Deposits: The city **manager administrator** shall collect from each individual or entity applying for a reservation or permit the deposit set forth in the fee schedule established by resolution of the city council. The city **manager administrator** will retain an appropriate amount of the deposit for the following: 1) damaged property; 2) cleanup; 3) city staff time resulting from the occupancy, including, but not limited to, overtime fees; 4) costs resulting from modifications to the reservation or permit; 5) applicant's failure to comply with the reservation, permit, city code or any applicable city rules, policies or procedures; or 6) any other costs associated with the occupancy actually incurred by the city but unpaid by the applicant. The city **manager's administrator's** decision to retain all or a portion of the cleanup fee may be appealed to the city council, whose decision shall be final. (2001 Code § 58-1-104; § 8-13-4 amd. Ord. 15-04, 1-28-2015; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-13-6: PROHIBITED ACTIVITIES IN CITY PARKS AND RECREATIONAL FACILITIES:

- A. Advertising: It is unlawful to distribute any handbills or circulars, or to post, place or erect any bills, notices, papers or advertising devices; except that the city **manager administrator** may authorize advertisements on outfield fences and may authorize the Western Stampede celebration committee to place advertisements on the inside of the rodeo grounds fence. These advertisements, when authorized, will be removed within seven (7) days of the completion of league play or completion of the Independence Day celebration.
- B. Alcohol Use: It is unlawful for any person to consume or possess any beer or any alcoholic beverage within any city park or recreational facility, except a special event which is the subject of a single event permit granted under this code.
- C. Animals: Except as otherwise permitted by this code, animals are prohibited in city parks. Animals may be expressly permitted in a city park or recreational facility pursuant to an approved special event permit.
- D. Barbecue Grills: Barbecue grills are permitted in city parks, except cooking is prohibited under any pavilion or structure. A fire extinguisher must be kept within five feet (5') of any grill. Digging of barbecue pits is prohibited in city parks and recreational facilities. Users and visitors shall comply with grilling rules, regulations and policies of the city and all other regulatory agencies.
- E. Business Activities; City **Manager Administrator** Approval: Practicing, conducting, or soliciting any occupation, business or profession, or selling any merchandise, is prohibited in city parks and recreational facilities, including, but not limited to: yard sales, rummage sales and sidewalk vending. Activities may be permitted in writing by the city **manager administrator**, or as part of a special event permit issued by the city, or through a concessions permit, or as otherwise allowed by city code.
- F. Camping: It is unlawful to camp or lodge in city parks, recreational facilities, plazas, open space or on any other city property unless expressly permitted in a special event permit.

- G. Destruction ~~Of~~ ~~of~~ City Landscaping ~~And~~ ~~and~~ Property: It is unlawful to cut, break, injure, deface or disturb any trees, shrubs, plants, buildings, monuments, fences, benches, tables or other structures, apparatus, fixtures or property; or pluck, pull up, cut, take or remove any shrub, bush, plant or flower; or mark or write upon any structure or apparatus. It is unlawful to cut, remove, injure or destroy any wood, turf, grass, soil, rock, sand or gravel.
- H. Disturbance: It is unlawful to engage in fighting or riotous, boisterous, threatening or indecent language under circumstances that may result in a breach of the peace.
- I. Dogs:
1. Dogs are prohibited in city parks and recreational facilities unless accompanied by a person. The dog must be licensed and leashed. It is unlawful for any person in control of such dog to fail to retrieve and properly dispose of fecal matter.
 2. A reservation or permit may restrict or prohibit dogs.
- J. Fires: Fires are prohibited on city property, except where designated.
- K. Firearms ~~And~~ ~~and~~ Explosives: Possessing or discharging firearms or any other explosives is prohibited in city parks and recreational facilities, except as allowed by state law.
- L. Fireworks: It is unlawful to discharge any type of fireworks in any city park, except as permitted pursuant to the provisions of this code.
- M. Gambling: Gambling is prohibited in city parks and recreational facilities.
- N. Golf: It is unlawful to play golf or hit golf balls in city parks and recreational facilities or upon city property.
- O. Horses: Horses are prohibited on city property, except that horses are permitted in the arena and the immediately adjacent parking area and while being transported, led or ridden over the paved streets leading to the arena. It is unlawful for any person in control of such horse to fail to retrieve and properly dispose of fecal matter. Horses are prohibited on all grass areas.
- P. Inflatables: Inflatable toys are prohibited in city parks and recreational facilities unless specifically authorized by an approved special event permit. Additional deposits will be required as required by the fee schedule adopted by resolution of the city council.
- Q. Irrigation ~~Of~~ ~~of~~ Turf: Adjusting or shutting off any irrigation control or valve(s) on city property is prohibited, except by authorized city employees and contractors.
- R. Littering, Dumping Refuse: All litter must be disposed of in designated and marked city receptacles or removed from city parks and recreational facilities. Dumping of refuse on city property or in any city trash receptacle is prohibited except refuse generated from lawful, authorized use of the city property.
- S. Model Planes ~~And~~ ~~and~~ Rockets: It is unlawful to operate any gas powered model aircraft, either line or radio controlled, except in the Veterans Memorial Park on the westernmost ball diamonds, and then only when there is no interference, disruption or annoyance to other users of the park.
- T. Noise: All users and visitors shall obey Salt Lake Valley health department noise regulations.
- U. Relocating ~~Of~~ ~~or~~ Removing Structure, Object, Soil: Relocation or removal of structures, objects, soil or other items within city parks and recreational facilities is prohibited without express written approval from the city. This includes, but is not limited to, tables, chairs, trash cans, warning devices, playground equipment and sand.

- V. Swimming: Swimming in fountains or other water features located on city property is prohibited, except water features specifically designated for such use.
- W. Vehicles: No vehicles other than city vehicles are allowed in city parks and recreational facilities except in designated traveled ways and parking lots, unless expressly allowed, in writing, in a special event permit. For the safety of all visitors, drivers are required to obey all posted speed limits and other signs. Vehicles may be permitted in the arena as specifically set forth in a special event permit.
- X. Water: Use of city water is prohibited except for normal use of restrooms, existing drinking fountains, and running water provided for use in conjunction with operation of reserved concession stands. Visitors shall not hook up to irrigation or culinary water in city property. The city may from time to time use nonpotable water for irrigation, which water is not intended for human consumption.
- Y. Weapons: Except as expressly allowed under state law, it is unlawful to possess or use a dangerous weapon in a city park. "Dangerous weapon" means: 1) any item capable of causing death or serious bodily injury or 2) a facsimile or representation of the item, if the actor's use or apparent intended use of the item is to assault, inflict pain on or injure another. (2001 Code § 58-1-105; amd. 2009 Code; Ord. 10-15, 6-9-2010; Ord. 10-13, 7-14-2010; § 8-13-5 Ord. 15-04, 1-28-2015, Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-13-7: ADMINISTRATIVE REGULATIONS:

