ORDINANCE NO. 2020-04

AN ORDINANCE OF IVINS CITY, UTAH, AMENDING TITLE 11 OF THE IVINS CITY CODE TO ADD A NEW CHAPTER 6 REGARDING SMALL WIRELESS FACILITIES

WHEREAS Ivins City desires to provide a fair and equitable process for the deployment of small wireless facilities while enabling the City to promote the management of its rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS in adopting the Small Wireless Facilities Deployment Act, the Utah legislature expressed support for the rapid deployment of small wireless facilities to serve important statewide goals of meeting growing consumer demand for wireless data, increasing competitive options for communication services available to residents, and promoting the ability of residents to communicate with each other, with government and with first responders, thereby promoting public health, safety and welfare; and

WHEREAS the City intends to fully comply with state and federal law applicable to small wireless facilities; and

WHEREAS, in the exercise of its legislative authority, the Ivins City Council finds that this ordinance would be in the best interest of the City and for the general health, safety and welfare of its residents;

NOW, THEREFORE, BE IT ORDAINED by the Ivins City Council that Title 11 of the Ivins City Code be amended to add a new Chapter 6 regarding Small Wireless Facilities as follows:

TITLE 11
PUBLIC WAYS AND PROPERTY

* * *

CHAPTER 6
SMALL WIRELESS FACILITIES

11.06.101 Use of Right-of-Way For Small Wireless Facilities and Utility Poles.

(1) Subject to the provisions of this chapter and along, across, upon or under a right-of-way, a wireless provider may:

(a) Collocate a small wireless facility, including collocation on a City pole;

(b) Install, operate, modify, maintain or replace:

(i) A utility pole associated with the wireless provider's collocation of small wireless facilities;

(ii) A stand-alone pole owned by a wireless provider for use with a small wireless facility; or

(iii) Equipment described in Utah Code Annotated subsection 54-21-101(25)(b)(i) through (ix) required for a wireless provider's operation or collocation of small wireless facilities.

(2) An applicant may not install a new utility pole or a small wireless facility, including any associated equipment, upon or under a residential street without the City's discretionary written consent.

(3) This chapter applies to the construction, modification, removal and operation of small wireless facilities installed in the public right-of-way.

(4) This chapter does not apply to video service systems, wireline services, or wireless facilities that are not small wireless facilities.

(5) All references to small wireless facilities in this chapter shall refer only to small wireless facilities in the right-of-way and not small wireless facilities located anywhere outside of the right-of-way.

(6) No person shall install, construct, modify, or otherwise place any small wireless facility within the public right-of-way except pursuant to the provisions of this chapter.

(7) Microwave, macro towers, and other wireless backhaul facilities are not permitted within the right-of-way.

(8) The definitions used in this chapter apply only to this chapter. (Ord. 2020-04, 2020)

11.06.102 Definitions.

(1) Except as specifically defined in this section, the terms used in this chapter shall be defined as set forth in the Small Wireless Facilities Deployment Act, section 54-21-101 Utah Code Annotated ("Act"), or its successor provision.

(a) CITY POLE: An authority pole owned by Ivins City.

(b) FEES: Either a fee or rate as defined in the Act.

(c) RESIDENTIAL STREET: A public right-of-way that is not more than sixty feet (60') wide, as shown on a deed, dedication plat, or other official plat record on file with the Office of the Washington County Recorder and that is adjacent to single-family residential lots, other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restriction.

(d) RIGHT-OF-WAY: Does not include: private streets; private abutter's alleys; utility easements owned by the City, including public utility easements shown on a recorded subdivision plat; the interior of public parks or other public grounds including internal sidewalks, parking areas or roads; or trails and paths that are not immediately adjacent to and parallel with a public right-of-way.

