



CITY COUNCIL MEETING

MARCH 12, 2024 AT 6:00 PM

505 E 2600 N | NORTH OGDEN, UT 84414

AGENDA

PUBLIC CAN ATTEND:

In-person OR: Click the link to join the Webinar: <https://us02web.zoom.us/j/83571261292>

Webinar ID: 835 7126 1292

Telephone Dial: 1 346 248 7799 or 1 669 900 9128 or 1 253 215 8782

YouTube: <https://www.youtube.com/channel/UCriqbePBxTucXEzRr6fclhQ/videos>

Welcome: Mayor Berube

Invocation/Thought & Pledge of Allegiance: Council Member Dalpias

PRESENTATIONS

1. Water Wise Landscaping Conversion Incentive Programs
Presented by: Jonathan Parry with Weber Water Conservancy District

CONSENT AGENDA

2. Call for Conflict of Interest Disclosure

ACTIVE AGENDA

3. Public Comments*
4. Discussion and/or action to approve Resolution 03-2024, amending a Humanitarian Policy for damage to homes caused by water line breaks, sanitary sewer, or storm water lines
Presenter: Council Member Ryan Barker
5. Discussion and/or action to approve a Franchise Agreement A3-2024 with CenturyLink QC
Presenter: City Manager/Attorney Jon Call
6. Discussion and/or action for the acquisition of Weber County Surplus Property, Parcel 16-049-0130
Presenter: Community and Economic Development Director Scott Hess
7. Discussion and/or action on request to begin the development of Chicken Coop Hill in Barker Park
Presenter Council Member Jay D Dalpias
8. Discussion and review of North Ogden City Code Chapters 5 - 8
Presenter: City Manager/Attorney Jon Call
9. Council Department Reports
 - a. Council Member Dalpias – Police Department
 - b. Council Member Cevering – Building and Planning Departments
 - c. Council Member Barker – Parks Department
10. Public Comments*
11. Mayor/Council/Staff Comments
12. Adjournment

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda were posted within the North Ogden City limits on this 7th day of March 2024 at North Ogden City Hall, on the City Hall Notice Board, on the Utah State Public Notice Website at <https://www.utah.gov/pmn/>, and at <http://www.northogdencity.com>. The 2024 meeting schedule was posted on December 13, 2024.
Rian Santoro, North Ogden City Recorder.

The Council at its discretion may rearrange the order of any item(s) on the agenda. Final action may be taken on any item on the agenda. The Council reserves the right to enter into a closed meeting at any time in accordance with 52-4-204. In compliance with the Americans with Disabilities Act, those needing special accommodation (including auxiliary communicative aids and service) during the meeting should notify the City Recorder at 801-782-7211 at least 48 hours prior to the meeting. In accordance with State Statute, City Ordinance, and Council Policy, one or more Council Members may be connected via speakerphone or may by a two-thirds vote to go into a closed meeting.

Public Comments/Questions

- a. Time is made available for anyone in the audience to address the Council and/or Mayor concerning matters pertaining to City business.
- b. When a member of the audience addresses the Mayor and/or Council, he or she will come to the podium and state his or her name and city residing in.
- c. Citizens will be asked to limit their remarks/questions to five (5) minutes each.
- d. The Mayor shall have discretion as to who will respond to a comment/question.
- e. In all cases the criteria for response will be that comments/questions must be pertinent to City business, that there are no argumentative questions and no personal attacks.
- f. Some comments/questions may have to wait for a response until the next regular Council Meeting.
- g. The Mayor will inform a citizen when he or she has used the allotted time.

Humanitarian Policy- Resolution 07-2018

I have gone back through previous City Council meeting minutes regarding our Humanitarian Policy or No-fault insurance payments. On Aug 21, 2018 the City Council discussed Resolution 07-2018 and voted on increasing the amount from \$4000 up to \$10,000. These payments are specifically for no-fault payments.

Additionally I just attended some trainings that had restoration/ clean-up companies also in attendance. I spoke with multiple companies about the difference between a sanitary sewer clean-up vs a water clean-up. I was told that a sanitary sewer clean-up is at least 3x more expensive than water breaks but on average they are 5-6 times more expensive. I would like to discuss whether North Ogden City should have a separate no-fault amount for water breaks and sanitary sewer back-ups.

I have attached the minutes from the Aug 21, 2018 meeting as well as the 2 resolutions. It needs to be noted that Resolution 06-2018 and the amended 07-2018 are the same policy and the change to \$10,000 was not made. I have also added the link for the YouTube video and the discussion starts at the 50:14 minute mark.

[North Ogden City Council Meeting 8/21/18 \(youtube.com\)](#)

RESOLUTION 03 - 2024

A RESOLUTION OF NORTH OGDEN CITY AMENDING A HUMANITARIAN POLICY FOR DAMAGE TO HOMES CAUSED BY WATER LINE BREAKS, SANITARY SEWER OR STORM WATER LINES, REPEALING RESOLUTION 07-2018

WHEREAS; North Ogden City owns, builds, and maintains an extensive network of utility lines; and

WHEREAS; North Ogden City periodically experiences unexpected failures in the utility lines which occasionally cause damage to neighboring property owners; and

WHEREAS; North Ogden City wishes to assist in the cleanup and repair of damage caused by breaks or other failures in the City utility lines on a humanitarian basis without agreeing to any legal liability under the Utah Government Immunity Act; and

NOW THEREFORE, BE IT RESOLVED by the North Ogden City Council that the following policy be adopted by North Ogden City.

HUMANITARIAN ASSISTANCE POLICY

Purpose

The purpose of this policy is to establish procedures under which the City may provide basic humanitarian assistance to persons whose homes are flooded as a result of a backup in a city-owned and maintained sanitary or storm water line, or break of a water main regardless of fault. These provisions are not intended to and do not imply fault. Neither do the provisions of this policy create any contractual obligation between the parties. Assistance provided by the City shall not be construed as an admission of liability nor does it imply a duty nor any negligence or responsibility on the part of the City for such damage. Any payment or assistance provided herein is strictly voluntary on the part of the City.

This policy shall not, in any way supersede, change or abrogate the State Governmental Immunity Act, Utah Code Annotated, Section 63-30-1, et seq., as amended, and its application to the City, or establish in any person a right to sue the City under this policy, nor does it create a cause of action against the City.

Guidelines for Granting Assistance

Assistance is intended for extreme situations that pose an undue hardship on citizens. Circumstances that qualify for humanitarian assistance are as follows:

1. Sanitary sewer backup from a City line into a private residence, provided the cause of the backup cannot be directly linked to something introduced into the City line from the lateral of the home which experienced the backup;
2. Storm water damage to a private residence only when it has occurred multiple times, and the City determines that flooding resulted because North Ogden City's storm water collection system doesn't meet City design standards in place at the time the line was installed. Damages from large storms exceeding the design capacity of North Ogden's storm water system, or from storm water originating from neighboring entities do not qualify.
3. Water damage to a private residence from a broken City-owned water main.
4. Damage from other abnormal or unusual circumstances as determined by the City excluding occurrences resulting from catastrophic and natural occurrences, such as earthquakes, avalanches, slides, and those that are weather-related.
5. Other circumstances as determined by the Mayor.

Criteria for Assistance

The determination for providing humanitarian assistance shall be based on whether the occupants and/or homeowner suffered an otherwise uninsured property loss under circumstances where the occupant and/or homeowner acted responsibly to avoid the loss.

Humanitarian assistance shall not be provided where the loss is fully covered by private insurance or when the loss is caused by an intentional or negligent act of the homeowner or occupant, their agents, or a member of their family or household.

Humanitarian assistance may be reduced if the loss is partially covered by private insurance or in an instance where the occupants and/or homeowner did not cause the problem, but failed to act responsibly to minimize the loss.

Assistance is at the sole discretion of the City in both the determination of eligibility and amount and shall be considered on a case-by-case basis.

All requests for assistance shall be approved in a regularly scheduled council meeting and the individuals requesting assistance are not required to be present to receive assistance.

Extent of Assistance Provided

Payments for assistance shall not exceed \$10,000 for any single occurrence and must be made in accordance with the approved budget for the fiscal year in which the loss occurred. These policy amounts may only be modified by approval of the Council, no employee, officer, or other individual is able to authorize the expenditure of any funds until the Council has approved the Request for Assistance.

Procedure

1. The Mayor/Mayor Pro Temp should be notified by the Public Works Department as soon as possible following a flooding event into a private residence.
2. The Mayor/Mayor Pro Temp will confirm with Public Works that the flooding originated from a city-owned and maintained line and determine if the event qualifies for humanitarian assistance under this policy.
3. If the event qualifies for assistance, the Public Works Director will ask the occupants or homeowner if the flooding is covered by insurance. If so, they will be directed to handle the problem through their insurance company.
 - a. If the occurrence does not appear to be covered by the homeowner's insurance, the Public Work Director, after speaking with the Mayor may arrange with a local cleaning service to provide the services as described in this policy as soon as possible.

When the Mayor/Mayor Pro Temp is unavailable, the Public Works Director or Utility Supervisor will contact the City Administrator/Manager who may complete steps 1 through 3 above and expedite the process. The Mayor should follow up on any questions regarding available insurance coverage.

The City Recorder shall be notified within 24 hours of any damage to a private residence which is suspected of being caused by a City-owned utility.

Periodically, the Public Works Director should ask local cleaning services to submit price quotes for their services to ensure the City is getting fair pricing.

In the event, the occupants and/or homeowner initiate a call to a cleaning service than themselves. The City may still provide assistance in accordance with this policy, but the City shall not pay for cleaning costs above those considered reasonable by the City.

Humanitarian assistance costs as outlined herein shall be approved by the Mayor/Mayor Pro Temp and Public Works Director, or if the Mayor/Mayor Pro Temp is unavailable the City Administrator/Manager and Public Works Director in accordance with the approved budget.

Budgeting

The City Council shall determine on an annual basis whether to provide funding for this Humanitarian Assistance Policy, and the specific amount authorized for funding. If an unusual number of claims occur in a fiscal year the Council may adopt a revised budget number, or may reduce the payment per claim to provide assistance as they see fit.

SECTION 3: This policy shall take effect upon adoption.

PASSED and ADOPTED this 12th day of March 2024

North Ogden City:

S. Neal Berube
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

| | Aye | Nay |
|---|------------|------------|
| Council Member Barker: | — | — |
| Council Member Cevering: | — | — |
| Council Member Dalpiaz | — | — |
| Council Member Pulver: | — | — |
| Council Member Watson: | — | — |
| (In event of a tie vote of the Council): | | |
| Mayor Berube | — | — |

ATTEST:

Rian Santoro
City Recorder

RESOLUTION 06 - 2018

AN RESOLUTION OF NORTH OGDEN CITY ADOPTING A HUMANITARIAN POLICY FOR DAMAGE TO HOMES CAUSED BY WATER LINE BREAKS, SANITARY SEWER OR STORM WATER LINES

WHEREAS; North Ogden City owns, builds, and maintains an extensive network of utility lines; and

WHEREAS; North Ogden City periodically experiences unexpected failures in the utility lines which occasionally cause damage to neighboring property owners; and

WHEREAS; North Ogden City wishes to assist in the cleanup and repair of damage caused by breaks or other failures in the City utility lines on a humanitarian basis without agreeing to any legal liability under the Utah Government Immunity Act; and

NOW THEREFORE, BE IT RESOLVED by the North Ogden City Council that the following policy be adopted by North Ogden City.

HUMANITARIAN ASSISTANCE POLICY

Purpose

The purpose of this policy is to establish procedures under which the City may provide basic humanitarian assistance to persons whose homes are flooded as a result of a backup in a city owned and maintained sanitary or storm water line, or break of a water main regardless of fault. These provisions are not intended to and do not imply fault. Neither do the provisions of this policy create any contractual obligation between the parties. Assistance provided by the City shall not be construed as an admission of liability nor does it imply a duty nor any negligence or responsibility on the part of the City for such damage. Any payment or assistance provided herein is strictly voluntary on the part of the City.

This policy shall not, in any way supersede, change or abrogate the State Governmental Immunity Act, Utah Code Annotated, Section 63-30-1, et seq., as amended, and its application to the City, or establish in any person a right to sue the City under this policy, nor does it create a cause of action against the City.

Guidelines for Granting Assistance

Assistance is intended for extreme situations that pose an undue hardship on citizens. Circumstances that qualify for humanitarian assistance are as follows:

1. Sanitary sewer backup from a City line into a private residence, provided the cause of the backup cannot be directly linked to something introduced into the City line from the lateral of the home which experienced the backup;
2. Storm water damage to a private residence only when it has occurred multiple times, and the City determines that flooding resulted because North Ogden City's storm water collection system doesn't meet City design standards in place at the time the line was installed. Damages from large storms exceeding the design capacity of North Ogden's storm water system, or from storm water originating from neighboring entities do not qualify.
3. Water damage to a private residence from a broken City owned water main.
4. Damage from other abnormal or unusual circumstances as determined by the City excluding occurrences resulting from catastrophic and natural occurrences, such as earthquakes, avalanches, slides, and those that are weather related.
5. Other circumstances as determined by the Mayor.