The city **manager administrator** or his designee is authorized to prescribe and adopt such necessary regulations and forms, consistent with the provision of this chapter, for the proper administration of this chapter. (2001 Code § 58-1-106; § 8-13-6 Ord. 15-04, 1-28-2015, Ord. 19-_____-2019 Effective at 12 noon on January 6, 2020)

8-13-8: SMOKING PROHIBITED IN CERTAIN AREAS OF PUBLIC PARKS:

It is unlawful for any person to smoke while sitting or standing on the bleachers of the rodeo arena in the Veterans Memorial Park, in any other bleachers or publicly-owned seating in any other park, or within thirty feet (30') of such bleachers or publicly-owned seating. (2001 Code § 58-1-107; amd. 2009 Code; § 8-13-7 Ord. 15-04, 1-28-2015, Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

ARTICLE A. MAIN CITY PARK/VETERANS MEMORIAL PARK

- 8-13A-1: CREATION OF MAIN CITY PARK/VETERANS MEMORIAL PARK PRESERVATION AREA:
- 8-13A-2: RESTRICTIONS ON TRANSFER OF REAL PROPERTY OWNED BY CITY:
- 8-13A-3: LEGAL OPINION AND SUMMARY OF MATERIAL TERMS:
- 8-13A-4: PROHIBITION ON USE OF PUBLIC FUNDS OR ASSETS TO AFFECT ELECTION:
- 8-13A-5: DISCLOSURE OF EXPENDITURES:
- 8-13A-6: BAN ON EMPLOYING OR BENEFITING CITY EMPLOYEES, AGENTS AND OFFICERS:
- 8-13A-7: PENALTIES:
- 8-13A-8: EFFECTIVE DATE:

8-13A-1: CREATION OF MAIN CITY PARK/VETERANS MEMORIAL PARK PRESERVATION AREA:

- A. Creation **Of of** Preservation Area: There is hereby established the Main city park/Veterans Memorial park preservation area (hereinafter the "preservation area"). The boundaries of the area are those properties owned by the city, but not included as utility easement, streets or other rights of way boundary from Redwood Road from 7800 South to Sugar Factory Road, along Sugar Factory Road to 2200 West, along 2200 West to 7800 South, along 7800 South back to Redwood Road.
- B. Purpose: The purpose of the preservation area is to preserve and maintain any property owned by the city within the preservation area for use as part of the Main city park/Veterans Memorial park complex, unless the voters of the city determine that the property is no longer needed for the Main city park/Veterans Memorial park or other public use by the city. The establishment of the preservation area does not alter the property rights of any private property located within the preservation area.
- C. City Property Exempt **From from** Restrictions: The other provisions of this chapter notwithstanding, the city may lease land within the area commonly known as the Sugar Factory property, described below, for any lawful purpose and consistent with applicable zoning conditions, provided: 1) the lease's proposed use of the property is compatible with and complements the Main city park/Veterans Memorial park, in the exclusive judgment of the city council; 2) the lease terms are approved by the city council and do not exceed fifteen (15) years in duration; however, this restriction shall not preclude granting a new lease for similar length of time upon due reconsideration by the city council; and 3) any such lease or commercial activity under its terms shall be limited and conformed to the less than 36.42 acres within the preservation areas, particularly described as follows:

The Sugar Factory property is legally described as follows:

SIDWELL PARCEL # 21-34-151-008-0000, and 21-34-151-009-0000

OWNER: THE CITY OF WEST JORDAN
ADDRESS: 2150 WEST SUGAR FACTORY ROAD

DESCRIPTION:

Beginning at a point which is 143.88 feet North and 1544.48 feet West from the Center of Section 34, Township 2 South, Range 1 East, Salt Lake Base and Meridian; running thence South 69°27'00" West 1096.11 feet; thence North 31°19'20" West 62.45 feet; thence North 18°50'54" West 161.22 feet; thence North 16°00'00" West 46.3 feet; thence North 11°06'12" West 91.66 feet; thence North 06°25'19" West 85.15 feet; thence North 00°46'54" East 78.28 feet; thence North 09°44'25" East 92.49 feet; thence North 14°58'28" East 139.79 feet; thence North 17°22'34" East 134.1 feet; thence North 18°12'58" East 32.39 feet; thence North 00°01'33" East 149.5 feet; thence South 89°41'34" East 507.31 feet; thence North 00°20'24" East 170.11 feet; thence North 89°54'34" East 456.45 feet; thence North 89°41'59" East 889.75 feet; thence South 89°06'44" East 18.57 feet; thence South 00°15'36" East 515.17 feet; thence South 69°27'00" West 883.86 feet to the point of beginning.

PARCEL CONTAINS: 36.42 ACRES, MORE OR LESS

(2001 Code § 58-3-101; amd. 2009 Code, Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-13A-2: RESTRICTIONS ON TRANSFER OF REAL PROPERTY OWNED BY CITY:

- A. Requirement ~~Of~~ ~~of~~ Voter Approval: Before any real property, or interest in real property, owned by the city as of January 1, 2001 or thereafter, which is located in the Main city park/Veterans Memorial park preservation area may be transferred or alienated, whether by sale, lease or any other manner, to any other person or entity, public or private for any use other than those public uses authorized under the public facilities zone¹ of this code, the question of the transfer and the applicable terms of the transfer must be presented to the voters of the city at a general municipal election, or a special municipal election as allowed by law, and a majority of the voters must approve the transfer upon the terms specified.
1. This subsection A shall not apply to not for profit organizations, private individuals, or families who desire to make use of the existing park area and park facilities, or existing buildings owned or controlled by the city, in a manner consistent with the current and designed use of the buildings, park area and park facilities.
 2. This subsection A shall not apply to for profit or other organizations or individuals who make temporary use of the park area, park facilities and existing buildings owned by the city when such temporary use is authorized by the city and made in conjunction with celebrations and activities which are sponsored or sanctioned or organized by the city.
 3. Subsections A1 and A2 of this section shall be effective until December 31, 2002, at which time they shall no longer be in force or effect.
- B. Requirement ~~Of~~ ~~of~~ City Council Approval: Before any such question may be placed upon the ballot, the terms of the proposed transfer must be published for two (2) weeks and a public hearing must be held. Two-thirds ($\frac{2}{3}$) of the members of the city council must vote in the affirmative to transfer the property and to place the question on the ballot upon the terms proposed before the question may be placed upon the ballot. The terms proposed may not be altered from those presented to and approved by the city council, except as provided herein. Any modification of the proposed terms following approval by the city council requires reapproval of the proposed transaction in accordance with all of the requirements of this article before the question may be placed upon the ballot.

- C. Form **Of of** Ballot Question: The ballot question must be presented to the voters in substantially the following form:

Shall the property (or interest in property) owned by the city at (given address) be (sold, leased, etc.) to (give name of recipient) upon the following terms: (give material terms).