(e) SMALL WIRELESS FACILITY: A type of wireless facility:

(a) on which each wireless provider's antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and

(b) for which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than twenty-eight (28) cubic feet in volume, not including any:

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(i) electric meter;

(ii) concealment element;

(iii) telecommunications demarcation box;

(iv) grounding equipment;

(v) power transfer switch;

(vi) cut-off switch;

(vii) vertical cable run for the connection of power or other service;

(viii) wireless provider antenna; or

(ix) coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

(f) STAND-ALONE POLE: A pole installed by a wireless provider in the public right-of-way for use in connection with a small wireless facility. (Ord. 2020-04, 2020)

11.06.103 Small Wireless Facilities; Restrictions.

(1) A small wireless facility, including associated poles, equipment and structures, installed under this chapter may not:

(a) Obstruct or hinder the usual travel or public safety on a right-of-way;

(b) Be located within two feet (2') of a curb, provided that this restriction does not apply to an existing utility pole that is used for collocation unless the pole is proposed to be replaced;

(c) Utilize guy wires to support, provided that this restriction does not apply to an existing utility pole with a guy wire;

(d) Interfere with or impair the vision of operators of vehicles at street intersections or interfere with or impair any aspect of any sight triangle field of vision; or

(e) Obstruct, damage, or interfere with:

(i) Another utility facility in a right-of-way; or

(ii) A utility's use of the utility's facility in a right-of-way.

(2) Construction and maintenance of any pole, equipment or small wireless facility by a wireless provider shall comply with all applicable legal obligations for the protection of underground and overhead utility facilities.

(3) A wireless provider shall indemnify, save harmless, and defend City, its officers and employees, 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.

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(4) A wireless provider is solely responsible for establishing electrical power service for its small wireless facilities and for the payment of all electrical utility charges associated with the small wireless facility.

(5) All small wireless facilities and wireless provider-owned structures shall be maintained by the wireless provider in a clean and good condition, free of graffiti, and rusting, excessive dirt, and peeling paint. The City shall have the authority to conduct inspections of the small wireless facilities and structures at any time to determine whether such facilities and structures comply with the requirements of this chapter. (Ord. 2020-04, 2020)

11.06.104 When Permit Required.

(1) When Permit Required: An applicant shall obtain a permit prior to:

(a) Collocating a small wireless facility in a public right-of-way;

(b) Installing a new, modified, or replacement utility pole, authority pole or stand-alone pole associated with a small wireless facility in a right-of-way; or

(c) Permanently removing a small wireless facility.

(2) Agreements: The City will not provide a permit to a wireless provider until the wireless provider and City have first entered into a franchise agreement.

(3) Exceptions to Permitting: Unless the work requires the closing of sidewalks or vehicular lanes in the public right-of-way, an application for a permit is not required for:

(a) Routine maintenance of a small wireless facility or support structures for a small wireless facility;

(b) The replacement of one small wireless facility with another small wireless facility of substantially similar or smaller size;

(c) The installation, placement, operation or maintenance of a micro wireless facility that is strung on a cable between two (2) existing utility poles in compliance with the National Electrical Safety Code; or

(d) Non-substantial modifications.

(4) Notice: A wireless provider shall give notice to the City of an activity described in subsection (3) of this section at least five (5) business days prior to conducting the activity. (Ord. 2020-04, 2020)

11.06.105 Design Standards Applicable to All Small Wireless Facilities.

(1) Integrated Design Consideration: Small wireless facilities, including equipment associated with the small wireless facility, shall be integrated into the stand-alone pole, utility pole or authority pole where possible and generally shall be installed in a manner minimizing the visual impact. Whether the small wireless facility is collocated or is placed on its own pole:

(a) Small wireless facilities should not be readily noticed;

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(b) All equipment, including electric meters, should be located on or within the pole unless prohibited by the owner of the pole, in which case an alternative power meter box must be approved by the City Engineer;

(c) A small wireless facility and associated equipment located on the exterior of a pole shall be enclosed in a shroud or enclosure painted to match the existing pole color;