Criteria for Assistance

The determination for providing humanitarian assistance shall be based on whether the occupants and/or homeowner suffered an otherwise uninsured property loss under circumstances where the occupant and/or homeowner acted responsibly to avoid the loss.

Humanitarian assistance shall not be provided where the loss is fully covered by private insurance or when the loss is caused by an intentional or negligent act of the homeowner or occupant, their agents, or a member of their family or household.

Humanitarian assistance may be reduced if the loss is partially covered by private insurance or in an instance where the occupants and/or homeowner did not cause the problem, but failed to act responsibly to minimize the loss.

Assistance is at the sole discretion of the City in both the determination of eligibility and amount and shall be considered on a case-by-case basis.

All requests for assistance shall be approved in a regularly scheduled council meeting and the individuals requesting assistance are not required to be present to receive assistance.

Extent of Assistance Provided

Payments for assistance shall not exceed \$4,000 for any single occurrence, and must be made in accordance with the approved budget for the fiscal year in which the loss occurred. These policy amounts may only be modified by approval of the Council, no employee, officer, or other individual is able to authorize the expenditure of any funds until the Council has approved the Request for Assistance.

Procedure

1. The Mayor/Mayor Pro Temp should be notified by the Public Works Department as soon as possible following a flooding event into a private residence.
2. The Mayor/Mayor Pro Temp will confirm with Public Works that the flooding originated from a City owned and maintained line and determine if the event qualifies for humanitarian assistance under this policy.
3. If the event qualifies for assistance, the Public Works Director will ask the occupants or homeowner if the flooding is covered by insurance. If so, they will be directed to handle the problem through their insurance company.
 - a. If the occurrence does not appear to be covered by the homeowners insurance, the Public Work Director, after speaking with the Mayor may arrange with a local cleaning service to provide the services as described in this policy as soon as possible.

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Humanitarian assistance costs as outlined herein shall be approved by the Mayor/Mayor Pro Temp and Public Works Director, or if the Mayor/Mayor Pro Temp is unavailable the City Administrator/Manager and Public Works Director in accordance with the approved budget.

Budgeting

The City Council shall determine on an annual basis whether to provide funding for this Humanitarian Assistance Policy, and the specific amount authorized for funding. If an unusual number of claims occur in a fiscal year the Council may adopt a revised budget number, or may reduce the payment per claim to provide assistance as they see fit.

SECTION 3: This policy shall take effect upon adoption.

PASSED and ADOPTED this 7th day of August, 2018.

RESOLUTION 07 - 2018

AN RESOLUTION OF NORTH OGDEN CITY ADOPTING A HUMANITARIAN POLICY FOR DAMAGE TO HOMES CAUSED BY WATER LINE BREAKS, SANITARY SEWER OR STORM WATER LINES

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Budgeting

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SECTION 3: This policy shall take effect upon adoption.

PASSED and ADOPTED this 21st day of August, 2018

North Ogden City:


Brent Chugg
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

| | Aye | Nay |
|--------------------------|----------|-----|
| Council Member Barker: | <u>X</u> | ___ |
| Council Member Cevering: | <u>X</u> | ___ |
| Council Member Stoker: | <u>X</u> | ___ |
| Council Member Swanson: | <u>X</u> | ___ |
| Council Member Turner: | <u>X</u> | ___ |

(In event of a tie vote of the Council):

| | | |
|-------------|-----|-----|
| Mayor Chugg | ___ | ___ |
|-------------|-----|-----|

ATTEST:


S. Annette Spendlove, MMC
City Recorder

7. **DISCUSSION AND/OR ACTION TO CONSIDER A RESOLUTION AMENDING RESOLUTION 06-2018 A HUMANITARIAN POLICY FOR DAMAGE TO HOMES CAUSED BY CITY WATER LINE BREAKS OR BACKUPS IN SANITARY SEWER OR STORM WATER LINES**

City Administrator/City Attorney Call explained that City Administration is proposing a resolution that would amend the City's humanitarian policy to provide for more funding for repairs of damages to personal property caused by City waterline breaks or backups in sanitary sewer or storm lines. Following a recent flooding event, an insurance adjuster determined damages at one property equal \$10,000 and the current policy only allows for \$4,000 in humanitarian aid. City Administration feels that \$4,000 would only cover clean up following an event, but that additional funding would be appropriate to provide for remediation and repairs.

City Recorder Spendlove reported the City's liability insurance provider has indicated that they cannot include a coverage limit below \$5,000 per occurrence and they would actually recommend \$10,000 per occurrence; this money can be used to pay claims. She then noted that in her tenure with the City, all such events have been determined to be at no fault of the City, but the Council had planned to build funding in the event that a situation does occur in the future that is the fault of the City and repairs are costly. Finance Director Nelson added that in the past the City has budget for no-fault insurance from the general fund, but it is an option to use utility funds – which are enterprise funds – since any infrastructure failure would be associated with a City utility. He would recommend budgeting \$20,000 from the water fund for the two claims that the City has received following the most recent event. Recently, the City's utility rates were adjusted to increase utility fund balances to pay for depreciation costs and City Administration feels that using fund balance for this type of repair is appropriate. Utility rate revenues are designed to support repair and replacement of existing infrastructure. In the next budget process, he will propose new line items for this purpose, but for the current situation he would recommend that funding come from the water utility general fund.

Council Member Swanson clarified that for the two current cases in which property damages were caused by something that was not technically the City's fault, both the homeowners and City's liability insurance have denied the claim and the homeowner is responsible for the costs. This policy allows the City to pay a defined amount in these types of instances. He asked if the City's insurance rates will increase if the not-to-exceed amount in the humanitarian policy is increased from \$4,000 to \$10,000. Ms. Spendlove answered no.

Council Member Stoker motioned to approve Resolution 07-2018 amending Resolution 06-2018, A Humanitarian Policy for damage to homes caused by City water line breaks or backups in sanitary sewer or storm water lines. Council Member Barker seconded the motion.

Voting on the motion:

| | |
|--------------------------------|------------|
| Council Member Barker | aye |
| Council Member Cevering | aye |
| Council Member Stoker | aye |
| Council Member Swanson | aye |
| Council Member Turner | aye |

The motion passed unanimously.

8. DISCUSSION AND/OR ACTION TO CONSIDER AN AGREEMENT WITH THE BARKER FAMILY FOR BARKER PARK

A staff memo from City Administrator/City Attorney Call explained this agreement has been previously discussed by the Council in July. There have been several changes proposed by the Council Members, Ray and Fern Barker family members, and residents.

City Administration has identified the most important talking points as follows:

- Number of tickets sold;
- Whether to construct a separate building for restrooms, concessions, and tickets. Including which of those components should be included;
- Number of events held per month;
- How to regulate sound in relation to the existing ordinance;
- Length of the term of the agreement.

There should be members of the Ray and Fern Barker family present to discuss these issues and provide feedback as to the proposed changes.

The memo concluded that a word version of the document will be available during the discussion of this item so that additional changes can be made as the discussion occurs. Staff suggests that Council Members provide any additional changes at the meeting, instead of through email at this point so that everyone has the same information at the same time.

Council Member Barker declared his relation to the Barker Family that is the subject of this agreement. He then noted he discussed this issue privately with Mr. Call and asked Mr. Call to provide an explanation of why the City feels this type of agreement is needed. Mr. Call stated that an agreement will be more beneficial than an ordinance because a future governing body could amend an ordinance much easier than they could an agreement that is with another party or entity. He then highlighted the changes that have been made to the agreement since its original iteration, including adjustments to the relationship between parking accommodations and ticket sales; event size regulations and the number of events allowed in a given month; sound equipment specifications; fencing



Staff Report to the North Ogden City Council

SYNOPSIS

Description: Lumen (Century Link) would like to get a franchise agreement with the city in place. The old agreement has lapsed.

Date: 2/22/23

STAFF INFORMATION

Jon Call
jcall@nogden.org
801-737-9846

QUESTION FOR COUNCIL

Is the Council willing to accept the proposed changes to the Franchise Agreement?

DISCUSSION

The attached redlined version of the agreement shows the proposed changes from the standard agreement we have implemented with other commercial entities.

STAFF RECOMMENDATION

Council should review the agreement and proposed changes to see if anything else needs to be included or amended in the agreement. We are not required to accept the changes proposed by Lumen, though most would be pretty benign.

AGREEMENT A3-2024

**FRANCHISE AGREEMENT
QWEST CORPORATION DBA CENTURYLINK QC (“CENTURYLINK”)**

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of North Ogden, Utah (hereinafter “CITY”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 505 East 2600 North, North Ogden, Utah, 84414, and Qwest Corporation dba CenturyLink QC, a Colorado Corporation (hereinafter “PROVIDER”) with its principal offices at 1025 Eldorado Blvd, Broomfield, CO 80021.

WITNESSETH:

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 8, Chapter 2 of the North Ogden City Municipal Code (hereinafter the “Telecommunication Rights-of-Way Ordinance”) which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and the PROVIDER agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.

1.2 Ordinance. The CITY has adopted the Telecommunications Rights-of-Way Ordinance which is attached to this Agreement as Exhibit “A” and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance to the extent such terms are consistent with applicable federal and state law, and except to the extent otherwise noted in this Agreement, which terms shall not be deemed in conflict with the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to

require the PROVIDER to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined to be unlawful or beyond the CITY’s authority.

1.3 Ordinance Amendments. The CITY reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time. The CITY shall give the PROVIDER notice as required under the Utah Open Meetings Act and other relevant provisions of Utah and North Ogden City Code. No special notice is implied or required. An opportunity to be heard concerning any proposed amendment is part of the public meeting legislative process. If there is any inconsistency between the PROVIDER’s rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, or if such amendments materially and adversely impact PROVIDER’s rights or increase its risks, the provisions of this Agreement shall govern during its term provided that such terms are not otherwise rendered illegal under state or federal laws. Otherwise, the PROVIDER agrees to comply with any such amendments, subject to and reserving its rights and remedies under applicable state and federal law.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the City. All equipment which is used to broadcast or receive a signal via wireless, satellite, or other similar way may not be located in the public right of way, but must be located on a separately leased adjoining parcel and comply with all land use ordinances, building department approvals and other relevant City Code sections. All equipment which shall be constructed above ground in the existing right of ways shall receive approval from the appropriate city authority prior to installation, including a review for safety purposes. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER’s System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance.

1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, the PROVIDER shall pay to the CITY a tax of 3.5% of the gross receipts in accordance with the Municipal Telecommunication

License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410), less any business license fee or business license tax lawfully enacted by the CITY, which lawfully enacted taxes shall in no event exceed the amount payable pursuant to the Municipal Telecommunications License Tax Act. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

2.2 Equal Treatment. CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the CITY will either (a) impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the CITY, if applicable, or (b) waive collection of the fees from PROVIDER provided for herein that are subject to such competition.

ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein ~~may be~~ will be renewed by the PROVIDER upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, ~~by~~ unless providing to the CITY’s representative designated herein written notice of the PROVIDER’s intent to not renew ~~not less than ninety (90) calendar days before the expiration of the initial franchise term.~~

3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon final expiration of the franchise granted herein, whether by lapse or time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, and failure to the parties to enter a new franchise, the PROVIDER shall have the right to either (a) abandon its System in place or (b) remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of the PROVIDER, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS.

4.1 City Uses of Poles and Overhead Structures. The CITY shall have the right, without ~~cost~~ payment of attachment fees, to use ~~all~~ approved poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or similar governmental, non-commercial purposes and subject to the PROVIDER’s reasonable safety and availability review. ~~any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.~~

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole capacity or do any make ready work, alter the manner in which the PROVIDER attached equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments at the CITY's expense.

ARTICLE 5. POLICE POWERS.

The CITY expressly reserves, and the PROVIDER expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY.

6.1 Meet to Confer. ~~The PROVIDER and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters,~~ The PROVIDER and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of any relevant changes in applicable law developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such legal developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will meet and confer negotiate, in good faith, as to

whether it would be appropriate to enter an amendment to this Agreement. As used herein, “material consideration” for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City’s Excavation Permit Ordinance. For the PROVIDER, “material consideration” is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the CITY’s Excavation Permit Ordinance.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

7.1 Grounds for Termination. Subject to the Telecommunications Rights-of-Way Ordinance provisions concerning incumbent local exchange carriers like the PROVIDER, ~~t~~The CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The PROVIDER fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after receipt of written notice by the CITY of such failure;

(b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER’s control, and with respect to which redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the PROVIDER notice of such determination, the PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the PROVIDER; or

(c) The PROVIDER becomes permanently insolvent, ~~unable or unwilling to pay its debts,~~ is adjudged bankrupt, or all ~~or part~~ of its facilities should be required to be sold under an instrument to secure a debt and ~~is are~~ not redeemed by the PROVIDER within sixty (60) days.