*For
Against*

(2001 Code § 58-3-102; amd. 2009 Code, **Ord. 19- , -2019, Effective at 12 noon on January 6, 2020**)

8-13A-3: LEGAL OPINION AND SUMMARY OF MATERIAL TERMS:

- A. Requirement **Of of** Legal Opinion: The city attorney shall, in his or her independent judgment, with the city as his or her sole client, give a legal opinion as to whether the proposed transfer, upon the specified terms approved by the city council, would be lawful. If the city attorney's opinion is that the proposed transfer is unlawful for any reason, the process may not proceed until such questions are resolved to the legal satisfaction of the city attorney. Modifications of the terms to bring the proposed transaction into legal compliance shall require a new public hearing and approval by the city council as provided above.
- B. Preparation **Of of** Summary **Of of** Terms: If the city attorney opines that the proposed transfer is lawful and therefore permissible upon the specified terms, the city attorney shall identify and summarize the material terms of the transfer to be included in the ballot question. The city attorney's summary shall be submitted to the city council in the language to be placed upon the ballot no later than sixty (60) days before the municipal election when the question is to be presented to the voters.
- C. Requirement **Of of** Public Hearing: Upon receipt of the city attorney's proposed ballot language regarding material terms, the city council shall, with no less than two (2) weeks' public notice, hold a public hearing on the form of the ballot question. In the event there is an objection at the hearing that the characterization of the material terms omits a material term, the omitted term shall be added. In the event there is any dispute as to any other characterization of the terms which cannot be resolved informally, the **city manager mayor** shall request the county attorney to review the issue and promptly provide proposed language which shall be accepted by the city council for the ballot. If the county attorney refuses or fails to provide proposed language promptly, the **city manager mayor** shall promptly hire outside legal counsel to provide proposed language as to the disputed terms using his or her independent legal judgment, with the city as his or her sole client, which language shall be accepted by the city council for the ballot. The city, or any resident of the city, has standing to appeal the form of the ballot question in accordance with applicable law. (2001 Code § 58-3-103; amd. 2009 Code, **Ord. 19- , -2019, Effective at 12 noon on January 6, 2020**)

8-13A-4: PROHIBITION ON USE OF PUBLIC FUNDS OR ASSETS TO AFFECT ELECTION:

Neither the city, nor any officer, employee or agent of the city, may appropriate or spend any city or public funds, or otherwise use any city or public assets, in a manner intended or likely to affect the outcome of the election, including, but not limited to, publications purportedly designed to educate the public. This does not prevent any elected city officer from giving his or her opinion on the issue, so long as city funds or resources are not used to publish or promulgate that opinion. (2001 Code § 58-3-104)

8-13A-5: DISCLOSURE OF EXPENDITURES:

Any individual or entity receiving contributions or expending funds with the intent to affect the outcome of the election in an amount greater than two hundred fifty dollars (\$250.00) shall be required to disclose the contributions and/or expenditures in the same manner as is currently required of a candidate for city office, excluding any current requirement regarding or related to primaries. Such reports, once filed, shall be immediately available to the public. (2001 Code § 58-3-105)

8-13A-6: BAN ON EMPLOYING OR BENEFITING CITY EMPLOYEES, AGENTS AND OFFICERS:

- A. Prohibition ~~On~~ on Employing ~~Of~~ or Providing Benefit: Any person or entity seeking to obtain the city's interest in any real property located in the preservation area, or who has obtained any such interest, may not employ or otherwise confer a benefit directly or indirectly upon any employee or agent of the city or any person holding or seeking office in the city at the time of the negotiation or consummation of the transaction, or such person's immediate family member or employer.
- B. Prohibition ~~On~~ on Seeking ~~Of~~ or Accepting Employment ~~Of~~ or Benefit: Any person who is an employee, agent or officer of the city at the time of the solicitation, negotiation or consummation of the transaction may not, while the person is in office or in the employ of the city, or for two (2) years after his or her departure from the city, obtain or seek to obtain employment, directly or indirectly, with any person or entity who is known to be seeking to obtain the city's interest in any real property located in the preservation area, or who has obtained such interest. (2001 Code § 58-3-106; amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-13A-7: PENALTIES:

- A. Disqualification From Office ~~Of~~ or Termination ~~Of~~ of Employment: Any employee, agent or officer of the city who violates this article shall immediately be terminated from employment with the city by the city council, or removed from office by the city attorney, and shall be ineligible for employment or holding office in the city for five (5) years. If the city attorney independently determines there has been a violation of this article by any city officer, he or she shall initiate proceedings for judicial removal. Any citizen may also initiate proceedings for judicial removal for a violation of this article in accordance with state law.
- B. Criminal Sanctions: Any person who violates any provision of this article shall be guilty of a class B misdemeanor if the amount in question is equal to or exceeds one thousand dollars (\$1,000.00); or a class C misdemeanor if the amount in question is less than one thousand dollars (\$1,000.00) or does not involve a dollar amount. (2001 Code § 58-3-109; amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-13A-8: EFFECTIVE DATE:

This article shall take effect on the date of approval from the city council, or as soon thereafter as allowed by law. If not adopted by the city council when presented, it shall take effect immediately following the November 2001 municipal general election if the voters of the city approve this article, or as soon thereafter as allowed by law. This article is intended to relate back in time to cover all property located in the preservation area owned by the city as of January 1, 2001, so as to prevent the sale or transfer of any city-owned property in the preservation area pending the adoption of this article. (2001 Code § 58-3-110; amd. 2009 Code: Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

Footnotes - Click any footnote link to go back to its reference.

Footnote 1: See [title 13, chapter 5, article C](#) of this code.

Chapter 14 CEMETERY

- 8-14-1: DEFINITIONS:
- 8-14-2: USE OF CEMETERY REQUIRED:
- 8-14-3: PROCEDURES FOR USE OF CEMETERY:
- 8-14-4: FUNERALS AND INTERMENT:
- 8-14-5: DISINTERMENT:
- 8-14-6: MAINTENANCE AND OPERATION RESPONSIBILITY:
- 8-14-7: GRAVE DECORATIONS:
- 8-14-8: MARKERS AND MONUMENTS:
- 8-14-9: SALE OF LOTS AND PERPETUAL MAINTENANCE:
- 8-14-10: RULES AND LANDSCAPING:
- 8-14-11: PLATS RECORDED:
- 8-14-12: TRANSCRIPTS FILED:
- 8-14-13: TERMINATION OF RIGHTS:
- 8-14-14: REPURCHASE OF CITY CEMETERY BURIAL LOTS:
- 8-14-15: TRANSFER OF CERTIFICATE:
- 8-14-16: BURIAL OF INDIGENTS:
- 8-14-17: REGULATIONS:
- 8-14-18: PROHIBITED ACTS:
- 8-14-19: FEES:
- 8-14-20: NON-LIABILITY OF CITY FOR THEFT OR LOSS:

8-14-1: DEFINITIONS:

The following words and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

BLOCK: An area containing eight (8) plots.

BODY: The remains of one (1) human body (cremated or otherwise).