(d) All small wireless facilities shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only);

(e) For metal poles:

(i) Cable runs should be inside of the pole to the maximum extent practicable;

(ii) Equipment associated with the small wireless facility should, where practicable, be enclosed at the base of the wireless support structure in a space not more than twenty-four inches (24") in diameter and not more than five feet eight inches (5'8") in height; and

(iii) Poles used for collocation shall be designed to separate different pole users, such as through dual chamber or tri-chamber design;

(f) If equipment cannot be installed inside of the pole, pole attachments within fifteen feet (15') of ground level shall be positioned on the side of the pole facing away from approaching traffic in the travel lane closest to the pole, provided that if the equipment would extend over a sidewalk or road surface, the equipment shall be positioned in a way to avoid such encroachment;

(g) Wireless facility equipment on the outside of a utility pole shall be placed at least eight feet (8') above the public way, unless otherwise permitted by City;

(h) Shall not be lighted or marked unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or other applicable governmental authority; and

(i) Signs located at the small wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by applicable governmental authority. Commercial advertising is strictly prohibited.

(2) Antennae:

(a) Each individual antenna shall be located entirely within a shroud enclosure of not more than three (3) cubic feet in volume. All antennas associated with the small wireless facility shall not exceed a combined space of six (6) cubic feet.

(b) The diameter of the antenna or antenna enclosure should generally not exceed the diameter of the top of the wireless support structure pole, and to the maximum extent practical, should appear as a seamless vertical extension of the pole.

(c) In no case shall the maximum diameter of the shroud be wider than one and one-half ($1^1/_2$) times the diameter of the top of the pole.

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(d) Where maximum shroud diameter exceeds diameter of the top of the pole, the shroud shall be tapered to meet the top of the pole.

(e) Unless technologically infeasible or otherwise appropriate based on neighborhood context, all antennas shall be mounted to the top of the wireless support structure pole, aligned with the centerline of the structure.

(f) Antennas shall be generally cylindrical in shape.

(g) Antenna shall be completely housed within a cylindrical shroud that is capable of accepting paint to match the wireless support structure.

(3) Height Limitations: Except for small wireless facilities on a residential street:

(a) The height of a structure used for collocation of a small wireless facility, including the wireless facility, measured at the base of the structure shall not exceed the lesser of:

(i) The minimum height needed for the operation of the wireless facility; or

(ii) For a new or modified utility pole or authority pole, fifty feet (50') above ground level together with the minimum antenna height necessary for one antenna contained within any approved concealment feature.

(b) A utility pole existing on or before September 1, 2018 that is used for the collocation of a small wireless facility may, on only one occasion, be increased by up to ten feet (10') to allow for the attachment of the small cell wireless antenna together with any approved concealment feature.

(c) A stand-alone pole shall not exceed thirty feet (30') in height, including any antenna.

(4) Cabinets; Vaults: If a ground mounted or buried equipment cabinet is proposed, the cabinet or vault:

(a) May be placed above ground in a landscaped park strip or, if there is no landscaped park strip it shall be placed underground;

(b) Shall meet the same separation standards as required for a new utility pole from trees and drive approaches; and

(c) For an above ground cabinet:

(i) Shall be secured to a concrete foundation or slab with a breakaway design in the event of collisions; and

(ii) Shall not exceed three feet (3') in height, unless special conditions exist that would result in the cabinet encroaching into the sidewalk or to within two feet (2') of the curb. (Ord. 2020-04, 2020)

11.06.106 Design Standards Applicable to Co-located Small Wireless Facilities. Collocated small wireless facilities shall, in addition to the requirements of section 11.06.105 of this chapter, meet the following design standards:

(1) To the maximum extent practicable, all small cell facilities, associated equipment and cabling shall be completely concealed from view within an enclosure.

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(2) Where equipment cannot reasonably be incorporated into the base of the authority pole, it may be installed within:

(a) An equipment enclosure mounted to the authority pole; or

(b) A ground-mounted cabinet physically independent from the authority pole.