(d) The PROVIDER, or its contractors damage CITY or private property during the installation and maintenance of its telecommunication network and fails to repair or compensate the ~~property owner~~ CITY for the damage. When not timely cured consistent with Section 7.1(b), above, Ssuch failure isshall constitute a material breach of this

~~Agreement contract and PROVIDER shall be given sixty (60) days written notice to complete any required repairs follow the timelines outline in 7.1(b) above.~~

7.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of the CITY.

7.3 Remedies at Law. In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 8. PARTIES' DESIGNEES.

8.1 CITY designee and Address. The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at Attn: City Recorder, 505 East 2600 North, North Ogden, UT 84414, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

8.2 PROVIDER Designee and Address. ~~Designated personnel from the PROVIDER's Network Infrastructure Services Department~~~~CEO David Bradshaw or his or her designee(s)~~ shall serve as the PROVIDER's representatives regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's ~~headquarter~~ offices at 1025 Eldorado Blvd, Broomfield, CO 80021, and such other office as the PROVIDER may designate by written notice to the CITY.

8.3 Failure of Designee. The failure or omission of the CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppels by the CITY or PROVIDER.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, the PROVIDER shall furnish to the CITY evidence that it has adequate general

liability and property damage insurance. The evidence may consist of a statement that the PROVIDER is effectively self-insured if the PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.

9.2 Indemnification. The PROVIDER agrees to indemnify, defend and hold the CITY harmless from and against any and all third party claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from to the extent caused by the PROVIDER's negligent or willful acts, including the acts of PROVIDER's contractors, or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to the PROVIDER of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit the PROVIDER to assume the defense of such with counsel of the PROVIDER's choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, the PROVIDER shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY or an unrelated third party.

ARTICLE 10. INSTALLATION

10.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, PROVIDER shall coordinate with the CITY ~~and other providers or users of the CITY Rights-of-Way~~, when such cuts and excavations will be made. ~~Unless otherwise permitted~~ When the same can reasonably be accomplished without significant delay or increased cost to PROVIDER, and subject to applicable law, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

10.2 Underground Installation. The CITY generally requires utilities to be located underground in areas being newly developed. In all locations within the CITY where all utility services are required to be located underground in accordance with permits issued for such new developments, unless otherwise authorized by CITY in writing and subject to applicable law, all of PROVIDER's new facilities shall be constructed underground. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless all other providers in the same location are required to do so. If undergrounding is caused by or required due to the activities of a third party, PROVIDER's undergrounding costs shall be borne by the third party, and the CITY agrees to make the same a condition of any permits issued to such third party. ~~Unless otherwise provided, all of PROVIDER's facilities within the CITY shall be constructed underground. Notwithstanding the provisions of Article 1.3 of this Agreement,~~

~~PROVIDER expressly agrees to install and maintain all of its facilities in accordance with CITY Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.~~

10.3 Damage to Property. If during installation of any facility, line, or equipment under the provisions of this Agreement, PROVIDER, its contractors, agents, or other individuals damage any municipal property, including all street improvements, utility improvements, or third party improvements, PROVIDER agrees to fully restore the property, at ~~their-its~~ expense, to their original condition in accordance with established municipal standards. If PROVIDER'S agents, contractors, or other individuals insurance coverage does not fully cover the costs of repairs to the extent required because of any act of PROVIDER, its agents, contractors or other individuals, PROVIDER shall complete the repairs at ~~their-its~~ own expense. ~~If property damage occurs~~Under the foregoing circumstances, CITY may require, at its discretion, that PROVIDER complete the necessary repairs. Under no condition is CITY required to complete the repairs and seek to obtain repayment from PROVIDER or insurance companies unless CITY elects to do so.

10.4 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) days in the event of a (a) relatively minor, temporary relocation (i.e., where facilities will be returned back to their original state and location) and no less than ninety (90) days for a (b) relatively major temporary or (c) permanent relocation, the PROVIDER shall~~ten (10) business days, the PROVIDER shall do the following at its own expense;~~ protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, or any property owned by the CITY, or for any City-CITY Pproject, any property of the PROVIDER when lawfully required by the CITY by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure to be used for non-commercial purposes, municipal buildings, or any other type of public structures or improvements which are not used to compete with the PROVIDER'S services. In the event that the CITY requests relocation efforts from PROVIDER for reasons not included in this paragraph, or for aesthetic reasons, then CITY agrees to pay all costs associated with relocation. PROVIDER shall not be required to pay for the relocation of PROVIDER'S equipment, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by the CITY through the permitting process. Likewise, PROVIDER shall not be required to pay for the relocation of PROVIDER'S equipment, and may require advance payment for costs and expense from a third party, to the extent such removal or relocation is made at the request or in support of the activities of such third party; the CITY shall make the same a permitting condition of the third party's permit(s).

In the event of an emergency, the CITY shall notify the PROVIDER, who shall immediately respond to the emergency. Should the PROVIDER be unable to respond in a timely manner, the CITY shall take such action as is necessary to meet the emergency at the expense of PROVIDER, if such action by the CITY would otherwise have been at the expense of PROVIDER.

ARTICLE 11. GENERAL PROVISIONS

11.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

11.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

11.3 Time of Essence. Time shall be of the essence of this Agreement.

11.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held in include the plural number and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

11.5 No Presumption. All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

11.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

11.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this ____ day of _____, 20__

“CITY”
CITY OF NORTH OGDEN

By: _____
S. Neal Berube, Mayor

ATTEST:

Susan Nance, City Recorder

APPROVED AS TO FORM:

Jonathan Call, City Attorney

“PROVIDER”

~~Vaix Inc Dba Senawave
Communications~~ Qwest Corporation dba
CenturyLink QC, an ~~Utah~~ Colorado
Corporation

By: _____
~~David Bradshaw~~ Shaun Giesler, Chief

~~Executive Officer~~ Manager NIS ROW

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
:ss.
COUNTY OF _____)

On the ____ day of _____, 20__ personally appeared before me ~~David Bradshaw~~ Shaun Giesler, who being by me duly sworn did say that he or she is the ~~Chief Executive Officer of Senawave Communications~~ Network Infrastructure Manager of CenturyLink, and that the foregoing instrument was signed on behalf of said company by authority of its board of directors and/or its company documents; and he acknowledged to me that said company executed the same.

Notary Public
Residing at: _____
My Commission Expires: _____

EXHIBIT "A"
Telecommunications Rights-of-Way Ordinance

8-2: TELECOMMUNICATIONS; USE OF RIGHTS OF WAY**8-2-1: FINDINGS AND INTENT; AUTHORITY****8-2-2: DEFINITIONS****8-2-3: ADMINISTRATION; GENERAL PROVISIONS****8-2-4: APPLICABILITY; EXCEPTIONS****8-2-5: FRANCHISE REQUIRED****8-2-6: APPLICATION FOR FRANCHISE****8-2-7: COMPENSATION, FEES AND PAYMENTS****8-2-8: INSURANCE, RECORD REQUIREMENTS****8-2-9: CONSTRUCTION, TECHNICAL REQUIREMENTS****8-2-10: PRIVATE PROPERTY; OBLIGATION TO NOTIFY****8-2-11: TRANSFER OF FRANCHISE AND LICENSE****8-2-12: ENFORCEMENT; RIGHTS OF CITY****8-2-13: SEVERABILITY****8-2-1: FINDINGS AND INTENT; AUTHORITY**

A. Rights Of Way: The city finds that the rights of way within the city:

1. Are critical to the travel and transport of persons and property in the business and social life of the city;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. Can be partially occupied by the facilities of 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 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.

B. Compensation: The city finds that the city should receive fair and reasonable compensation for use of the rights of way.

C. Local Concern: The 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.

D. Promotion Of Telecommunications Services: The city finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscriminatory basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

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

1. Fairly and reasonably compensates the city on a competitively neutral and nondiscriminatory basis as provided herein;
2. Encourages competition by establishing terms and conditions under which providers may use the rights of way to serve the public;
3. Fully protects the public interests and the city from any harm that may flow from such commercial use of rights of way;
4. Protects the police powers and rights of way management authority of the city in a manner consistent with federal and state law;
5. Otherwise protects the public interests in the development and use of the city infrastructure;
6. Protects the public's investment in improvements in the rights of way; and
7. 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.

F. Power To Manage Rights Of Way: The city adopts this telecommunications chapter pursuant to its power to manage the rights of way, pursuant to common law, the Utah 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.010 on 1/1/1987

8-2-2: DEFINITIONS

For purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICATION: The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights of way of all, or a part, of the city. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the 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 by a provider; and any other matter pertaining to a proposed system or service.

CITY: North Ogden City, Utah.

COMPLETION DATE: The date that a provider begins providing services to customers in the 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 OR CONTROLLING INTEREST: Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instrument

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 "controlling person"). Control or controlling interest, as used herein, may be held simultaneously by more than one person or group of persons.

FCC: The federal communications commission or any successor thereto.

FRANCHISE: The rights and obligations extended by the 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. Any such authorization, in whatever form granted, shall not mean or include:

- A. Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city;
- B. 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 or a private entity, or for excavating 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 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 11-26, as amended.

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.

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.

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

PSC: The public service commission or any successor thereto.

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

PERSONAL WIRELESS SERVICES FACILITIES: Has the same meaning as provided in section 106 of the act (47 USC 332(c)(7)(c)), which includes what is commonly known as cellular and PSC 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.

RESELLER: Refers to 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: The surface of and the space above and below any public street, sidewalk, alley or other public way of any type whatsoever, now or hereafter existing as such within the city.

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

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 SERVICE OR SERVICES: Any telecommunications services provided by a provider within the city that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the 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 OR 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. Telecommunications system or systems also includes an open video system.

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

HISTORY

Adopted by Ord. 1987 Code § 12.20.040 on 1/1/1987

8-2-3: ADMINISTRATION; GENERAL PROVISIONS

- A. **Conflicts:** In the event of a conflict between any provision of this chapter and a franchise entered pursuant to it, the provisions of this chapter in effect at the time the franchise is entered into shall control.
- B. **New Developments:** It shall be the policy of the city to liberally amend this chapter, 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.

- C. Notices: All notices from a provider to the city required under this chapter or pursuant to a franchise granted pursuant to this chapter shall be directed to the officer as designated by the mayor. A provider shall provide in any application for a franchise the identity, address and phone number of the person designated to receive notices from the city. A provider shall immediately notify the city of any change in such designated person's name, address or telephone number.
- D. Exercise Of Police Power: To the full extent permitted by applicable law either now or in the future, the 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.
- E. Construction:
 - 1. Federal And State Statutes: This chapter shall be construed in a manner consistent with all applicable federal and state statutes.
 - 2. Applicability: This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the extent permitted by applicable federal or 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.
 - 3. Other Applicable Ordinances: A provider's rights are subject to the police powers of the 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 pursuant to its police powers. In particular, all providers shall comply with the city zoning and other land use requirements.
 - 4. City Failure To Enforce: A provider 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.
 - 5. Construed According To State Law: This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state.

HISTORY

Adopted by Ord. 1987 Code § 12.20.480, 12.20.500, 12.20.510, 12.20.520, 12.20.530, 12.20.540, 12.20.550, 12.20.560, 12.20.570 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

8-2-4: APPLICABILITY; EXCEPTIONS

- A. Providers: This chapter 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 chapter shall apply to all future providers and to all providers in the city prior to the effective date hereof, whether operating with or without a franchise as set forth in CCNO 8-2-3E2.
- B. Excluded Activities:
 - 1. Cable Television Operators: This chapter shall not apply to cable television operators otherwise regulated by the cable television ordinance.
 - 2. Wireless Service Facilities: This chapter shall not apply to personal wireless service facilities.

- C. Excluded Providers; Provisions Applicable: Providers excused by other law that prohibits them from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this chapter through the exercise of the city police power and not preempted by other law shall be applicable.

HISTORY

Adopted by Ord. 1987 Code § 12.20.020, 12.20.030 on 1/1/1987

8-2-5: FRANCHISE REQUIRED

- A. Nonexclusive Franchise; Authority: The city is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the city rights of way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the city and provider.
- B. Provider Required To Obtain: Except to the extent preempted by federal or 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 is not preempted or permitted 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.
- C. Nature 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. 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 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.
- D. Current Providers; Time Limit To Request: Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date hereof shall request issuance of a franchise from the 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 CCNO 8-2-12D.
- E. Nature Of Franchise: The franchise granted by the city under the provisions of this chapter 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.
- 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, state and local authorities, if required, and shall submit to the city, upon the written request of the city, evidence of all such approvals, permits, authorizations or licenses.

- G. Term: No franchise issued pursuant to this chapter shall have a term of less than five (5) or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner. Item 5.

