

COTTONWOOD HEIGHTS

ORDINANCE NO. 333

AN ORDINANCE AMENDING SECTION 14.28.080 OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES REGARDING WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, effective 14 January 2005, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) adopted a code of ordinances (the “*Code*”) for the City; and

WHEREAS, Title 14 of the Code regulates use of the public right of way (the “*public way*”) in the City; and

WHEREAS, effective 28 August 2018 the Council enacted Code Chapter 14.28, “Wireless Facilities in the Public Right-of-Way”; and

WHEREAS, thereafter, City staff proposed certain amendments to Code Section 14.28.080 (“*Section 14.28.080*”) as shown on the attached exhibit; and

WHEREAS, the Council met in regular session on 5 November 2019 to consider, among other things, enacting and codifying such amendments (the “*Amendments*”) to Section 14.28.080 as proposed; and

WHEREAS, in connection therewith, the Council has made, and hereby reaffirms, certain findings regarding the public way, including that the City’s public way is critical to the travel and transport of persons and property in the business and social life of the City; is intended for public uses and must be managed and controlled consistent with that intent; can be partially occupied by the facilities and other public service entities delivering public services for the enhancement of the health, welfare, and well-being of the City and its citizens; and is a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects on the public from such facilities construction, placement, relocation, and maintenance of the public way; and

WHEREAS, the Council also has made, and hereby reaffirms, certain findings regarding compensation for use of public way, including that the right to occupy portions of the public way for limited times for providing wireless services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the public way; and

WHEREAS, the Council also has made, and hereby reaffirms, certain findings regarding local concern, including that while wireless telecommunications facilities are in part an extension of interstate commerce, their operations also involve the public way, municipal franchising, and vital business and community service, which are of local concern, and that the City has the

proprietary right to determine what persons and entities are granted permission to use the public way and to determine the terms and conditions of such use; and

WHEREAS, the City also has made, and hereby reaffirms, certain findings regarding promotion of wireless telecommunication services, including that it is in the best interests of its taxpayers and citizens to promote the rapid development of wireless telecommunications services on a nondiscriminatory basis that is responsive to community and public interest, and to assure its availability for municipal, educational and community services; and

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

WHEREAS, after careful consideration of the foregoing findings, recommendation of the City's staff, and the requirements of federal and state law, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to amend Section 14.28.080 as proposed by the Amendments;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. **Adoption and Codification of the Amendments.** The Council hereby approves and adopts the Amendments to Section 14.28.080 in the form attached hereto, and hereby codifies the same as amended Section 14.28.080 of the Code.

Section 2. **Actions of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this "*Ordinance*"), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. **Severability.** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. **Effective Date.** This Ordinance, assigned no. 333, shall take effect on the later of (a) the date when it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or (b) such later date as be required by Utah statute.

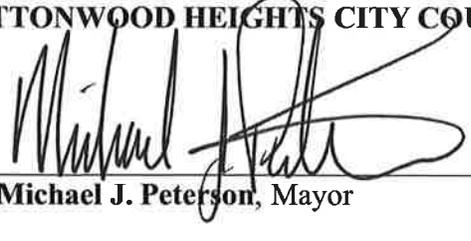
PASSED AND APPROVED this 5th day of November 2019.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder



By: 
Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Michael L. Shelton	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
J. Scott Bracken	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
•Tali C. Bruce	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
• Christine Watson Mikell	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>

DEPOSITED in the Recorder's office this 5th day of November 2019.

POSTED this 7th day of November 2019.

14.28.080 Other requirements.

A. 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 public way; (2) create a public health or safety hazard, (3) obstruct, damage, or interfere with another utility facility in the public way, 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) violate the ADA, or (7) violate any applicable laws or legal obligations.

B. Design requirements. The design and location of the wireless facility and utility pole or support structure shall comply with all design standards adopted by the city and be architecturally integrated with existing buildings, structures and landscaping, including considerations of height, color, style, placement, design and shape. Exposed cabling will not be permitted. New and replacement structures must be of monopole design; lattice structures will not be permitted. Wooden structures will not be permitted.

C. Structural load analysis. The application shall include an industry-standard pole load analysis indicating that the structure on which the wireless facilities will be mounted will safely support the load. If a small wireless facility cannot be safely installed on the structure, the applicant shall either replace the structure with a compliant structure of the same type or propose a new location.