(3) Equipment enclosures mounted to an authority pole:

(a) Protrusion: Shall not protrude more than eighteen inches (18") beyond the face of the pole to the outermost portion of the enclosure.

(b) Installation: Should be installed as flush to the pole as practical. In no case shall an enclosure be installed more than four inches (4") from the wireless support structure pole.

(c) Multiple Enclosures: Where multiple enclosures are proposed on a wireless support structure pole, the enclosures shall be grouped as closely together as possible on the same side of the pole.

(d) Enclosure Size: Small wireless facility equipment enclosures should be the smallest size practicable to house the necessary facilities and equipment.

(e) Enclosure Shape: Small wireless facility equipment enclosures shall be cylindrical or rectangular in shape and should generally be no wider than the maximum outside diameter of the pole to which it is attached, to the maximum extent possible.

(f) Attachment: The shroud enclosure shall be securely strapped to the wireless support structure pole using stainless steel banding straps. Through-bolting or use of lag bolts on publicly wned wireless support structures is prohibited. (Ord. 2020-04, 2020)

11.06.107 Design Standards Applicable to Small Wireless Facilities on New Stand-Alone Utility Poles. If an applicant proposes to install a new stand-alone utility pole in connection with a small wireless facility, the pole and facilities shall, in addition to the requirements of section 11.06.105 of this chapter, meet the following design standards:

(1) Design of the pole shall be cylindrical and shall match the aesthetics of existing streetlight poles and streetlights installed adjacent to the pole.

(2) Together with the small wireless facility components shall be sized to be visually pleasing.

(a) For a pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered;

(b) The equipment associated with the small wireless facility shall be enclosed at the base of the wireless support structure in a space described in section 11.06.105 of this chapter, provided that if a separate equipment cabinet or vault not exceeding twenty eight (28) cubic feet in size may be used if the equipment cannot reasonably be contained in the space allowed;

(c) A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size and

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shall taper between different pole diameters, with no horizontal or flat spaces greater than 1.5 inches;

(d) The upper pole shall be scaled to 0.5 to 0.75 the size of the equipment cabinet, with a ten inch (10") minimum outer diameter at the widest portion of the pole;

(e) All hardware connections shall be hidden from view;

(f) No horizontal flat spaces greater than 1.5 inches shall exist on the equipment cabinet to prevent cups, trash, and other objects from being placed on the equipment cabinet;

(g) Each pole component shall be architecturally compatible to create a cohesive aesthetic; and

(h) The pole shall be made of steel and shall be powder coated black.

(3) Shall not be located within one hundred feet (100') of the apron of a fire station or other adjacent emergency service facility.

(4) Shall be placed in alignment with existing trees, utility poles, and streetlights.

(5) Shall be located such that it in no way impedes, obstructs, or hinders the usual pedestrian or vehicular travel, affect public safety, obstruct the legal access to or use of the public ROW, violate applicable law, violate or conflict with public ROW design standards, specifications, or design district requirements, violate the Federal Americans With Disabilities Act of 1990, or in any way create a risk to public health, safety, or welfare.

(6) Shall be located at intersecting property lines as much as possible.

(7) Whenever possible, shall be located on the secondary street.

(8) Shall be located a minimum of fifteen feet (15') away from trees or outside of the tree drip line, whichever is greater, to prevent disturbance within the critical root zone of any tree.

(9) Shall be located at least five feet (5') away from the widest part of an alley or drive approach, including any flare associated with the approach.

(10) Shall not be installed between the perpendicular extension of the primary street-facing wall plane of any single or two-family residence and the street.

(11) When located adjacent to a commercial establishment, such as a shop or restaurant, care should be taken to locate the pole such that it does not negatively impact the business.

(a) Shall not be located in-front of store front windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building.