HISTORY

Adopted by Ord. 1987 Code § 12.20.050, 12.20.060, 12.20.070, 12.20.080, 12.20.090, 12.20.100, 12.20.110 on 1/1/1987

8-2-6: APPLICATION FOR FRANCHISE

- A. Required; Form: To obtain a franchise to construct, own, maintain or provide services through any system within the city, to obtain a renewal of a franchise granted pursuant to this chapter or to obtain the city approval of a transfer of a franchise, as provided in CCNO 8-2-11A2, granted pursuant to this chapter, an application must be filed with city on the form attached to the ordinance codified herein as exhibit A, which is hereby incorporated by reference. The application form may be changed by the mayor so long as such changes request information that is consistent with this chapter. Such application form, as amended, is incorporated by reference.
- B. Criteria: In making a determination as to an application filed pursuant to this chapter, the city may, but shall not be limited to, request the following from the provider:
1. A copy of the order from the PSC granting a certificate of convenience and necessity.
 2. Certification of the provider's financial ability to compensate the 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 CCNO 8-2-9.
- C. Determination By City: The 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.220, 12.20.230, 12.20.240 on 1/1/1987

8-2-7: COMPENSATION, FEES AND PAYMENTS

- A. Compensation; Provider Obligations: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:
1. Application Fee: In order to offset the cost to the 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, at the time of application, a nonrefundable application fee in such amount as established by resolution of the city council.
 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.
 3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in CCNO 8-1.

- B. Due Monthly: 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.
- C. Statement Of Calculation; 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.
- D. Future Costs: A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the 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 chapter 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.
- E. Taxes, Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the city, on the use of the 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 chapter.
- F. Interest On Late Payments: In the event that any payment is not actually received by the 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 taxes.
- G. Acceptance Of Fee; Not Construed Satisfaction: No acceptance by the 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 may have for additional sums payable.
- H. Additional Taxes Or Fees Still Applicable: The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this chapter or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city owned poles are not waived and remain applicable.
- I. Operation After Term; Continuing Obligation And Holdover: In the event 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 chapter 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 as a result of such continued operation after the term, including, but not limited to, damages and restitution.
- J. Publication Costs: A provider shall assume any publication costs associated with its franchise that may be required by law.

HISTORY

Adopted by Ord. 1987 Code § 12.20.120, 12.20.130, 12.20.140, 12.20.150, 12.20.160, 12.20.170, 12.20.180, 12.20.190, 12.20.200, 12.20.210 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

8-2-8: INSURANCE, RECORD REQUIREMENTS

- A. Insurance Required: Prior to the execution of a franchise, a provider will deposit with the 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 as set forth in the franchise.
- B. Oversight: The city shall have the right to oversee, regulate and inspect periodically 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 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.
- C. Records Maintenance: A provider shall at all times maintain:
1. On file with the 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 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 herein, as built maps include file construction prints. Maps shall be drawn to scale. As built maps, including the compatible electronic format, as provided above, 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 at all times to determine whether a provider is in compliance with the franchise. Should the 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 section. 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 and generally accepted accounting principles shall be deemed to be acceptable under this section.
- D. Confidentiality: If the information required to be submitted is proprietary in nature or must be kept confidential by federal, 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; provided, that a provider notifies the 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.
- E. Provider's Expense: All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a franchise.

F. Right 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 at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided, that the city shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the 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 for the period of such audit. In the event the accounting rendered to the 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 may accept any amount offered by the provider, but the acceptance thereof by the city shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

HISTORY

Adopted by Ord. 1987 Code § 12.20.370, 12.20.380, 12.20.390, 12.20.400, 12.20.410, 12.20.420 on 1/1/1987

8-2-9: CONSTRUCTION, TECHNICAL REQUIREMENTS

- A. Compliance Required; Excavation Permit: 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 or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with city utilities. A provider shall obtain an excavation permit, pursuant to CCNO 8-1, before commencing any work in the rights of way.
- B. Quality And Performance Of Work: 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 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.
- C. Licenses 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 to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

D. Relocation Of System:

1. New Grades Or Lines; Excavation Requirements: 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 CCNO 8-1.
2. Emergency; City Authority To Move System: The city may, at any time, in case of fire, disaster or other emergency, as determined by the 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, in which event the city shall not be liable therefor to a provider. The 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 section. Notice shall be given as provided in CCNO 8-2-3C.
3. Temporary Move For Third Party: A provider shall, upon prior reasonable written notice by the 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 said structure. A provider may impose a reasonable charge on any person other than the city for any such movement of its systems.
4. Change In Rights Of Way; Obligation To Move System: When the city is changing a right of way and makes a written request, a provider is required to move or remove its system from the right of way, without cost to the city, to the extent provided in the excavation ordinance, as provided in CCNO 8-1. 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 excavation permit.

E. Protection Of Structures, Landmarks: 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 and all designated landmarks, as well as all other structures within any designated landmark district. A provider shall obtain the prior written consent of the city to alter any water main, power facility, sewerage or drainage system, or any other city structure on, over or under the rights of way of the city required because of the presence of the system. Any such alteration shall be made by the city or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the city to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the city, any municipal structure or any other rights of way of the 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.

F. Obstructions Prohibited: 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 without the prior consent of the appropriate authorities.

G. Safety Precautions: 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, state and local requirements, including, but not limited to, the national electrical safety code.

H. Repair Of Rights Of Way: After written reasonable notice to the provider, unless, in the determination of the city, an eminent danger exists, any rights of way within the city which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the city at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the city shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights of ways intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the city the entire amount thereof.

I. Maintenance Of System: A provider shall:

1. Install and maintain all parts of its system in a nondangerous 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 and all applicable other federal, state and local laws or regulations.
3. At all reasonable times, permit examination by any duly authorized representative of the city of the system and its effect on the rights of way.

J. Trimming Trees; Authority: 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.250, 12.20.260, 12.20.270, 12.20.280, 12.20.290, 12.20.300, 12.20.310, 12.20.320, 12.20.330, 12.20.340 on 1/1/1987

8-2-10: PRIVATE PROPERTY; OBLIGATION TO NOTIFY

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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.470 on 1/1/1987

8-2-11: TRANSFER OF FRANCHISE AND LICENSE

A. Notification Of Sale:

1. PSC Approval: When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposal, in whole or in part, either by force 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 of the nature of the transaction. The notification shall include either:
 - a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
 - b. The successor entity's application, in compliance with CCNO 8-2-6.
2. Transfer Of Franchise: Upon receipt of a notification and certification in accordance with subsection A1a of this section, the city designee, as provided in CCNO 8-2-12A1, shall send notice affirming the transfer of the franchise to the successor entity. If the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application for the transfer. The application shall comply with CCNO 8-2-6.
3. If PSC Approval No Longer Required: If the PSC no longer exists or if its regulations or state law no longer require approval of transactions described in subsection A of this section, and the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application. The application shall comply with CCNO 8-2-6.

B. Events Of Sale: 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.350, 12.20.360 on 1/1/1987

8-2-12: ENFORCEMENT; RIGHTS OF CITY

A. Enforcement; Remedies:

1. City Designee: The city is responsible for enforcing and administering this chapter, and the city or its designee, as appointed by the mayor, is authorized to give any notice required by law or under any franchise agreement.
2. Enforcement Provisions: Any franchise granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund and rights of termination or revocation.

B. Force Majeure: In the event a provider's performance of any of the terms, conditions or obligations required by this chapter 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 subsection, 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.

C. Extended Operation; Continuity Of Services:

1. Continuation After Expiration: Upon either expiration or revocation of a franchise granted pursuant to this chapter, the 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 chapter and the franchise granted pursuant to this chapter.
2. Incumbent Local Exchange Carrier; Negotiate Renewal: 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.

D. Removal Or Abandonment 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 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 chapter or franchise; or
 - c. the provisions of CCNO 8-2-5D 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 Abandoned System: The 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 chapter, 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. In removing its plant, structures and equipment, a 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 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 chapter 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 Abandoned System To City: Upon abandonment of any system in place, a 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 the abandoned system.
4. Removal 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 chapter, 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 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 chapter, 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.

HISTORY
Adopted by Ord. 1987 Code § 12.20.430, 12.20.440, 12.20.450, 12.20.460 on 1/1/1987

8-2-13: SEVERABILITY

If any provision of this chapter is held by any federal, state or local court of competent jurisdiction invalid as conflicting with any federal or 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 ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that 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 and the provider; provided, that the city shall give the provider thirty (30) days' written notice, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, of the change before requiring compliance with such provision.

HISTORY

Adopted by Ord. 1987 Code § 12.20.490 on 1/1/1987

Agreement A4-2024

INTERLOCAL COOPERATION AGREEMENT

Between

WEBER COUNTY and
NORTH OGDEN CITY

For

DEVELOPMENT OF A PUBLIC PARK

This Agreement is between Weber County (“County”), a political subdivision of the State of Utah, and North Ogden City (“City”), a political subdivision of the State of Utah. The County and the City are sometimes referred to herein as a “Party” or collectively as the “Parties.” The intent of this Agreement is to describe and define the Parties’ cooperative efforts to develop a public park near the North Ogden Canyon road in North Ogden.

RECITALS

WHEREAS, the County owns a parcel of real property in North Ogden identified as Weber County Parcel #16-049-0130 (the “Property”), which is more particularly described in Exhibit A; and

WHEREAS, the County acquired the Property through a tax sale in 2012; and

WHEREAS, the delinquent tax amount was \$12,527.96; and

WHEREAS, the market value of the Property is significantly higher than \$12,527.96; and

WHEREAS, the County has no intended use for the Property and has declared it as surplus; and

WHEREAS, the City approached the County about the possibility of acquiring the Property so that the City could develop a public park on the Property; and

WHEREAS, residents of the City, as well as residents of unincorporated parts of the County and other cities within the County, would benefit from the development of a public park on the Property, which would increase recreational opportunities for them; and

WHEREAS, the development of a park on the Property is in the best interest of the residents of the City and the County, and it will contribute positively to their health and welfare; and

WHEREAS, both cities and counties are authorized by law to provide public parks, but the County, consistent with its existing practice and priorities, does not desire to use its resources to develop or operate a park on the Property; and

WHEREAS, Title 11, Chapter 13 of the Utah Code, the Interlocal Cooperation Act (the “Act”), authorizes public agencies to enter into interlocal cooperation agreements for joint or cooperative undertakings involving services that they are each authorized by law to provide; and

WHEREAS, a primary purpose of the Act, as stated in section 11-13-102, is “to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities” in ways that benefit local communities; and

WHEREAS, section 11-13-211 of the Act authorizes a public entity entering into an agreement under the Act to “sell, lease, give, or otherwise supply tangible and intangible property to the joint or cooperative undertaking”; and

WHEREAS, if the County sells the Property to the City at less than fair market value, for the development of a park, the City is willing to take on all other costs and responsibilities associated with the development, operation, and ownership of the park; and

WHEREAS, the County desires to collect the delinquent tax amount of \$12,527.96, to enable payment to the taxing entities that have an interest in the unpaid taxes; and

WHEREAS, the Parties have determined that this cooperative undertaking is to their mutual advantage and will benefit their residents, and that it is authorized by the Act;

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. The foregoing recitals are adopted by reference as part of this Agreement.
2. The County agrees to sell the Property to the City for \$12,527.96, subject to the other provisions of this Agreement.
3. The City agrees to construct a city park on the Property and open it to public use within five years after the date the County executes the deed to the Property. The park shall include, at a minimum, restroom facilities and a drinking fountain.
4. The City agrees to ensure that it, or another public entity, continues to use and maintain the Property as a public park during the 20-year period after the park is opened to public use.

5. The City shall provide adequate public access to the park and shall ensure that water and other necessary utilities are provided and maintained for the park. The restrooms and drinking fountain may be closed and turned off seasonally, on the same schedule as other parks operated by the City.
6. Selling the Property to the City, at a price significantly lower than market value, will be the County's only contribution to this cooperative undertaking. All other costs and responsibilities associated with the development, operation, and ownership of the park will be the City's responsibility.
7. The County does not warrant or guarantee that the Property is free from easements, covenants, mortgages, liens, or other encumbrances, nor does the County make any other covenants or warranties concerning the Property. By signing this Agreement, the City represents that it is satisfied with the status of the title to the Property, and the City hereby releases the County from all liability related to title issues regarding the Property.
8. The County shall convey the Property to the City by quit claim deed, subject to the reversionary interest described in the following paragraph, upon receipt of the full purchase price.
9. Conditions of Conveyance
 - a. The conveyance of the Property will be effective as long as both of the following conditions are satisfied:
 - i. The City constructs a city park, including restroom facilities and a drinking fountain, on the Property and opens it to public use within five years after the date the County executes the deed; and
 - ii. The City, or another public entity, continues to use and maintain the Property as a public park during the 20-year period after the park is opened to public use.
 - b. If either of the two conditions in paragraph 9.a. is violated, then the ownership of the Property will automatically revert to the County, with no requirement of re-entry by the County.
 - i. If ownership reverts to the County, then the City shall execute and deliver a mutually acceptable document confirming the termination of the City's ownership interest in the Property, and shall consent to that document being recorded.
 - ii. If the City fails to deliver the document described in paragraph 9.b.i., then the County may, on its own, record a document confirming the termination of the City's interest in the Property.
 - c. If both of the conditions in paragraph 9.a. are satisfied, then the County's reversionary interest will automatically terminate 20 years after the date the park is opened to public use.