CEMETERY: The real property owned by the **City city** and located at approximately 7800 South 1300 West, and the Wight's Fort Cemetery located at 9000 South 3501 West, West Jordan City, Salt Lake County, Utah, currently used and reserved for interment of the dead.

CERTIFICATE FEE: The fee charged by the **City city** for issuing a duplicate certificate or to transfer a certificate of interment rights, as set forth in this chapter.

CITY: West Jordan City.

DISINTERMENT: The opening or excavation of an existing plot where deceased are interred.

FUNERAL: The ceremonies, rituals, processions, and memorial services held in connection with the burial, cremation, or memorial of a deceased person, including the assembly and dispersal of the mourners.

HALF BLOCK: An area containing four (4) plots.

INFANT: A fetus or a child up to two (2) years of age.

INTERMENT OR INTER: The burial of a body in a plot.

NONRESIDENT: Any person who is not a resident of West Jordan City.

PLOT: A legal and authorized gravesite generally measuring four feet one and one-half inches by eight feet six inches (4' 1 1/2" x 8'6"), and intended for interment.

RESIDENT: Resident of West Jordan City at the time of purchase of the burial plot, or any person who is a resident of West Jordan City at the time of death.

RIGHT OF BURIAL AND/OR BURIAL RIGHT: The right for the holder of a right of burial certificate, or heir, to be buried in the City Cemetery city cemetery.

TRANSFER: To sell, donate, exchange, trade or convey a plot or block. (Ord. 17-30, 6-14-2017, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-2: USE OF CEMETERY REQUIRED:

No body of any deceased person shall be interred within the limits of the City city except in the City city Cemetery or in such other cemetery as may be established with the consent of the City Council city council. (2001 Code § 26-1-101; § 8-14-1, amd. Ord. 17-30, 6-14-2017, Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-3: PROCEDURES FOR USE OF CEMETERY:

- A. Caskets Or or Coffins: Vertical stacking of vaults, caskets, coffins or urns is not allowed, unless otherwise specified in this document. All bodies, remains or other items buried with the body must be in a casket, coffin or urn. All caskets, coffins or urns must be enclosed in a concrete vault that is acceptable to the City city or acceptable equal that must be approved by the Parks Director parks superintendent. The casket, coffin or urn shall contain only the body or remains of the deceased, clothing and jewelry, and other small personal items that fit into the casket or coffin.
- B. Excavating Plots: No person, other than City city authorized personnel, shall excavate a gravesite unless authorized in writing by the City Manager city administrator or designee.
- C. Application: The City city shall not open a plot for interment, provide interment services, or disinterment services until the City city has received a completed application for interment or disinterment, on the form provided by the City city, signed by a relative of the deceased, ecclesiastical leader, or licensed funeral director representing the deceased, together with the fees as per the uniform fee schedule.
- D. Payment Of of Fees: The fee to open and close the gravesite, as set forth in the current fee schedule, shall be paid in full prior to any interment or disinterment or funds must be guaranteed by grantor.
- E. Additional Fees And and Charges: Fees and costs in addition to those set forth in the current fee schedule may be charged for special circumstances requiring additional City city staff, equipment or resources. Such additional charges shall be paid in full prior to any interment or disinterment or funds must be guaranteed by grantor.

- F. Closing ~~Of~~ ~~of~~ Gravesites: City personnel shall close any open gravesite promptly after the casket or coffin is placed inside the vault. City staff will oversee cultural traditions on the closing of the graves but must be done by shovel only. (Ord. 17-30, 6-14-2017, ~~amd. Ord. 19-____, ____-2019~~, Effective at 12 noon on January 6, 2020)

8-14-4: FUNERALS AND INTERMENT:

- A. Prohibited Days: Graveside services or interments shall not be conducted on any Sunday, New Year's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day or Christmas Day.
- B. Length ~~Of~~ ~~of~~ Services: Graveside services and/or interments shall not exceed two (2) hours in length, unless authorization is provided by the ~~City Manager~~ ~~city administrator~~ or designee.
- C. Funeral Processions: Upon entering the cemetery, all funeral processions shall be under the control and direction of ~~City~~ ~~city~~ personnel.
- D. Burial Plots: A maximum of two (2) burials may be made in any given burial plot, excluding two (2) full-sized adult vaults. The combinations are as follows:
- One (1) adult vault
 - Two (2) infant vaults
 - Two (2) urn vaults
 - One (1) infant, one (1) urn vault
 - One (1) adult, one (1) infant vault
 - One (1) adult, one (1) urn vault (Ord. 17-30, 6-14-2017, ~~amd. Ord. 19-____, ____-2019~~, Effective at 12 noon on January 6, 2020)

8-14-5: DISINTERMENT:

It is unlawful for any person to disinter any human body buried in the ~~City Cemetery~~ ~~city cemetery~~ or in any cemetery within the limits of the ~~City~~ ~~city~~ except under the direction of the ~~City Sexton~~ ~~city sexton~~ as follows:

- A. Before disinterment, the ~~City Sexton~~ ~~city sexton~~ shall require a permit issued by the ~~Board of Health~~ ~~board of health~~ and a written order from the owner of the burial right authorizing such removal, which order shall be filed and preserved by the ~~City Sexton~~ ~~city sexton~~.
- B. All such removals shall be recorded by the ~~City Sexton~~ ~~city sexton~~ in a book kept for that purpose.
- C. The ~~City~~ ~~city~~ shall provide disinterment services only for persons buried in a non-biodegradable concrete vault and in accordance with applicable statutes, rules and regulations.
- D. The requester shall provide a fee as determined by the ~~City Council~~ ~~city council~~ in the uniform fee schedule.
- E. No body shall be removed where the person has died of a communicable disease within five (5) years of the date of burial, unless the body was buried in a hermetically sealed coffin, which is still intact. The family of the deceased will need to provide the following:
1. A copy of the death certificate;

2. All original documentation from the funeral service provider stating what type of casket and vault were purchased;
3. Contact information of the mortuary handling the disinterment; and
4. Family will need to be willing to purchase a new concrete vault if needed due to deterioration. (Ord. 17-30, 6-14-2017; amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-6: MAINTENANCE AND OPERATION RESPONSIBILITY:

The ~~Parks Director~~ parks superintendent or his/her designee shall be responsible for the maintenance and operation of the ~~City Cemetery~~ city cemetery. All markers, planting, improvements or other work of any nature or description must be done under his/her direction and control. No person owning burial rights in the ~~City Cemetery~~ city cemetery shall plant, grade or do any work in the cemetery except by his/her written permission. The ~~Parks Director~~ parks superintendent shall keep a record of the death and place of burial of every person so reported to him/her. The record shall be open to inspection by the public. (2001 Code § 26-1-102; amd. 2009 Code; Ord. 15-23, 8-25-2015; § 8-14-2, Ord. 17-30, 6-14-2017; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-7: GRAVE DECORATIONS:

- A. Grave decorations are limited to flowers, artificial flowers, and national flags.
- B. The placement of artificial flowers within the cemetery is prohibited during the months of April through October, except as provided in subsection C of this section.
- C. Artificial flowers may be placed within the cemetery on the ~~State~~ state recognized holidays only and if placed within the container or receptacle provided in the grave marker.
- D. Any grave decorations not removed by the owners by April 1 or one (1) week after any holiday may be removed and discarded by cemetery personnel.
- E. All funeral flowers and floral pieces will be removed without notice when they become unsightly.
- F. To protect the safety of cemetery personnel no glass including vases and other containers are permitted and will be removed if found. (Ord. 17-30, 6-14-2017; amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-8: MARKERS AND MONUMENTS:

The monument (as defined herein) size, location on lot, foundation, kind of stones and other materials to be used shall comply with rules and regulations established by West Jordan City. No monument shall be placed on any lot or grave until approved by the ~~Cemetery Sexton~~ cemetery sexton. The ~~City~~ city, without any liability, shall have the right to correct, remove, or have removed any monument placed without the approval of the ~~Cemetery Sexton~~ cemetery sexton or that does not comply with the rules and regulations established herein.

- A. Fencing ~~Or or~~ Dividers: No plot or block shall be defined by fences, railings, coping, hedges, trees, shrubs, embossing or depression, or any other markers to describe its corners or boundaries, unless approved by the ~~City Manager~~ city administrator or designee.
- B. Headstones, Tombstones ~~And and~~ Markers: Raised markers are allowed in the cemetery. The owners of gravesites or relatives of deceased persons interred in the cemetery are required to erect and maintain, in a manner satisfactory to the ~~City~~ city, and at the expense of the plot owner or relatives of the deceased, headstones, markers or other suitable monuments at the head of the gravesite, with the name of the deceased person plainly inscribed thereon. All

headstones, tombstones or markers must be in an orderly row and reasonably in line with all other such markers in that block. No bench headstones are allowed to be placed in the cemetery. All upright headstones must be drilled and doweled and adhesive applied to secure the headstone to the base.

- C. Cement Base: All headstones, tombstones or markers shall have a stone or cement base, level with the ground, extending outward from the outer perimeter of the base and the headstones, tombstones or markers shall be eight inches (8") on all sides, with a minimum thickness of four inches (4").
- D. Specifications ~~For~~ ~~for~~ Raised Markers: The width of a single raised headstone, tombstone or marker shall not exceed twenty four inches (24"), not including the base. The width of a raised double headstone, tombstone or marker shall not exceed forty two inches (42"), not including the base. The height of single or double raised headstones, tombstones or markers shall not exceed forty two inches (42") above ground level. An exception to the maximum height and width requirement may be granted by the ~~City Manager~~ ~~city administrator~~ or designee for a family marker, but in no event, more than sixty inches (60") above ground level. Only one (1) family marker shall be allowed for each eight (8) plots. Family markers must be aligned within the general alignment of raised or flat markers.
- E. Specifications ~~For~~ ~~for~~ Flat Markers: Flat markers shall not be smaller in surface measurement than twelve inches by eighteen inches (12" x 18"), not including the base, and not larger than twenty one inches by forty two inches (21" x 42"), not including the base.
- F. Materials: All headstones, tombstones or markers must be made of real bronze, glazed granite or other permanent materials acceptable to the ~~City Manager~~ ~~city administrator~~ or designee. Headstones, tombstones or markers shall not be made of wood, sandstone or any other material which is susceptible to decay.
- G. Vases: All permanent vases shall be placed in the cement or stone base of the marker or monument and shall be recessed to ground level when not in use. Receptacles in the monument itself are allowed, provided they do not project horizontally beyond the base of the monument.
- H. Liability ~~For~~ ~~for~~ Damage: The ~~City~~ ~~city~~ shall not be held liable for damage to headstones, tombstones or markers, including any damage caused during cemetery maintenance or resulting from the ~~City~~ ~~city~~ moving or transferring a monument, headstones or markers for interment purposes. The maintenance and repair of grave markers including the repositioning of settled grave markers, is the responsibility of the individual who purchased the burial plot. The ~~City~~ ~~city~~ assumes no responsibility for any damage, regardless of the source of damage, to any grave marker or monument.
- I. Setting ~~Of~~ ~~of~~ Markers ~~Or~~ ~~or~~ Monuments: Grave markers or monuments shall not be set after October 15 until the following March 1, or as soon as weather conditions permit thereafter.
- J. Repairs ~~Or~~ ~~or~~ Resetting: If any monument or headstone becomes unsafe, unsightly, in need of repair or resetting, the ~~City~~ ~~city~~ shall attempt to notify the owner of the relevant "Certificate of Burial Rights" "certificate of burial rights" of such condition and shall request such person to make any needed repairs under the ~~Cemetery Sexton's~~ ~~cemetery sexton's~~ supervision. If the owner does not make the needed repairs, the ~~City~~ ~~city~~ shall have the right to have the monument or headstone removed at the expense of the lot owner or purchaser to remove, replace, or repair any monument or marker. (Ord. 17-30, 6-14-2017; ~~amd. Ord. 19-~~ ~~-~~ ~~2019, Effective at 12 noon on January 6, 2020~~)

8-14-9: SALE OF LOTS AND PERPETUAL MAINTENANCE:

The ~~City Cemetery Sexton~~ city cemetery sexton may sell only the right to be buried. All rights to be buried must be paid for in full at time of purchase. All money received from such sales shall be remitted promptly to the ~~City Treasurer~~ city treasurer. The ~~City Sexton~~ city sexton shall deliver to each purchaser a certificate of burial right, which shall be described by plat, lot or portion of lot. Each certificate shall be signed by the ~~Mayor~~ mayor and attested by the ~~City Clerk-Recorder~~ city recorder. The ~~City Sexton~~ city sexton shall keep duplicates of all certificates issued. All burial rights as provided in this section, together with all improvements, shall be exempt from execution and from taxation. (2001 Code § 26-1-103; amd. 2009 Code; § 8-14-3, Ord. 17-30, 6-14-2017; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-14-10: RULES AND LANDSCAPING:

- A. Recreational Activity: No recreational or athletic activities are permitted within the cemetery.
- B. Noise: All visitors to the cemetery shall maintain a reasonable level of noise to avoid disturbing other visitors to the cemetery. Loud music, shouting, yelling, barking dogs and other loud noises are prohibited.
- C. Damage Or or Removal Of of Headstones Or or Tombstones: It is unlawful to damage or remove any headstone, tombstone or marker located in the cemetery, or to desecrate any gravesite within the cemetery.
- D. Motor Vehicles: Motor vehicles shall remain on clearly designated roadways within the cemetery, unless provided express consent by City city personnel.
- E. Planting Of of Bushes Or or Trees: No plants, bushes, trees, shrubs, flowers or other vegetation may be planted in the cemetery by anyone other than City city personnel.
- F. Visitation Hours: Cemetery hours shall be from seven thirty o'clock (7:30) A.M. to ten o'clock (10:00) P.M. of the same day, unless otherwise posted.
- G. Signs And and Advertisements: No unauthorized signs or advertisements shall be displayed within the cemetery.
- H. Traffic Ordinances: City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall be in effect within the cemetery. The speed limit within the cemetery shall be five (5) miles per hour.
- I. Children: Children under the age of sixteen (16) years of age shall not be allowed within the cemetery unless accompanied by a parent or a chaperone at least eighteen (18) years of age. Exceptions to this rule are allowed for persons attending an authorized funeral, placing flowers on a gravesite of a deceased relative or friend, or performing any other customary respect or respectful actions consistent with the environment maintained within the cemetery.
- J. Surface Grade: No sections, plots, lots, blocks or plats shall be raised above the established grade.
- K. Alcoholic Beverages: Alcoholic beverages are not allowed in the cemetery. (Ord. 17-30, 6-14-2017; amd. Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-14-11: PLATS RECORDED:

The City city shall record plats of the ~~City Cemetery~~ city cemetery in accordance with Utah Code Annotated section 8-3-1, as amended periodically. (2001 Code § 26-1-105; amd. 2009 Code; § 8-14-4, Ord. 17-30, 6-14-2017; Ord. 19- - -2019, Effective at 12 noon on January 6, 2020)

8-14-12: TRANSCRIPTS FILED:

The City city shall file transcripts of deeds, certificates of sale or evidences of burial rights in accordance with Utah Code Annotated section 8-3-3, as amended periodically. (2001 Code § 26-1-106; amd. 2009 Code; § 8-14-5, Ord. 17-30, 6-14-2017; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-14-13: TERMINATION OF RIGHTS:

The City city may terminate a person's burial right in the City Cemetery city cemetery and re-vest title to those rights in the City city as permitted by and in accordance with Utah Code Annotated sections 8-5-1 through 8-5-6, as periodically amended. (2009 Code; amd. § 8-14-6, Ord. 17-30, 6-14-2017; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-14-14: REPURCHASE OF CITY CEMETERY BURIAL LOTS:

The holder or owner of burial rights who does not intend to utilize those burial rights may tender to the City city those burial rights for repurchase. The repurchase price shall be the amount originally paid by the owner of the burial rights. If the sale took place more than five (5) years previous, no administrative fee will be charged. If the sale took place less than five (5) years previously, an administrative fee will be charged in an amount periodically established in the City Council's city council's uniform fee schedule. (2001 Code § 26-1-107; amd. 2009 Code; § 8-14-7, Ord. 17-30, 6-14-2017; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-14-15: TRANSFER OF CERTIFICATE:

The City Sexton city sexton shall transfer a certificate of burial right in the City Cemetery city cemetery from the original owner to a successor upon proof of legal succession and payment of a transfer fee. The City city shall in no way be responsible for a failure to properly determine the legal successorship of the lot owner purchaser. (2001 Code § 26-1-108; amd. 2009 Code; § 8-14-8, Ord. 17-30, 6-14-2017; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-14-16: BURIAL OF INDIGENTS:

The City Manager city administrator and the Parks Director parks superintendent may authorize the burial of indigents in the City Cemetery city cemetery without the payment of the fees required by this chapter. (2001 Code § 26-1-110; amd. 2009 Code; Ord. 15-23, 8-25-2015; § 8-14-9, Ord. 17-30, 6-14-2017; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-14-17: REGULATIONS:

The Parks Director parks superintendent may promulgate rules and regulations necessary for the operation of the City Cemetery city cemetery and not inconsistent with this chapter. (2001 Code § 26-1-111; amd. Ord. 15-23, 8-25-2015; § 8-14-10, Ord. 17-30, 6-14-2017; Ord. 19-_____-2019, Effective at 12 noon on January 6, 2020)

8-14-18: PROHIBITED ACTS:

- A. Animal Control: It is unlawful for any person to allow or permit animals to run at large or trespass on City Cemetery city cemetery grounds.
- B. Injury ~~To to Or or~~ Removal ~~Of of~~ Property: It is unlawful for any person to injure, deface, destroy or remove from the grave or lot any monument, marker, tree, shrub, flower, ground or any other property or ornament in the City Cemetery city cemetery, except by written permission of the Parks Director parks superintendent. For the purposes of this subsection, the person who removes such property shall be deemed not to be the owner unless he has previously obtained from the Parks Director parks superintendent written permission for such removal.

- C. Vehicles: It is unlawful for any person, except for official **City city** maintenance personnel in the performance of their duties, to drive any vehicle over any grave or upon any nonpaved area of the **City Cemetery city cemetery**, or to drive any motor vehicle at a speed in excess of five (5) miles per hour.
- D. Dogs: It is unlawful for any person to allow any dog under his/her control or ownership, other than a guide or service dog, specially trained for that purpose, accompanying a blind, visually handicapped, hearing impaired or otherwise physically disabled person, to be within the **City Cemetery city cemetery**, even if under leash.
- E. Certificate Required: It is unlawful for any person to inter any person in the **City Cemetery city cemetery** without first acquiring a right to be buried as evidenced by a duly issued certificate of burial right or other acceptable proof.
- F. Disinterment: It is unlawful for any person to disinter any human body except as allowed in section 8-14-5 of this chapter. (2001 Code § 26-1-113; amd. 2009 Code; Ord. 15-23, 8-25-2015; § 8-14-11, Ord. 17-30, 6-14-2017; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-19: FEES:

All fees shall be periodically adopted by the **City Council city council** and set forth in the **City city** uniform fee schedule. (2001 Code § 26-1-115; amd. 2009 Code; § 8-14-12, Ord. 17-30, 6-14-2017; Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-14-20: NON-LIABILITY OF CITY FOR THEFT OR LOSS:

The **City city** is not responsible for the theft or loss of personal belongings in the cemetery. (Ord. 17-30, 6-14-2017; amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

Chapter 15 MEMORIALS, MONUMENTS, AND NAMING OF PUBLIC PLACES AND FACILITIES

- 8-15-1: PURPOSES:
- 8-15-2: SCOPE:
- 8-15-3: DEFINITIONS:
- 8-15-4: GENERAL NAMING PRINCIPLES AND PLACEMENT:
- 8-15-5: SPECIFIC NAMING PRINCIPLES:
- 8-15-6: SAFETY REQUIREMENTS FOR MEMORIALS AND MONUMENTS:
- 8-15-7: MONUMENTS, MEMORIALS, DONATED SEATING, AND TREES;
SPECIFIC PRINCIPLES:
- 8-15-8: COST AND OWNERSHIP:
- 8-15-9: MAINTENANCE, REMOVAL AND RELOCATION OF DONATED
MEMORIALS, EQUIPMENT:
- 8-15-10: PROCESS AND PROCEDURES:
- 8-15-11: APPEALS TO **CITY COUNCIL THE MAYOR:**