(b) Should be located between properties as much as possible. (Ord. 2020-04, 2020)

11.06.108 Design Standards Applicable to Decorative Poles. Small wireless facilities located on decorative poles shall, in addition to any other requirements of this chapter, meet the following design standards:

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(1) Decorative Poles: If necessary, to collocate a small wireless facility, a wireless provider may replace a decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the displaced decorative pole as approved by the City Engineer. A replacement pole does not reasonably conform to the design aesthetic if it extends the current pole height by more than twenty five percent (25%). (Ord. 2020-04, 2020)

11.06.109 Undergrounding.

(1) A wireless provider will place newly constructed lines and cables underground whenever practicable when building in:

(a) New residential subdivision areas where other utilities have been placed underground;

(b) Within areas where other utilities have been located underground.

(2) A wireless provider shall locate wires, cables, or other facilities that are not required to be above ground underground.

(3) 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. (Ord. 2020-04, 2020)

11.06.110 Application Process.

(1) Applications for the installation or collocation of a small wireless facility shall be filed with the City Engineer on a form or forms to be furnished by the City Engineer.

(2) All applications shall contain the following:

(a) The application form shall be signed by the applicant or its authorized representative;

(b) The name, address, telephone, facsimile number, and email address of the applicant. Where an applicant is not the owner of the utility pole to be installed, maintained or repaired in the public way, the application also shall include the name, address, telephone, facsimile number and email address of the owner;

(c) A description of the location, purpose, method of the proposed work, and surface and subsurface area to be affected;

(d) A plan showing the dimensions of any excavation and the facilities to be installed, maintained, or repaired in connection with the work, and such other details as the City Engineer may require;

(e) Construction drawings which demonstrate the application meets the minimum requirements of this chapter, including:

(i) 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; and

(ii) Sufficient information to determine compliance with the standards and requirements of this chapter, specifically including information concerning structure height and location within the right-of-way, compliance with the City's

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intersection and driveway sight distance standards, and compliance with the ADA;

(f) The appropriate application fee as set forth in subsection 11.05.112(2) of this chapter;

(g) An affidavit or attestation that the applicant or, if the applicant does not provide wireless services, a wireless service provider will provide wireless service using the small wireless facility and that the installation or collocation of the small wireless facility shall be completed within two hundred seventy (270) days after the day on which the City issues a right-of-way permit except in the case that:

(i) The City and the applicant agree to extend the two hundred seventy (270) day period; or

(ii) Lack of commercial power or communications transport infrastructure to the site delays completion;

(h) If the applicant does not provide wireless service to an end user associated with the small wireless facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the City Engineer that the applicant is authorized to act on behalf of a wireless service provider;

(i) An affidavit or attestation that each proposed small wireless facility, pole, and associated equipment is eligible for an exemption from environmental or historical assessment under 47 CFR 1.1312(e) or, if not exempt, evidence of compliance with such required assessment;

(j) An affidavit or attestation from a Utah licensed engineer that the proposed wireless facility will be in compliance with the radio frequency emissions limits established by the FCC;

(k) The proposed start date of work;

(l) The proposed duration of the work, which shall include the duration of the restoration of the right-of-way physically disturbed by the work;

(m) Written certification that all material to be used in the work and restoration of the right-of-way, will be on hand and ready for use so as not to delay the work and the prompt restoration of the public way;

(n) For an application that proposes collocation of the small wireless facility:

(i) An industry-standard pole load analysis indicating that the structure on which the wireless facilities will be mounted will safely support the load;

(ii) Evidence that the applicant has permission to collocate the proposed small wireless facility on the pole; and

(iii) If a small wireless facility cannot be safely installed on the respective structure, the applicant shall either replace the structure with a compliant structure of the same type, or propose a new location;

(o) For an application that proposes use of a decorative pole, a copy or other documentation that the applicant has complied with section 11.06.108 of this chapter;

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(p) Written certification that the applicant and the wireless service provider are in compliance with all terms and conditions of this chapter, the orders, and all applicable rules and regulations of the City Engineer, and that the applicant and owner are not subject to any outstanding assessments, fees or penalties that have been finally determined by the City;

(q) Evidence of insurance as required by either section 11.06.113 of this title or the applicable agreement with the City;

(r) Certification of the applicant and owner's financial ability to compensate the City for the use of the public way during the term of the respective franchise agreement or master license agreement;

(s) Any other information that may reasonably be required by the City Engineer.