- i. If the County’s ownership interest terminates, then the County shall execute and deliver a mutually acceptable document confirming the termination of the County’s ownership interest in the Property, and shall consent to that document being recorded.
 - ii. If the County fails to deliver the document described in paragraph 9.c.i., then the City may, on its own, record a document confirming the termination of the County’s interest in the Property.
10. The County shall have no liability related to the construction and operation of the park. The City shall indemnify and hold harmless the County and its officers, agents, employees, and permitted assigns from and against any and all claims, losses, liabilities, and costs (including attorney’s fees) arising as a result of the construction and operation of the park pursuant to this Agreement. Neither Party waives any protection it may have under the Governmental Immunity Act of Utah.
11. This Agreement establishes a cooperative undertaking, but not a joint venture, between the Parties. Neither Party shall serve as the legal representative or agent of the other Party for any purpose. Neither Party shall have power to assume or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of the other Party. Neither Party shall have any obligation with respect to the other Party’s debts or other liabilities.
12. Each Party will be responsible for maintaining its own financial budget for its participation in this Agreement. There will be no joint budget.
13. This Agreement shall become effective upon (a) its approval and execution by each Party; and (b) the filing of an executed copy of this Agreement with the keeper of records of each Party.
14. Duration of Agreement.
 - a. The Parties may mutually agree to terminate this Agreement at any time. If this happens, the Property will be disposed of in accordance with the terms of the County’s conveyance of the Property to the City, as described in paragraph 9 above.
 - b. Otherwise, this Agreement shall remain in effect until either (1) the County’s reversionary interest in the Property has terminated due to the City’s compliance with the terms of the conveyance, or (2) the ownership of the Property has reverted to the County due to the City’s failure to comply with the terms of the conveyance.
 - c. The indemnification obligations of this Agreement shall survive termination of the Agreement.

15. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party.
16. To comply with the Act (sections 11-13-206 and 11-13-207), the City appoints its [REDACTED] as its administrator for all matters relating to the City's participation in this Agreement. The County appoints its Community Development director as its administrator for all matters relating to the County's participation in this Agreement. A Party may change the designation of its administrator by providing written notice to the other Party. To the extent that any joint administration of this Agreement becomes necessary, the Parties' administrators named above, or their designees or successors, shall constitute a joint board for this purpose, and each Party shall have an equal vote in any decision. However, unless otherwise specified in this Agreement, each Party shall have full authority to act on its own, without coordination with the other Party, in fulfilling its own independent obligations under this Agreement.
17. No separate legal entity is created by this Agreement. There shall be no joint acquisition or joint ownership of property, real or otherwise.
18. The provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns.
19. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah. If an ambiguity or question of intent or interpretation arises, there shall be no presumption in favor of either party by virtue of the authorship of any of the provisions of this Agreement. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall remain enforceable and in effect, unless the invalidation of the provision materially alters this Agreement. If the invalidation of the provision materially alters the Agreement, the Parties shall negotiate in good faith to modify the Agreement to match, as closely as possible, the original intent of the Parties.
20. This Agreement sets forth the entire understanding of the Parties. All prior negotiations, understandings, representations, inducements, and agreements, whether oral or written, and whether made by a Party hereto or by anyone acting on behalf of a Party, shall be of no force or effect. No amendment to this Agreement shall be valid or binding unless in writing and signed by both Parties.
21. Each individual signing this Agreement on behalf of a Party hereby represents and warrants, through his or her signature, that he or she is authorized to bind the Party.
22. In satisfaction of additional requirements of the Act, the Parties agree as follows:

- a. This Agreement shall be authorized and adopted, by resolution, by the legislative bodies of the City and the County, in accordance with section 11-13-202.5 of the Act.
- b. This Agreement shall be reviewed by a duly authorized attorney on behalf of each Party, in accordance with section 11-13-202.5(3) of the Act.
- c. A duly executed copy of this Agreement shall be filed promptly with the keeper of records of each Party, pursuant to section 11-13-209 of the Act.
- d. Promptly after execution of this Agreement by the Parties, each Party shall publish notice regarding this Agreement pursuant to section 11-13-219 of the Act.

Both Parties hereby agree to the conditions of this agreement.

NORTH OGDEN CITY

BY: _____ DATED: _____

Approved: _____
City Attorney

WEBER COUNTY

BY: _____ DATED: _____
James H. "Jim" Harvey
County Commission Chair

Attest: _____ DATED: _____
Ricky Hatch, CPA
Weber County Clerk/Auditor

Approved: _____
Deputy County Attorney

EXHIBIT A

Parcel Tax ID#16-049-0130

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 27, LOCATED SOUTH 89D17'22" EAST ALONG SAID NORTH LINE 1357.51 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27; RUNNING THENCE SOUTH 89D17'22" EAST ALONG SAID NORTH LINE 646.36 FEET; THENCE SOUTH 379.70 FEET; THENCE WEST 149.60 FEET; THENCE SOUTH 86.41 FEET; THENCE NORTH 47D21'39" WEST 512.09 FEET; THENCE SOUTH 42D38'21" WEST 135 FEET, THENCE NORTH 47D21'39" WEST 13.24 FEET, THENCE NORTH 1D20' EAST 217.34 FEET TO THE POINT OF BEGINNING. EXCEPT: PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, BETTER DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SECTION 27, SAID POINT ALSO BEING SOUTH 88D55'28" EAST (SOUTH 89D17'22" EAST DEED) 1357.51 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27, BASIS OF BEARING BEING THAT OF SOUTH 00D51'54" WEST (NAD"83 STATE PLANE GRID) BETWEEN THE SAID NORTHWEST CONRER OF SECTION 27 AND RUNNING THENCE SOUTH 36D46'10" EAST 159.23 FEET TO THE MOST NORTHERLY CORNER OF LOT 20 OF THE NORTHCREST PHASE 2 SUBDIVISION, SAID SUBDIVISION HAVING BEEN RECORDED IN MAY 1987 IN THE WEBER COUNTY RECORDER'S OFFICE AS BOOK 29 PAGE 34, THENCE SOUTH 43D00'15" WEST 135.00 FEET ALONG THE WEST LINE OF SAID LOT 20 TO THE NORTHERLY RIGHTOF WAY LINE OF MOUNTAIN ROAD, THENCE NORTH 46D59'45" WEST13.24 FEET ALONG SAID RIGHT OF WAY LINE, THENCE NORTH 01D41'54" EAST 217.34 FEET TO THE POINT OF BEGINNIG. CONTAINS 11658.5 SQUARE FEET OR 0.268 ACRES.



Staff Report to the North Ogden City Council

SYNOPSIS

Description: The attached word proof document is to amend Title 5 to 8 of the North Ogden City Code. The plan is to update and amend the entire city code.

Date: March 6, 2024

STAFF INFORMATION

Jon Call
jcall@nogden.org
 801-737-9846

QUESTION FOR COUNCIL

What revisions would the council like to incorporate into this document for the final approval some time early next year.

DISCUSSION

This is the part of the North Ogden Code titles to be reviewed as part of the comprehensive update of City Code. We plan to have a discussion on the proposed changes and talk about specifics as necessary so the Council can have a cleaner document for the final approval in early 2024. The purpose of this is a discussion for guidance on any additional needed changes to the North Ogden City Code. No vote will be taken on an official ordinance at this time.

Significant Amendments Made:

1. 5-6-1 Changed the standards for polluting rivers and streams to the state code standards for simplicity in prosecution of crimes.
2. 6-1-1 eliminated definitions in favor of state definitions
3. 6-2A Eliminate Housing discrimination section. This is covered under state code now.
4. 8-1-3 fixed some definitions
5. 8-2-2 Changed to Public Works
6. 8-4-5 Council needs to discuss whether or not we want to keep this section in or how to regulate it better.

Other Amendments have been made so a thorough review of the code should be conducted as well. Most are grammar or other minor changes, but it is still important for council to review all changes.

STAFF RECOMMENDATION

Staff recommends the council review the language suggestions.

5: HEALTH AND SANITATION

5-1 : REFUSE AND INOPERABLE MOTOR VEHICLE STORAGE

5-2 : NUISANCES

5-3 : NOISE RESTRICTIONS ON USES OR ACTIVITIES

5-4 : FIREWORKS

5-5 : CONSTRUCTION SITE CLEANLINESS

5-6 : WATERCOURSE DISRUPTION

5-7 : PROTECTIVE GROUND COVER

5-8 : VACANT AND DANGEROUS BUILDINGS

5-1 : REFUSE AND INOPERABLE MOTOR VEHICLE STORAGE

5-1-1 : ACCUMULATION PROHIBITED

5-1-2 : INOPERABLE MOTOR VEHICLE STORAGE

5-1-3 : ADMINISTRATION AND ENFORCEMENT

5-1-4 : PENALTY

5-1-1 : ACCUMULATION PROHIBITED

A. Specified; Authority: It is unlawful for the owner or occupant of any real property or estate, or its agent, to cause or permit upon such property, or right-of-way adjacent thereto, the accumulation of, or, after notice as provided in this chapter, to fail to properly maintain, eradicate or remove any injurious and noxious weeds, garbage, refuse, dead trees, tree stumps, abandoned or inoperable vehicles, boats or trailers, or fail to maintain protective ground cover, or any unsightly or deleterious objects or structures pursuant to the powers granted to the city by U.C.A. 1953, ch. 10-11.

B. Public Nuisance Declared: It is declared that the above-listed objects shall constitute a public nuisance when they create a fire hazard, a source of pollution to water, air or land, or they create a breeding place or habitation for insects, rodents or other forms of life deleterious to human habitation, or are unsightly or deleterious to their surroundings.

HISTORY

Adopted by Ord. 2011-15 on 9/27/2011

Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-1-1)

5-1-2 : INOPERABLE MOTOR VEHICLE STORAGE

A. Inoperable Defined: For the purposes of this chapter, a motor vehicle, boat, recreational vehicle or trailer shall be deemed inoperable if it is not currently licensed, as required by state code, and operable for the use for which it was intended. The same shall be deemed abandoned if it has been left unattended for a period of seven (7) days or more upon any public or private property.

B. Fence Required: Any inoperable or abandoned vehicle must be stored in an enclosed structure or behind an opaque six-foot (6') fence, which is intended to shield the

vehicle from view from any adjoining public or private property.

HISTORY

Adopted by Ord. 2011-15 on 9/27/2011

(Code 2002, § 5-1-2)

5-1-3 : ADMINISTRATION AND ENFORCEMENT

The enforcement procedures for this chapter are found in CCNO 1-9, or any other relevant municipal or state code provision. This title in no way limits any remedy available to the city authorized under any local, state, or federal rule, regulation, code, or other provision.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-1-3)

5-1-4 : PENALTY

Any person who violates this chapter or any provision thereof shall be guilty of a Class B misdemeanor, subject to penalty as provided in CCNO 1-4-1, and may also be charged under Utah Code.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-1-4)

5-2 : NUISANCES

5-2-1 : STATE PROVISIONS ADOPTED BY REFERENCE

5-2-1 : STATE PROVISIONS ADOPTED BY REFERENCE

Except insofar as the application thereof is clearly impractical or inappropriate, in view of the context of purposes or penalty, as provided, all of the definitions, requirements, regulations, prohibitions, provisions, penalties and sections of the state nuisance provisions, U.C.A. 1953, § 76-10-801 et seq., as amended, are hereby adopted by the city.

HISTORY

Adopted by Ord. 2006 Code on 1/1/2006

(Code 2002, § 5-2-1)

5-3: SOUND REGULATIONS

5-3-1: PURPOSE

5-3-2: DEFINITIONS

5-3-3: SOUND LEVEL

5-3-4: MEASUREMENT

5-3-5: EXPECTATIONS

5-3-6: ADDITIONAL REQUIREMENTS

5-3-7: PENALTIES

5-3-1: PURPOSE

The purpose of this chapter is to regulate sound levels in the City within acceptable limits

HISTORY

Adopted _____ by _____ Ord. _____ 2010-11 _____ on _____ 10/12/2010
 Amended by Ord. [2020-20](#) on 8/11/2020

5-3-2: DEFINITIONS

Commercial Receiving Zone: The category of property which includes all commercial and industrial zones, multi-family zones, mixed use zones, and all public owned property directly adjacent to commercial and industrial zones.

Day: 7:00 a.m. to 10:00 p.m.

Decibel (dB): The unit of measurement for sound pressure level at a specified location. The symbol is "dB".

Events: any formally organized sporting, cultural, or other activity which has obtained an official reservation from the Parks and Recreation Department and any relevant Special Event Permits if so required.

La: The A-weighted sound level.

LAeq: The A-weighted unit equivalent continuous sound level in La (dB-SPL) measured over a stated period of time. It is the equivalent continuous sound level which contains the same sound pressure as the varying sound levels over time.

LAmx: The maximum A-weighted sound level permitted in a receiving zone.

Night: 10:01 p.m. to 6:59 a.m.

Noise Control Officer (NCO): means any individual authorized by State or Municipal Code to enforce the laws and regulations found in State or Municipal Code. All sworn officers are by default NCOs.