8-15-1: PURPOSES:

- A. To provide guidelines for consistency in:
 - 1. The naming of city-owned and managed parks, public spaces, public buildings, and public facilities, and
 - 2. The placement of memorials, including installation of monuments and planting of memorial trees, in any public space within the city.
- B. To ensure the naming of parks, public spaces, public buildings and public facilities, and the placement of monuments and memorials: 1) commemorate and recognize individuals, institutions or events contributing significantly to the historical creation or betterment of the city, the state or the nation; 2) are consistent with the overall interests, values, and expectations of the citizens of West Jordan City; and 3) are consistent with state and federal requirements as may now or in the future be applicable. (Ord. 09-11, 3-24-2009, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-15-2: SCOPE:

- A. This chapter covers all proposals to name parks, public spaces, public buildings and public facilities, and the donation or other placement of memorials or monuments, including planting of memorial trees, in any public space within the city.
- B. This chapter will supersede any other prior ordinance or code provision affecting or regulating the same subjects.
- C. This chapter does not cover city created public road signage or other city created signage or city-owned display boards or banners.
- D. Parks, public spaces, public buildings and public facilities named, and any monument or memorial placed, prior to the adoption date hereof, are exempted from any retroactive application of the provisions of this chapter. (Ord. 09-11, 3-24-2009, amd. Ord. 19- , - -2019, Effective at 12 noon on January 6, 2020)

8-15-3: DEFINITIONS:

For the purposes of this chapter, the following definitions will be used:

MEMORIAL: A plate, tablet, or slab made of metal, stone or any other appropriate material with text and/or graphics displayed on it and fixed on, applied to, or inserted in a surface, created to recognize and preserve the memory of a person, group, event or place.

MONUMENT: A structure or a three-dimensional physical object (e.g., a sculpture) created to recognize and preserve the memory of a person, group, event or place. A water feature or memorial garden type proposal may be deemed a monument. (Ord. 09-11, 3-24-2009)

8-15-4: GENERAL NAMING PRINCIPLES AND PLACEMENT:

- A. All proposals to name a park, public space, public building or a public facility and the proposed placement of memorials or monuments, including installation of donated seating, street furniture and play/park equipment, and planting of memorial trees in any public space within the city, will be considered on a case by case basis, whether generated by the public or from within the city council. Notwithstanding this case by case approach, the relevant criteria to be taken into consideration shall include, but not be limited to:

1. There must be a high level of community support for the proposal;
 2. The proposal must: a) commemorate a person or a group who made a significant contribution to the West Jordan community, the state of Utah or the United States of America; or b) commemorate an event or occasion that is important in local, state or national history; or commemorate an important indigenous or nonindigenous aspect of West Jordan City's heritage;
 3. Any proposed name must reflect the character, landscape, natural amenity, flora or fauna, or function of the site or the area.
- B. With the exception of special circumstances approved by the city council, the naming after a person of parks, public spaces, public buildings and public facilities, and the placement of monuments and memorials, including placement of donated seating, street furniture or play/park equipment shall only be done posthumously.
 - C. With the exception of historical persons who died more than one hundred (100) years ago, naming of parks, public spaces, public buildings and public facilities, and the placement of monuments and memorials after a person shall only be done with the consent of the memorialized person's immediate family.
 - D. The city council will not approve names that are complex, unduly long, difficult to spell or difficult to pronounce, derogatory or offensive.
 - E. The city council will not approve name duplication of memorials within the city or in immediately adjacent local government areas.
 - F. If the proposed memorial site is currently recognized by a formal or informal name that is widely accepted and strongly recognized by the local community, the city council will not consider a name change unless the proposed name change is widely supported by the West Jordan City community.
 - G. When considering a proposal, the city council will make an assessment and decide whether the name needs to be registered with any state or federal agency. In cases where the city council decides to register the name with a state or federal agency, it will follow the relevant guidelines from the agency.
 - H. Memorials and monuments containing statements of religious principles or scriptural verses are prohibited in public parks, public spaces, public buildings or public facilities; provided, however, if such a principle or scripture is unavoidably entwined with an otherwise historically significant event or the persona of a person proposed to be honored, the monument or memorial may contain a minor and incidental reference to such a principle and/or scripture.
 - I. Any proposal to name a park, public space, public building or public facility and the proposed placement of memorials or monuments, including installation of donated seating, street furniture and play/park equipment, and planting of memorial trees in any public space within the city will be approved by the city council only after a duly noticed public hearing. (Ord. 09-11, 3-24-2009)

8-15-5: SPECIFIC NAMING PRINCIPLES:

- A. Prior to approving a name for a park or a public space, public building or a public facility, the city council will provide public notice of the proposal in the same manner and scope as otherwise required for city council public hearings.

- B. At the cost of the proposer(s) of a naming, a reasonable memorial will be erected at the named park, public space, public building or public facility displaying short biographical information and achievement of the person or group after whom the relevant site is named.
- C. City-owned buildings and facilities may be given either:
1. Functional names;
 2. Nonfunctional names, including naming after a person, group, or event;
 3. Location names;
 4. Commemorative names; or
 5. A combination of any two (2) of subsections C1 to C4 of this section.
- D. The names of buildings, facilities or parts thereof generally shall not change during the life of the building, facility or part thereof. In particular, where a building, facility or part thereof is named after a person, the name should not generally change even if there is a change in the usage of the building or facility.
- E. Buildings, facilities, or parts thereof may be named after or dedicated in honor of a person, group or entity in recognition of significant contributions to the West Jordan City community.
- F. Generally, naming plaques of buildings, facilities, or parts thereof shall include as a minimum:
1. Name as adopted by the sitting city council;
 2. Date of formal naming.
- G. Dedicatory plaques of buildings, facilities, or parts thereof shall include as a minimum:
1. Name of the facility, as adopted by city council;
 2. Date of dedication;
 3. The name of the person dedicating the building or facility;
 4. The name of the mayor; and
 5. The name of all then sitting council persons in alphabetical order (by last name); and
 6. The name of the city manager administrator. (Ord. 09-11, 3-24-2009, amd, Ord. 19-
-2019, Effective at 12 noon on January 6, 2020)

8-15-6: SAFETY REQUIREMENTS FOR MEMORIALS AND MONUMENTS:

- A. Any memorial or monument, or part thereof, that is not installed flush with a surface and, any memorial or monument that rises from ground level less than seven feet (7'), shall have rounded edges and shall avoid tripping hazards in the design and installation process.
- B. If a monument is to be installed on a base, regardless of height, the base shall have rounded edges.
- C. All memorials and monuments shall be designed to be noticeably separated from walkways, established lines of nonwalkway travel through parks, and established or reasonably likely areas of group running type play or activity.