(3) After an application has been approved, the applicant shall obtain any required permits, including right-of-way, excavation or electrical permits, prior to commencing installation or construction of the small wireless facility. (Ord. 2020-04, 2020)

11.06.111 Procedure for Administrative Review of Applications.

(1) City shall review a complete application, including a consolidated application of up to twenty-five (25) small wireless facilities, and approve or deny the application within the time frames and subject to the standards contained in the Act.

(2) City is a category two authority for purposes of determining the total number of small wireless facility applications allowed on a monthly basis under the Act.

(3) If construction of an approved small wireless facility is not complete within two hundred seventy (270) days after an application has been approved, the approval shall lapse and a new application will be required for the designated location. (Ord. 2020-04, 2020)

11.06.112 Fees.

(1) Right To Use And Occupy: Unless a wireless provider is subject to the Municipal Telecommunications License Tax under title 10, chapter 1, part 4 Utah Code Annotated, for the right to use and occupy the right-of-way:

(a) The wireless provider shall pay to the City an annual fee equal to the greater of:

(i) 3.5 percent of all annual gross revenue related to the wireless provider's use of the right-of-way within the City; or

(ii) Two hundred fifty dollars ($250.00) annually for each small wireless facility located in the City.

(b) The annual fee, together with the fee described in subsection (3) of this section, shall be paid on or before December 31, with the fee for any new small wireless facility installed in the prior year pro-rated by the number of months after the facility has been approved. Upon written request by City to the wireless provider, payments shall be made on a monthly basis.

(c) Annually, on or before December 31, a person required to make a payment under subsection (1)(a) of this section shall provide City with gross revenue upon which

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payments are calculated and a description, of reasonable specificity, of the small wireless facilities which have generated the revenue upon which the payment is based.

(i) Such report shall include such information related to such payment as the City may reasonably request.

(ii) The records pertaining to the reports and payment required by this chapter, including but not limited to any records deemed necessary or useful by the City to calculate or confirm gross revenue, and all other records of the wireless provider reasonably required by City to assure compliance by the wireless provider with the terms of this chapter shall be open to inspection by the City and its duly authorized representatives upon reasonable notice at all reasonable business hours of the wireless provider.

(2) Application Fee: With each application to locate a small wireless facility within the City, an applicant shall pay an application fee of:

(a) Collocation: One hundred dollars ($100.00) per small wireless facility on the same application where the application requests collocation of the facility; or

(b) Stand-Alone Pole: Two hundred fifty dollars ($250.00) per small wireless facility on the same application where the application requests the installation, modification or replacement of a stand-alone pole associated with the facility.

(3) Annual Fee: The wireless provider shall pay the City an annual fee for each collocation on a City pole in the amount of fifty dollars ($50.00) per pole.

(4) Other Fees: A wireless provider or applicant shall pay all other applicable fees established by City, specifically including but not limited to electrical permit fees and right-of-way permit fees prior to installing an approved small wireless facility in the right-of-way. (Ord. 2020-04, 2020)

11.06.113 Damage and Repair.

(1) If a wireless provider's activity disrupts or causes damage to a right-of-way, the wireless provider shall restore or repair the right-of-way to substantially the same condition as before the disruption or damage and in accordance with City's engineering standards.

(2) If a wireless provider fails to make a repair required by the City under subsection A of this section within a reasonable time after written notice, the City may:

(a) Make the required repair; and

(b) Charge the wireless provider the reasonable, documented, actual cost for the repair.