Property Line: means either (a) the vertical boundary that separates one parcel of property (i.e., lot and block) from another residential or commercial property; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi dwelling unit building; or (c) on a multi-use property, the vertical or horizontal boundaries between the two portions of the property on which different categories of activity are being performed.

Residential Receiving Zone: The category of property which includes all single family residential zones, and all publicly owned property surrounded by single family residential zones.

Sound: An oscillation in pressure, stress, particle displacement and particle velocity which induces auditory sensation. Special Event Permit – a permit required by the City for public gatherings.

HISTORY
 Adopted by Ord. 2010-11 on 10/12/2010
 Amended by Ord. [2020-20](#) on 8/11/2020

5-3-3: SOUND LEVEL

No use shall create sound levels which exceed the following standards:

Receiving Zone sound levels:

| Land Use Clarification | LAeq | LAeq 2 hr | LAeq 1 hr | LAeq 15 min | LAeq 2 min | LAmx |
|------------------------|------|--------------|--------------|-------------------|---------------|------|
| Residential/Night | 40 | 42 | 43 | 44 | 45 | 60 |
| Residential/Day | 55 | 70 | 75 | 80 | 93 | 108 |
| Commercial/Night | 65 | 66 | 68 | 71 | 74 | 77 |
| Commercial/Day | 80 | 81 | 83 | 90 | 103 | 118 |

HISTORY
 Adopted by Ord. 2010-11 on 10/12/2010
 Amended by Ord. [2020-20](#) on 8/11/2020

5-3-4: MEASUREMENT

A. Sound shall be measured at the property line of the individual concerned about the sound level.

B. Sound shall be measured on the A-weighted scale.

5-3-4 Hours enforced. The sound standards above shall be modified as follows to account for the impacts the time of day can have on the enjoyment of property.

HISTORY
 Adopted by Ord. 2010-11 on 10/12/2010
 Amended by Ord. [2018-11](#) on 6/19/2018
 Amended by Ord. [2020-13](#) on 6/9/2020
 Amended by Ord. [2020-20](#) on 8/11/2020

5-3-5: EXPECTATIONS

A. Vehicles operated by the Police, Sheriff, and Fire Departments are exempted from this ordinance.

B. Work undertaken by Utility companies for emergency repairs is exempted from this ordinance. Provided they are undertaking the minimum work necessary to re-establish service of the utilities safe. All equipment must utilize mufflers or other sound dampening devices

- C. Work undertaken to remove snow, water, or other naturally occurring materials which constitute a hazard to vehicular, bicycle, or pedestrian traffic. During night time hours, audible reverse indicators should be disabled for reverse movements which exceed five (5) seconds. All equipment must utilize mufflers or other sound dampening devices.
- D. Fireworks lit within timelines established under State Code.
- E. Any aircraft or railroad equipment operated in conformity with, or pursuant to, state statute, federal law or federal regulations, and traffic control instruction used pursuant to and within the duly adopted state or federal regulations. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt.
- F. Collection of Refuse shall be allowed between the hours of 6:00 a.m. and 10:00 p.m.
- G. Agricultural harvesting is permitted.
- H. Road and Utility work on UDOT Highways shall be permitted during hours as authorized by UDOT to manage traffic congestion and safety concerns.
- I. Pouring concrete is allowed for city utility projects upon the approval of the City Engineer after showing a necessity due to the size or the complexity of the concrete pour that it requires early a.m. start times. Any request for approval must also include detailed information about how the activity will impact the neighbors.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

Amended by Ord. [2020-20](#) on 8/11/2020

Amended by Ord. [2023-19](#) on 9/12/2023

5-3-6: ADDITIONAL REQUIREMENTS

- A. Construction Noise is not permitted prior to 7:00 a.m. or after 10:00 p.m.. A violation of this provision is a Class B Misdemeanor. Repeated offenses shall incur additional penalties as established in the fee schedule.
- B. Noises made by animals shall be regulated by Title 6 Chapter 1 of this code.
- C. All engines shall be operated with a muffler or other sound dampening device. Specifically, any vehicle or equipment which originally came from the manufacturer with a muffler must always be operated with a muffler in place.
- D. No individual may broadcast sound at any level which is intentionally designed to disrupt a neighboring property owner's quiet enjoyment or activity or an Event on public property.
- E. Noises caused by engine brakes ("jake brakes") are prohibited on all roads which are 5.0% or less of a grade.
- F. Individuals may not disrupt Events on public property with sound amplification devices. It is considered a disruption if sound is broadcast at a level more than 55 dBA and on the property where the Event is being held.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

Amended by Ord. [2020-20](#) on 8/11/2020

Amended by Ord. [2021-34](#) on 10/12/2021

5-3-7: PENALTIES

- A. Except as otherwise indicated a violation of any subsection of this chapter shall be considered an infraction and may also be charged under Utah Code § 76-9-102.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

Amended by Ord. [2020-20](#) on 8/11/2020

5-4 : FIREWORKS

State law reference--County and Municipal Fireworks Act, U.C.A. 1953, § 11-3-1 et seq.; Fire Prevention and Fireworks Act, U.C.A. 1953, § 53-7-201 et seq.

- 5-4-1 : STATE PROVISIONS ADOPTED BY REFERENCE
- 5-4-2 : PERMIT REQUIRED; FEE
- 5-4-3 : RULES ADOPTED AND INCORPORATED
- 5-4-4 : DISCHARGE OF FIREWORKS AND OPEN FIRE PITS
- 5-4-5 : PENALTY

5-4-1 : STATE PROVISIONS ADOPTED BY REFERENCE

Except insofar as the application thereof is clearly impractical or inappropriate, in view of the context of purposes or penalty as provided, all of the definitions, requirements, regulations, prohibitions, provisions, penalties and sections of the state fireworks provisions, U.C.A. 1953, § 11-3-1 et seq. and 53-7-201 et seq., as amended, are hereby adopted by the city.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 5-4-1)

5-4-2 : PERMIT REQUIRED; FEE

No person shall store, handle, sell or offer for retail sale any firework or other pyrotechnic device authorized to be sold or discharged under this chapter without first having submitted an application for and having obtained a special fireworks permit. All such applications shall be examined by, and permits issued by, the North View fire department fire chief, or their designated assistant. A copy of the state sales tax license shall accompany each application. A reasonable fee shall be assessed for the issuance of the permit, which must be paid before such permit may be issued. Such fee shall be established by the city council by resolution.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 5-4-2)

5-4-3 : RULES ADOPTED AND INCORPORATED

The state fire prevention board, pursuant to Utah Administrative Rulemaking Act, U.C.A. 1953, § ~~63G-3-10163-46a-1~~ et seq., is authorized by the County and Municipal Fireworks Act, U.C.A. 1953, § 11-3-1 et seq., and the Fire Prevention and Fireworks Act, U.C.A. 1953, § 53-7-201 et seq., ~~Utah fireworks act, Utah Code § 11-3-1 et seq., and the fire prevention and fireworks act, Utah Code § 53-7-201 et seq.~~, to adopt rules establishing minimum safety standards, reasonable under the circumstances, for the retail storage, retail handling and retail sale of common fireworks. All regulations adopted pursuant to the board's rulemaking authority are incorporated in this chapter as though set forth in full.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 5-4-3)

5-4-4 : DISCHARGE OF FIREWORKS AND OPEN FIRE PITS

There shall be no discharge of fireworks or use of open fire pits which are not specifically for recreational fires or fires for cooking food north of 3300 North or east of Mountain Road. The attached map is incorporated by reference.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010
Amended by Ord. 2018-10 on 6/19/2018

(Code 2002, § 5-4-4)

5-4-5 : PENALTY

Except as otherwise provided by state law, violation of any provision of this chapter shall be considered a Class B misdemeanor. This chapter may be enforced by employees of the North View fire district as determined by the fire chief.

HISTORY

Adopted by Ord. 2018-10 on 6/19/2018

(Code 2002, § 5-4-5)

5-5 : CONSTRUCTION SITE CLEANLINESS

5-5-1 : TOILET, TRASH BINS AND SANITATION

5-5-2 : EXCEPTIONS

5-5-1 : TOILET, TRASH BINS AND SANITATION

The general contractor, or owner-builder if there is no general contractor, of every subdivision, residential or commercial building construction site, shall:

A. Toilet, Trash Bins: Maintain on the premises of each building lot or construction site, and not on a street, sidewalk or other public property right-of-way, from the first day through the last day of construction:

1. A portable toilet facility meeting the health requirements of the law; and
2. A commercial trash bin which shall be used for refuse on the site and which shall be emptied when full;

B. Sanitation: Keep the construction site in a condition of cleanliness and healthfulness by:

1. Preventing the accumulation of garbage or refuse, including lumber, bricks, stones, etc., in disorderly stacks or piles;
2. Maintaining the premises in such a manner that mice, rats, rodents or other animals do not inhabit the premises;
3. Preventing garbage, refuse, dirt, rocks or building materials from encroaching onto sidewalks, streets, public property or the private property of neighbors without the written consent of the owner; and
4. Preventing the blowing of paper or other items onto neighboring properties.

HISTORY

Adopted by Ord. 1987 Code § 8.02.010 on 1/1/1987

(Code 2002, § 5-5-1)

5-5-2 : EXCEPTIONS

Exceptions to the requirements of a portable toilet facility and a commercial trash bin may be granted in writing by the building inspector upon a showing that such facilities are otherwise reasonably accessible and that the building construction site is free of the conditions more fully described in CCNO 5-5-1B.

HISTORY

Adopted by Ord. 1987 Code § 8.02.020 on 1/1/1987

(Code 2002, § 5-5-2)

5-6 : WATERCOURSE DISRUPTION

5-6-1 : BEFOULING WATERS

5-6-2 : INTERFERING WITH WATER FLOW

5-6-3 : TAKING WATER OUT OF TURN OR EXCESSIVE AMOUNTS

5-6-4 : OBSTRUCTION OF WATERGATES

5-6-1 : BEFOULING WATERS

A person is guilty of a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1, if they violate state or county health code in relation to streams, rivers, and other waters.:

5-6-2 : INTERFERING WITH WATER FLOW

Every person who in any way interferes with or alters the flow of water in any stream, ditch or lateral while under the control or management of any water commissioner is guilty of a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 8.28.020 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 5-6-2)

5-6-3 : TAKING WATER OUT OF TURN OR EXCESSIVE AMOUNTS

Every person who, in violation of any right of any other person, willfully turns or uses the water, or any part thereof, of any canal, ditch, pipeline or reservoir, except at a time when the use of the water has been duly distributed to the person, or willfully uses any greater quantity of the water than has been duly distributed to him, or in any way changes the flow of water when lawfully distributed for irrigation or other useful purposes, except when duly authorized to make the change, or willfully and maliciously breaks or injures any dam, canal, pipeline, water gate, ditch or other means of diverting or conveying water for irrigation or other useful purposes, is guilty of a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 8.28.030 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 5-6-3)

5-6-4 : OBSTRUCTION OF WATER GATES

Every person who rafts or floats logs, timber or wood down any river or stream and allows the logs, timber or wood to accumulate at or obstruct the water gates owned by any person or irrigation company taking or diverting the water of the river or stream for irrigation or manufacturing purposes is guilty of a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 8.28.040 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 5-6-4)

5-7 : PROTECTIVE GROUND COVER

5-7-1 : INSTALLED

5-7-2 : MAINTENANCE

5-7-3 : ALTERNATIVES

5-7-4 : BOND

5-7-5 : ENFORCEMENT

5-7-6 : Penalty

5-7-1 : INSTALLED

- A. In order to obviate the nuisance described in CCNO 5-2-1 relating to weeds and other noxious growth, "protective ground cover", as defined in CCNO 8-5-3, shall be installed on the front and side yards of every lot, including the right-of-ways adjacent thereto, not containing pavement, sidewalks, or other similar materials, within eighteen (18) months after the issuance of an occupancy permit. All back yards of every residential lot shall be covered by protective ground cover within two and one-half (2½) years from the date of the issuance of an occupancy permit.
1. When the Mayor declares a critical water emergency under Title 9, Chapter 2; the Mayor and Council may extend the time by up to 12 months for the installation of protective ground cover.
- B. Where an occupancy permit has been issued prior to the effective date hereof, "protective ground cover", as defined in CCNO 8-5-3, shall be installed on or before August 31, 1994, on all portions of every residential lot, including the parking strip, not containing pavement, sidewalks or other similar type materials.
- C. Nothing in this section shall prohibit the planting, installation or maintenance of a flower or vegetable garden, orchard, pasture, playground or other open space not prohibited by ordinance. No vegetable garden shall be planted or maintained in the parking strip.
- D. Violation of any subsection of this section shall be considered an infraction.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

Amended by Ord. 2014-08 on 4/22/2014

Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-7-1)

5-7-2 : MAINTENANCE

The owner of property upon which protective ground cover has been installed under CCNO 5-7-1 shall cause the protective ground cover to be adequately maintained, including within the right-of-ways adjacent thereto, and in that connection shall observe the following minimum standards:

- A. With respect to living protective ground cover, provide sufficient water and care to the protective ground cover which will ensure that the ground cover does not die and maintains the color or hue it would achieve if the proper quantity of water was applied to the protective ground cover; provided, however, that in the event the mayor, pursuant to Utah Code § 10-7-12 and this code, declares by proclamation that a scarcity of water should limit the use of water for all purposes other than specified domestic uses, the provisions of this subsection will be suspended during the term covered by such proclamation.
- B. If the protective ground cover is grass or similar turf, periodically mow or cut the turf so as not to exceed a height of more than six inches (6").
- C. All areas must be kept free from noxious weeds as defined by Weber Morgan Health Department.
- D. All areas that have removed the original natural vegetation by grading, cultivating, or other methods shall mow or cut vegetation to not exceed a height of more than six inches (6") for grasses and turf, and other vegetation which are not the part of a conscientious landscaping design.
- E. Areas which are used for keeping and feeding of livestock are not required to regularly mow the area where livestock is kept if livestock is actively living in the area. If the

pasture does not currently house livestock, the area must be kept maintained as not to exceed a height of more than six inches (6").