D. Height.

1. The height of a structure with an attached wireless facility, including the wireless facility, shall be the minimum height needed for the operation of the wireless facility.

2. In no event shall the maximum height of a new or modified utility pole with an attached wireless facility, including the wireless facility, exceed 50 feet above the public way; provided that the antenna of a wireless facility may not extend more than ten feet above the top of a utility pole existing on or before 1 September 2018.

3. Where wireless facility equipment is permitted on the outside of a utility pole, it shall be placed higher than eight feet above the public way and shall not protrude more than two feet from the pole, unless otherwise permitted by city.

E. Decorative poles. If necessary to collocate a wireless facility on a decorative pole, a wireless provider may replace that decorative pole if the replacement pole reasonably conforms to the design aesthetics of the displaced decorative pole and meets the requirements of this code, including the design standards.

F. Undergrounding. A wireless provider shall place newly constructed lines, cables and wireless support structures underground whenever required by the city under UTAH CODE ANN. 54-21-207, or its successor. Any request by a wireless provider for location of any overhead or aerial facilities (other than the antennas or other facilities required to remain above ground in order to be functional) shall be considered by city in accordance with applicable rules and regulations.

G. Historic districts and design districts. In order to maintain the character of a historic district (including the area surrounding a designated historic structure) and/or design district (such as the city's Gateway Overlay District) as contemplated by Title 19 of this code, all wireless facilities and new structures in such district must employ screening, concealment, camouflage, or other stealth techniques to minimize visual impacts, and comply with all requirements and obtain all approvals as required by Title 19 of this code and as permitted by UTAH CODE ANN. 54-21-208, or its successor.

H. Insurance and bonding. A wireless provider shall maintain in continuous effect all insurance and bonds required in connection with obtaining a permit, whether pursuant to a master license agreement or other city requirement.

I. Indemnity. A wireless provider shall indemnify, save harmless, and defend the city, its officers, employees and agents, from and against all losses, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorneys' fees, arising out of or in connection with such provider's wireless facilities or use of the public way, unless and to the extent caused by the city's negligence.

J. Electrical service. A wireless provider will be solely responsible for establishing electrical power services for its wireless facilities and for the payment of all electrical utility charges to the applicable electric service provider based upon applicable tariffs.

K. Residential realty. ~~Unless the city has given prior written consent, a~~ wireless provider may not install a new utility pole in a public way adjacent to any residential realty if the curb to curb measurement of the abutting:

(1) Street or thoroughfare is 60 feet wide or less; ~~or~~

(2) Cul-de-sac, so-called "traffic circle," or similar, is 100 feet wide or less;

As applicable, as depicted on the official plat records or other measurement provided with the application, ~~unless the city has given prior written consent.~~

L. Hazardous materials. Wireless provider shall not possess, use, generate, release, discharge, store, dispose of, or transport any hazardous materials on, under, in, above, to, or from any public way except in compliance with all applicable environmental laws and pre-approved by city. Wireless provider shall promptly reimburse city for any fines or penalties levied against the city because of wireless provider's failure to comply with applicable environmental laws.

M. Lighting. Only such lighting of wireless facilities as is necessary to satisfy FAA requirements is permitted. White strobe lighting will not be allowed, unless specifically required by the FAA. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is permitted, as long as it is appropriately down-shielded as reasonably directed by the city to keep light within the boundaries of the site.

N. Installation deadline. A permit shall expire 270 days after approval if the licensed small wireless facility or utility pole is not installed and operational. The foregoing deadline will be tolled for any period of time during which the lack of commercial power or communications facilities delays completion.

O. Tree trimming. A wireless provider may trim trees overhanging the public way to prevent the tree branches from coming in contact with the wireless facilities only with the prior permission and under the direction of the director and at the wireless provider's expense.

P. Compliance with law. All wireless facilities must at all times comply with all applicable federal, state, and local building codes and safety codes and regulations; provided that to the extent of any conflict between this chapter and any other provisions of this code, this chapter shall control. All wireless facilities and structures shall be constructed and installed to manufacturer's specifications.

Q. Additional requirements. Wireless facilities will be subject to any additional requirements set forth in the applicable master license agreement and permit.