(3) If the damage described in subsection A of this section causes an urgent safety hazard, the City may:

(a) Immediately make the necessary repair; and

(b) Charge the wireless provider the reasonable, documented, actual cost for the repair. (Ord. 2020-04, 2020)

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11.06.114 Removal of Small Wireless Facilities.

(1) Abandoned System: In the event that: a) the use of any portion of a small wireless facility is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of the wireless provider; b) the term of the applicable master license agreement has expired; or c) any small wireless facility has been installed in the rights-of-way without complying with the requirements of this chapter or master license agreement; a wireless provider shall be deemed to have abandoned such small wireless facility.

(2) Removal of Abandoned Facility: The City, upon such terms as it may impose, may give a wireless provider written permission to abandon, without removing, any small wireless facility, or portion thereof, directly constructed, operated or maintained under a master license agreement. Unless such permission is granted or unless otherwise provided in this chapter, a wireless provider shall remove within a reasonable time the abandoned small wireless facility and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed and in accordance with the then adopted engineering standards, so as not to impair their usefulness. In removing its facilities and equipment, a wireless 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 authority pole or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and any security fund provided in a master license agreement shall continue in full force and effect during the period of removal and until full compliance by a wireless provider with the terms and conditions of this section.

(3) Transfer of Abandoned Facility To City: Upon abandonment of any small wireless facility or wireless support structure in place, a wireless provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of such poles or equipment allowed to remain within the right-of-way.

(4) Removal of Above-Ground System: At the expiration of the term for which a master license agreement is granted, or upon its revocation or earlier expiration, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all above-ground portions of small wireless facilities within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(5) Leaving Underground System: Upon written approval by City, a wireless provider may abandon underground portions of a small wireless facility 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.

(6) Provider Defaults: If a wireless provider defaults under any provision of this chapter and such default is not cured within thirty (30) days following notice by City to wireless provider of its default, City shall maintain all its rights and remedies, at law and in equity, including the ability to charge fines, recover fees and costs. In the alternative, the City

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may remove the small wireless facilities and associated equipment and charge the reasonable, documented, actual cost to the wireless provider. (Ord. 2020-04, 2020)

11.06.115 Conflicts. In the event of a conflict between any provision of this chapter and a master license agreement entered pursuant to it, the provisions of this chapter shall control. (Ord. 2020-04, 2020)

11.06.116 Other Applicable Ordinances. The use of the right-of-way under this chapter is subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A person using the right-of-way pursuant to this chapter or a master license agreement shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. (Ord. 2020-04, 2020)

11.06.117 Orders, Rules and Regulations. In addition to the requirements set forth in this chapter, the City may adopt such orders, rules and regulations which are reasonably necessary to accomplish the purposes of this chapter and are consistent herewith. (Ord. 2020-04, 2020)

11.06.118 City Failure to Enforce. A person shall not be relieved of its obligation to comply with any of the provisions of this chapter or any franchise granted pursuant to this chapter by reason of any failure of the City to enforce prompt compliance. (Ord. 2020-04, 2020)

11.06.119 Construed According to Utah Law. This chapter and any master license agreement granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the State. (Ord. 2020-04, 2020)

Severability. If any section, clause or portion of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Effective Date: This Ordinance shall become effective immediately upon passage and publication.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS _____ DAY OF _____, 2020 BY THE FOLLOWING VOTE:

	AYE	**NAY**	**ABSTAIN**	**ABSENT**
Dennis Mehr	_____	_____	_____	_____
Cheyne McDonald	_____	_____	_____	_____
Jenny Johnson	_____	_____	_____	_____
Miriah Elliott	_____	_____	_____	_____
Ron Densley	_____	_____	_____	_____

_____
Chris Hart, Mayor

DRAFT

ATTEST:

_____

Kari Jimenez, City Recorder

DRAFT