- a. All areas outside of the pasture must be maintained in accordance with this code.
- F. All areas with sidewalks and paths will be maintained so they are passable without obstruction. This includes undeveloped, non-excavated lots, that remain in their natural state.
- G. No vegetation shall be allowed to grow into the right-of-way in a manner which impedes traveling along the right-of-way.
- H. Properties which were once cultivated and are no longer being cultivated, must remain maintained in a manner consistent with this code.
- I. Any vegetative growth or other condition which causes a fire hazard as determined by the Fire Marshal must be remedied as directed by the Fire Marshal. The Fire Marshal shall follow the guidelines in 304.1.2 and other relevant provisions in the International Fire Code.

HISTORY

Adopted by Ord. 15-93 § 2, 1993 on 1/1/1993
Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-7-2)

5-7-3 : ALTERNATIVES

1. Protective ground cover which utilizes creative methods to reduce the amount of irrigation required is encouraged. The focus of protective ground cover is an area which limits weeds, dust, and the use of fertilizers, while still providing for an attractive landscaping design.
2. In no event, however, shall an alternative protective ground cover be installed which; a) fails to maintain storm runoff detention capabilities of the area similar to if the ground had been installed with turf; or b) which is injurious to the health, safety, welfare, and property values of the surrounding residences.

HISTORY

Adopted by Ord. 2011-11 on 5/24/2011
Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-7-3)

5-7-4 : BOND

If, in the opinion of city officials, weather, scarcity of water, or other circumstance does not permit the installation of protective ground cover within the time periods described in CCNO 5-7-1, a cash bond in the sum of five hundred dollars (\$500.00), to guarantee the completion of the installation of protective ground cover, shall be provided to the city before the expiration of the required time period in question. In such case, the city shall specify, in writing, the date upon which installation of protective ground cover shall be completed.

HISTORY

Adopted by Ord. 15-93 § 2, 1993 on 1/1/1993

(Code 2002, § 5-7-4)

5-7-5 : ENFORCEMENT

This chapter shall be enforced according to the procedures outlined in CCNO 1-9 or any other relevant municipal or state code. This title in no way limits any remedy available to the city authorized under any local, state, or federal rule, regulation, code, or other provision.

HISTORY

Adopted by Ord. 15-93 § 2, 1993 on 1/1/1993
Amended by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-7-5)

5-7-6 : ²⁰Penalty

Any person who violates this chapter or any provision thereof shall be guilty of an infraction, subject to penalty as provided in CCNO 1-4-1 and may also be charged under Utah Code § 26-23-3. If an individual receives a penalty/fine on the same residence three times the next penalty/fine shall be a Class B misdemeanor with a mandatory court appearance.

HISTORY

Adopted by Ord. 2015-22 on 9/1/2015

(Code 2002, § 5-7-6)

5-8 : VACANT AND DANGEROUS BUILDINGS

5-8-1 : APPLICABILITY

5-8-2 : PURPOSE AND INTENT

5-8-3 : DEFINITIONS

5-8-4 : REGISTRATION OF VACANT BUILDINGS REQUIRED

5-8-5 : SECURING AND MAINTENANCE OF VACANT BUILDINGS

5-8-6 : DISCONNECTION OF WATER AND GAS

5-8-7 : ABATEMENT OF DANGEROUS BUILDINGS

5-8-8 : FAILURE TO MAINTAIN

5-8-9 : PENALTY

5-8-1 : APPLICABILITY

This chapter shall apply to all vacant buildings or structures within the city now existing or hereafter becoming vacant.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-1)

5-8-2 : PURPOSE AND INTENT

It is the purpose and intent of this chapter to protect the public health, safety, and welfare by establishing a registration process for vacant buildings and requiring responsible parties to implement a vacant building plan for such buildings to remedy any public

²⁰ Changed per city directive.

nuisance, prevent deterioration, unsightly blight and consequent adverse impact on the value of nearby property, and to establish minimum maintenance standards for vacant buildings. To such ends, it is the specific purpose and intent of this chapter:

- A. To minimize the period of time a building is boarded;
- B. To provide alternative procedures for the abatement of dangerous buildings, which, if adequately secured and maintained against entry in accordance with the requirements of this chapter, will not constitute an immediate danger to the life, limb, health, property or safety of the public;
- C. To prevent vacant buildings from becoming a public nuisance; and
- D. To improve the aesthetic appearance of vacant buildings, in order to protect surrounding properties

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-2)

5-8-3 : ²¹DEFINITIONS

BOARDED BUILDING: A building in which all or some of the utilities have been disconnected and all windows and doors are boarded against entry at the ground and second level (if a second level exists). Entry doors may be locked or boarded and windows adjacent to entry doors are boarded against entry.

BOARDING/BOARD: The secured covering of openings to a building or structure to prevent entrance pursuant to the provisions and standards of this chapter due to the non-occupancy of the building or structure.

CLOSED TO OCCUPANCY: A building in which no person may eat, sleep, live or otherwise reside or occupy the building or any portion thereof. Buildings closed to occupancy may only be entered by the owner, owner's agent or other authorized persons to do repair work.

DANGEROUS BUILDING: Any building or structure deemed to be dangerous under state law and the construction codes adopted by the state ~~the provisions of the Uniform Code for the Abatement of Dangerous Buildings (1997)~~. Specifically, any building which, because of inadequate maintenance, deterioration, dilapidation, decay, damage, faulty construction or arrangement, chemical residues, inadequate light, air, or sanitation facilities, or otherwise, is determined by the health department, building officials, fire marshal, or code enforcement official to be unsafe for habitation or use.

EMERGENCY CONDITIONS: One or more conditions which exist in a building or on a property that create a likelihood of imminent danger to life or safety if anyone were to enter or occupy the property or building.

UNBOARDED/UNSECURED BUILDING: A building whose windows and/or doors are missing or broken and other openings are not secured against unauthorized persons entering the building.

VACANT/SECURED BUILDING: A building having utility meters that may be locked off but the meters and service lines are in place. All windows are secured and glazed and the doors are secured by means of a lock.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-3)

5-8-4 : REGISTRATION OF VACANT BUILDINGS REQUIRED

A building which has been vacant for more than six (6) months is required to be registered with the code enforcement office of the city. The registration shall include the owner's name, address, email, and phone number.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-4)

5-8-5 : SECURING AND MAINTENANCE OF VACANT BUILDINGS

A. Vacant buildings shall be maintained with appropriate exterior coverings and treatments to prevent excessive weathering, decay, damage, or deterioration.

1. Paint, stains, and other treatments shall not be allowed to deteriorate such that any wood or metal be unprotected and exposed to the weather, unless originally designed to weather naturally.

2. Any signs, or items attached to the exterior of the building shall be removed, or properly secured and maintained to prevent a dilapidated appearance.

B. Vacant buildings shall be secured against entry from anyone who has not been expressly given access.

1. All broken windows and doors which face public streets shall be replaced with new windows and doors and shall not be secured by boarding. Plexiglass, acrylic sheets, or other transparent items may be used in place of glass, provided they are of sufficient thickness and properly secured to the building to prevent entry.

2. Broken windows and doors which do not face public streets may be boarded up and secured with screws or nails every six inches (6").

C. Vacant buildings which are closed to occupancy by the health department, building department, fire marshal, or code enforcement officials shall not be occupied until a proper inspection has been undertaken by the building department.

D. Vacant buildings shall not be allowed to deteriorate and become dangerous buildings.

1. All regular maintenance of protective ground cover, and other vegetation must continue despite the vacant nature of the ~~home~~ building.

2. All roofing and exterior surfaces shall be replaced when worn or damaged.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-5)

5-8-6 : DISCONNECTION OF WATER AND GAS

Buildings and structures which remain vacant for longer than two (2) years shall disconnect or lockout the water and gas services to prevent damage to the property and adjoining properties or wasting of resources in the event of a leak at the vacant property. Electricity may remain connected for security purposes.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-6)

5-8-7 : ABATEMENT OF DANGEROUS BUILDINGS

A. Dangerous Building Declared Public Nuisance: All buildings or portions thereof which are determined after inspection by the building official to be dangerous, as defined in this chapter, are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal.

B. Proceedings Following Determination Of Dangerous Building: When the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, the building official shall commence proceedings to cause the repair, rehabilitation, or demolition of the building.

C. Notice and Order: The building official shall issue a notice and order directed to the record owner of the building in accordance with CCNO 1-9.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-7)

5-8-8 : FAILURE TO MAINTAIN

A. Notice; Action By City: If the building official determines that a vacant building is not being maintained in accordance with CCNO 5-8-5, either in whole or in part, the building official shall send a notice to the owner or the owner's agent by First Class mail, prepaid, requiring compliance with the building maintenance standards within ten (10) days. If the maintenance work is not performed within the required time, the building official may cause the maintenance work to be done by city personnel or by a contractor hired by the city. Such notice may occur whether or not the vacant building is registered with the city and may be sent in conjunction with a notice to register the building as a vacant building under CCNO 5-8-4.

B. Charges To Property Owner: If the building official causes maintenance work to be done pursuant to subsection A of this section:

1. The city shall charge the property owner:

a. An administrative fee, as set by the city from time to time, ~~of one hundred dollars (\$100.00)~~ to partially recover the city's costs in administering or contracting for the maintenance of the building and/or premises; and

b. The actual costs of maintaining the building and/or the premises.

2. The costs shall be collected as provided under CCNO 1-4 and CCNO 1-9.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-8)

5-8-9 : PENALTY

Any person who violates this chapter or any provision thereof shall be guilty of a Class B misdemeanor, subject to penalty as provided in CCNO 1-4-1, and may also be charged under U.C.A. 1953, § 26-23-3. Each day shall be a separate violation.

HISTORY

Adopted by Ord. 2016-21 on 7/19/2016

(Code 2002, § 5-8-9)

6: PUBLIC SAFETY

6-1 : OFFENSES

6-1 : OFFENSES

6-1-1 : STATE CRIMINAL CODE ADOPTED

6-1-2 : CITATION

6-1-3 : PENALTY

ARTICLE A: HOUSING DISCRIMINATION

ARTICLE B: DESTROYING OR DEFACING PROPERTY

ARTICLE C: CURFEW

ARTICLE D: FIREARMS AND WEAPONS

6-1-1 : STATE CRIMINAL AND TRAFFIC-CODES ADOPTED

A. Adopted: The city adopts the most recently adopted version of the Utah Criminal Code, U.C.A. 1953, § 76-1-101 et seq., and the state traffic code, U.C.A. 1953, § 41-6A-101 et seq., to the extent the offenses set forth herein are identified as infractions or misdemeanors.

B. Amendments: The code shall be automatically replaced whenever the state or its regularly appointed agent shall issue a new version of the code or any successor to the code.

C. Copies Available: Pursuant to the requirements of U.C.A. 1953, § 10-3-711, the city shall make at least one copy of the code, any new version of the code or any successor of the code, available at the office of the city recorder for use and examination by the public.

D. Definitions: ~~Unless the context requires otherwise, all references in the adopted state criminal code to the following terms shall have the following meanings when used in the city:~~

~~COMMISSION: North Ogden City and its officers, departments, agencies and agents.~~

~~LOCAL AUTHORITIES: The North Ogden City mayor and city council.~~

~~MAGISTRATE: The judge of the North Ogden City justice court.~~

~~THE STATE DEPARTMENT OF PUBLIC SAFETY: The chief of police or his agent.~~

HISTORY

Adopted by Ord. 1987 Code § 10.04.010 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2-1)

6-2-2: CITATION

Where a citation or complaint is issued, it shall be sufficient to use the section number of the Utah Code Annotated followed by "the ordinances of North Ogden City" to show the section of the ordinance of the city which has been violated.