- D. Only seating and play equipment meeting the most current safety design and installation standards will be accepted and approved by the city council.
- E. If a monument or memorial consists of, or includes a reproduction model or actual copy of a manmade item; or a sculpture, whether of a human being or otherwise; and such model or sculpture has sharp or pointed edges or extrusions, including, but without limitation, expressions of hair, fingers, noses, arms, held objects (spears, scepters, guns, books, etc.), airplane wings, helicopter bodies or rotors, etc., such item or sculpture must sit within a protective alcove or on a base that raises the pointed or sharp edge(s) to a height of seven feet (7') or higher. Other permitted options meeting the requirements of this subsection are:
 - 1. The monument or memorial can be completely enclosed within a hardened glass or plastic viewing container meeting the requirements of subsection A of this section.
 - 2. The monument or memorial can be separated from pathways or other possible normal access by inattentive or running pedestrians by water or other natural separations.
- F. Memorials and monuments installed inside of a public building or other public facility shall be installed within an alcove or cutout of a wall in order to protect inattentive or running pedestrians from injury as a result of contact with the monument or memorial. (Ord. 09-11, 3-24-2009)

8-15-7: MONUMENTS, MEMORIALS, DONATED SEATING, AND TREES; SPECIFIC PRINCIPLES:

- A. In addition to the general principles in section 8-15-4 of this chapter, the following specific principles shall also apply for the establishment of memorials and monuments:
 - 1. The city council will undertake public notice and comment in the same manner as specified for naming in section 8-15-5 of this chapter.
 - 2. The city **manager administrator** will have delegated authority to approve or refuse requests for placement of donated seating or benches in parks or public spaces, with subsequent reporting to the city council.
 - 3. Any proposed memorial, monument, donated seating or trees, must:
 - a. Demonstrate some specific justification for being located at the proposed site.
 - b. Be consistent with the city council's approved plans for the proposed site or facility.
 - c. Not compromise the amenity value, aesthetic integrity or character of the proposed site.
 - d. Not interfere with existing and proposed usage patterns, and circulation at the site and must not pose any safety risk to users of the site or facility.
 - e. Contribute to the public space from a functional and/or aesthetic character of the site and should be designed and manufactured using high quality materials and workmanship.
 - f. Be compatible and at a design and quality level commensurate with the location or setting of the site and must be compatible with the surroundings.
- B. The city council will not consider for approval monuments or memorials which will impose a significant financial burden on the city to maintain.

- C. It will be the city council's responsibility to:
1. Approve the design, size, material, text and graphics to be used for memorials and monuments; and
 2. Approve species of memorial trees to be planted, in a specific case, in parks or other public spaces. (Ord. 09-11, 3-24-2009 and Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

8-15-8: COST AND OWNERSHIP:

- A. Unless otherwise decided by the city council in a specific case, the total cost of design, fabrication, transportation, site preparation, installation, lighting, electrical and all other costs relating to a memorial or monument shall be borne by the donor/applicant.
- B. All donated memorials, monuments, park/street furniture, equipment, and trees shall become and remain city property. (Ord. 09-11, 3-24-2009)

8-15-9: MAINTENANCE, REMOVAL AND RELOCATION OF DONATED MEMORIALS, EQUIPMENT:

- A. The city will endeavor to maintain memorials and monuments, donated park/street furniture, equipment (tree guard, picnic shelters, BBQ, play equipment, drinking fountain, etc.) and memorial trees for their useful life.
- B. The city takes no responsibility for the loss, damage and/or replacement of a donated memorial, park/street furniture, equipment, tree or monument.
- C. At the expiry of the useful life of furniture or equipment, unless the applicant makes an arrangement with the city to renew, refurbish or replace the furniture or equipment, the city staff may remove the item and, in case of memorials or monuments, reasonable attempts will be made by city staff to return the memorial or monument to the donor.
- D. The city council reserves the right to remove a memorial, monument, or a memorial tree in the following circumstances:
1. The area is to be redeveloped;
 2. The character and use of the area in which the item is sited has changed significantly and the item is no longer deemed suitable for the site;
 3. The structure or support on which the item is located is to be removed or altered.
- E. The city retains the right to relocate any donated memorial, monument, park/street furniture, equipment (tree guard, picnic/BBQ shelters, play equipment, drinking fountain, etc.) or a memorial tree, if and when it becomes necessary to do so. (Ord. 09-11, 3-24-2009)

8-15-10: PROCESS AND PROCEDURES:

- A. The city **manager administrator** or an empowered designee shall administer this chapter.
- B. In connection with a proposal for:
1. The naming of city-owned and managed parks, public spaces, public buildings, and public facilities, or

2. The placement of memorials, including installation of monuments and planting of memorial trees, in any public space within the city, such proposal shall be made in writing and submitted to the city ~~manager~~ administrator.
- C. Written proposals shall include:
1. A detailed description of the proposed naming or memorial, including an artist's rendering of the final form of any physical thing which is part of the proposal.
 2. A description of the method of funding for the proposal.
 3. A statement showing the proposal's compliance with the applicable rules contained in this chapter.
 4. An application fee in the amount provided for such applications in the city's uniform fee schedule, as amended from time to time.
 5. A safety survey of the proposal demonstrating that the design and location of the proposal will meet or exceed the safety concerns of this chapter and the professional standards of the surveyor.
- D. The city ~~manager~~ administrator or an empowered designee shall determine whether or not the application submitted is complete and meets the requirements of this chapter. If the application fails to meet the requirements of this chapter or is not complete, the application will be returned with comments and suggestions as to how the application can be made complete or compliant.
- E. Once a proposal is complete and found to meet the requirements of this chapter, the city ~~manager~~ administrator or an empowered designee shall prepare a staff report and schedule the proposal for review and action by the city council. (Ord. 09-11, 3-24-2009, ~~amd. Ord. 19-~~ amd. Ord. 19- -2019, Effective at 12 noon on January 6, 2020)

8-15-11: APPEALS TO ~~CITY COUNCIL~~ THE MAYOR:

- A. An Appeal may be made to the ~~city council~~ mayor from any decision, determination or requirement of the city ~~manager~~ administrator or an empowered designee by filing a written notice of appeal, and payment of a fee according to the city's uniform fee schedule, with the city ~~clerk~~ recorder within fifteen (15) days from the date such decision, determination or requirement was made. Such notice shall set forth in detail the action and grounds upon which the appealing party claims to be aggrieved.
- B. A hearing on the appeal shall be held by the ~~city council~~ mayor within a reasonable time from the date of receipt of the appeal. Such hearing may, for good cause, be continued by order of the ~~city council~~ mayor. The appealing party shall be notified of the appeal hearing date at least seven (7) days prior to the hearing. After hearing the appeal, the ~~city council~~ mayor may affirm, modify or overrule the decision, determination or requirement appealed, and may enter any such order or orders as are in harmony with the spirit and purposes of this chapter. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the ~~city council~~ mayor.
- C. The appealing party has the burden of proving that an error has been made. (Ord. 09-11, 3-24-2009, ~~amd. Ord. 19-~~ amd. Ord. 19- -2019, Effective at 12 noon on January 6, 2020)