HISTORY

Adopted by Ord. 1987 Code § 10.04.020 on 1/1/1987

(Code 2002, § 6-2-2)

6-2-3: PENALTY

Unless otherwise provided, any violation of the provisions set forth in the code, relative to offenses, shall be punishable as a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 10.04.050 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2-3)

ARTICLE B: DESTROYING OR DEFACING PROPERTY

6-2B-1: SIGN OR GATE REMOVAL

6-2B-2: INJURY TO TREE OR MONUMENT

6-2B-3: UNAUTHORIZED POSTING

6-2B-4: UNAUTHORIZED DEFACING

6-2B-5: DAMAGING SIGNS OR EQUIPMENT

6-2B-6: DESTRUCTION OF TRESPASSING SIGNS

6-2B-1: SIGN OR GATE REMOVAL

It is unlawful for any person to remove mischievously any gates or signs within the limits of the city. A violation of this section is a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 9.72.030 on 1/1/1987 Adopted by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2B-1)

6-2B-2: INJURY TO TREE OR MONUMENT

It is unlawful for any person willfully and maliciously to take down, injure or remove any monument erected or any tree marked as a boundary of any street, land or city lot, or t

destroy or deface or alter the marks of any monument or destroy or injure any shade or fruit trees within the limits of the city.

HISTORY

Adopted by Ord. 1987 Code § 9.72.040 on 1/1/1987

(Code 2002, § 6-2B-2)

6-2B-3: UNAUTHORIZED POSTING

A. It is unlawful for any person within the corporate limits of the city to print, paint, write, mark or in any way post up any notice, card, advertisement or other device upon any wall, fence, tree, post, building, bridge or other property or cause the same to be done, without permission of the owner or agent thereof, or of the city administrator, if upon public property.

B. A violation of this section is a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 9.72.050 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2B-3)

6-2B-4: UNAUTHORIZED DEFACING

It is unlawful for any person, without lawful authority, to tear down or deface any ordinance, bill, notice, advertisement or other paper of a business or legitimate character lawfully posted within the limits of the city at any time before the object of such notice has been accomplished.

HISTORY

Adopted by Ord. 1987 Code § 9.72.060 on 1/1/1987

(Code 2002, § 6-2B-4)

6-2B-5: DAMAGING SIGNS OR EQUIPMENT

It is unlawful and punishable as a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1, for any person to shoot, deface, damage or destroy signs or placards placed, permitted to be placed or caused to be placed in any part of the city by the city or by a private landowner; or to damage, destroy, remove, or cause to be damaged, destroyed or removed any equipment or devices owned, controlled or operated by the city; or to shoot, shoot at, damage, destroy or remove any road signs placed upon any of the highways of the city.

HISTORY

Adopted by Ord. 1987 Code § 9.72.070 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2B-5)

6-2B-6: DESTRUCTION OF TRESPASSING SIGNS

It is unlawful for any person, without the consent of the owner or person with apparent authority TO act for the owner of any privately-owned land, to tear down, mutilate or destroy any sign, signboard or other notice located on such property which regulates trespassing or otherwise limits or restricts specific behavior; or to, without such consent, tear down, deface or destroy any fence or other enclosure on such privately-owned land, or any gate or bars belonging to any such fence or enclosure.

HISTORY

Adopted by Ord. 1987 Code § 9.72.080 on 1/1/1987

(Code 2002, § 6-2B-6)

ARTICLE C: CURFEW

6-2C-1: HOURS DESIGNATED

6-2C-2: PARENTAL RESPONSIBILITY

6-2C-3: PENALTY

6-2C-1: HOURS DESIGNATED

It is unlawful for any person under the age of sixteen (16) years to be or to remain in or upon the streets, alleys, public places or vacant lots in the city on any night, except Friday night, between the hours of 10:00 p.m. and 4:00 a.m., or to be upon such streets, alleys, public places or lots on Friday night between the hours of 12:00 midnight and 4:00 a.m., unless such person is accompanied by a parent, guardian or other person having legal custody of such minor person. The provisions of this section shall not apply to any such minor persons whose employment or lawful business makes it necessary to be upon such streets, alleys or public places during such hours, if such minor person has upon theirperson a written permit from the chief of police to be upon such streets, alleys or public places during such hours.

HISTORY

Adopted by Ord. 1987 Code § 9.86.010 on 1/1/1987

(Code 2002, § 6-2D-1)

6-2C-2: PARENTAL RESPONSIBILITY

It is unlawful for the parent, guardian or any person having the legal custody or charge of a person under the age of sixteen (16) years to permit such minor person to go in or be in or upon any street, alley, public place or vacant lot in the city contrary to the provisions of this article.

HISTORY

Adopted by Ord. 1987 Code § 9.86.020 on 1/1/1987

(Code 2002, § 6-2D-2)

6-2C-3: PENALTY

Any person violating any of the provisions of this article shall be guilty of a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 9.86.030 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2D-3)

ARTICLE D: FIREARMS AND WEAPONS

6-2D-1: DISCHARGING WEAPONS WITHIN CITY LIMITS

6-2D-1: DISCHARGING WEAPONS WITHIN CITY LIMITS

It is unlawful and punishable as a Class B misdemeanor and, upon conviction, subject to penalty as provided in CCNO 1-4-1, for any person to discharge any gun or pistol or air gun, or to shoot any bow and arrow, within the limits of the city, except in self-defense, or in the case of a peace officer performing their official duty, or in case of target shooting with a bow and arrow after the erection in a proper place of a proper breastwork or barrier for the protection of other persons and their property and after approval of such barrier or breastwork by the chief of police or their designated representative; provided, however, that nothing contained in this section shall be construed to prohibit the use of play pistols, guns, bows and arrows, or other similar children's toys.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 6-2E-1)

7: MOTOR VEHICLES AND TRAFFIC

7-1 : TRAFFIC CODE; GENERAL PROVISIONS

7-2 : PROPER LOOKOUT AND CONTROL BY DRIVER

7-3 : STOPPING, STANDING AND PARKING

7-4 : ROAD REGULATIONS

7-5 : OFF ROAD VEHICLE OPERATION

7-6 : PARKING FOR DISABLED PERSONS ~~HANDICAPPED PARKING FACILITIES~~

7-7 : OTHER STREET AND SIDEWALK USE RESTRICTIONS

7-8 : RESTRICTED VEHICLES

7-1 : TRAFFIC CODE; GENERAL PROVISIONS

7-1-1 : TRAFFIC CODE ADOPTED

7-1-2 : CITATION

7-1-3 : SPEED LIMIT

7-1-4 : TRAFFIC CONTROL DEVICES AND SIGNS

7-1-5 : PENALTY

ARTICLE A: ADMINISTRATION AND ENFORCEMENT

7-1-1 : ²⁵TRAFFIC CODE ADOPTED

A. Adopted: The city adopts the provisions of Utah Criminal Code, U.C.A. 1953, § 76-1-101 et seq., and the most recently adopted version of the state traffic code, U.C.A. 1953, § 41-6A-101 et seq., subject to the modifying provisions of this chapter. Utah criminal and traffic code, ("the code"), to the extent the offenses set forth herein are identified as infractions or misdemeanors.

B. Amendments: The code shall be automatically replaced whenever the state or its regularly appointed agent shall issue a new version of the code or any successor to the code.

C. Copies Available: Pursuant to the requirements of U.C.A. 1953, § 10-3-711, the city shall make at least one copy of the code, any new version of the code or any successor of the code, available at the office of the city recorder for use and examination by the public.

D. Definitions: Unless the context requires otherwise, all references in the code to the following terms shall have the following meanings when used in the city:

COMMISSION: North Ogden City and its officers, departments, agencies, and agents.

LOCAL AUTHORITIES: The North Ogden City mayor and city council.

MAGISTRATE: The judge of the North Ogden City justice court.

STATE PUBLIC SAFETY DEPARTMENT: The chief of police of North Ogden City or their agent.

²⁵ See new language per city. Also, I have added the "subject to" language for the city's consideration.

HISTORY

Adopted by Ord. 1987 Code § 10.04.010 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-1-1)

7-1-2 : CITATION

Where a citation or complaint is issued, it shall be sufficient to use the number of the applicable state statute Utah Code followed by "the ordinances of North Ogden City" to show the section of the ordinance of the city which has been violated.

HISTORY

Adopted by Ord. 1987 Code § 10.04.020 on 1/1/1987

(Code 2002, § 7-1-2)

7-1-3 : SPEED LIMIT

A. When appropriate traffic control or regulatory signs giving notice of speed are posted, the prima facie maximum speed limits designated upon such signs shall apply to the appropriate streets or portion of streets so posted.

B. In the absence of any speed limit sign designating a speed limit applicable thereto, the prima facie speed limit shall be twenty-five (25) miles per hour.

HISTORY

Adopted by Ord. 1987 Code § 10.04.030 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-1-3)

7-1-4 : TRAFFIC CONTROL DEVICES AND SIGNS

The traffic control and regulation of all public streets shall be as posted, regulated or controlled by appropriate traffic control devices, signs or other regulatory devices or controls

HISTORY

Adopted by Ord. 1987 Code § 10.04.040 on 1/1/1987

(Code 2002, § 7-1-4)

7-1-5 : PENALTY

Any violation of the provisions set forth in the code, relative to traffic violations, shall be punishable as provided in U.C.A. 1953, § 41-6a-202.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 7-1-5)

ARTICLE A: ADMINISTRATION AND ENFORCEMENT

7-1 A-1: PENALTY FOR VIOLATIONS

7-1 A-2: AMOUNT OF PENALTY SET BY RESOLUTION

7-1 A-3: ENFORCEMENT OFFICERS

7-1 A-4: NOTICES

7-1 A-5: OWNER'S RESPONSIBILITY

7-1 A-6: PAYMENT OF PENALTY REDUCED

7-1 A-7: HEARINGS

7-1 A-8: COLLECTION

7-1 A-9: APPEALS

7-1 A-1: PENALTY FOR VIOLATIONS

The city shall have sole discretion in deciding whether to file a civil or criminal judicial case or pursue an administrative enforcement action for the violation of any of its ordinances or applicable code requirements. The enactment of this chapter shall not be construed to limit the city's right to prosecute any violation as a criminal offense.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 7-1A-1)

7-1 A-2: AMOUNT OF PENALTY SET BY RESOLUTION

The amount of any civil penalty assessed under CCNO 7-1A-1 shall be established by a resolution adopted by the city council.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-2)

7-1 A-3: ENFORCEMENT OFFICERS

A. All officers of the police department shall have the authority to issue notices under this article. In addition, the mayor may also authorize other city employees to issue notices under this article.

B. The mayor may also, pursuant to U.C.A. 1953, § ~~41-6A-217~~~~41-6-19.5~~, or any successor statute, delegate authority to other persons to enforce:

1. The provisions of U.C.A. 1953, § 41-1a-414, related to parking for a person with a disability;
2. The provisions of this title relating to accessible parking privileges for a person with a disability; or
3. The provisions of U.C.A. 1953, § ~~41-69A-1307~~~~41-6-103.5(4)~~ related to parking in a school bus parking zone.

C. If the mayor delegates authority to other persons under this section:

1. The person must be at least twenty-one (21) years of age; and
2. The person may not begin enforcement activities until the person has received appropriate training from the chief of police or their designee.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-3)

7-1A-4: NOTICES

Persons authorized to issue notices under this article shall issue notices to persons who have violated this title by affixing a notice (in a form approved by the city) to the vehicle which has been parked or left in violation of this title, or delivering the notice to the owner or driver of the vehicle.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-4)

7-1A-5: OWNER'S RESPONSIBILITY

Whenever any vehicle shall have been parked or left in violation of this title, there shall be a rebuttable presumption that the person in whose name the vehicle is registered is responsible for the violation and subject to the civil penalty provided in this article.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-5)

7-1A-6: PAYMENT OF PENALTY REDUCED

Any civil penalty imposed under this article which is paid within ten (10) days of the receipt of the notice shall be reduced by the sum of twenty-five dollars (\$25.00).

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-6)

7-1A-7: HEARINGS

A. Hearing Officers: The mayor, with the advice and consent of the city council, shall appoint such hearing officers as deemed appropriate to consider matters relating to violations of this title. The hearing officers may be city employees and shall make final administrative determinations in all matters in which a violation of this title has been alleged.

B. Request For Hearing: Within thirty (30) days after receiving the notice described in CCNO 7-1A-4, the person who received the notice may request a hearing on the allegation that they violated this title, except that a person may not request a hearing under this section if the violation is alleged to have occurred in conjunction with a criminal violation as part of a single criminal episode and the criminal violation will be prosecuted in a criminal proceeding. A person desiring to have a hearing under this section shall file a written request for the hearing with the city court clerk. Any person who received a notice and does not request a hearing within thirty (30) days shall be deemed to have waived the right to a hearing.

C. Hearing Conducted: Within ten (10) days after receiving the request for a hearing, the hearing officer shall conduct a hearing on the alleged violation of this title. The hearing shall:

1. Be a public meeting held during the city's regularly scheduled business hours;
2. Provide due process to all of the parties, including the right to be represented by counsel, the right to cross examine witnesses, and the right to present evidence on the party's own behalf; and
3. Be recorded or otherwise documented so that a true and correct transcript may be made of the proceedings.

D. Burden To Prove Defense: The burden to prove any defense shall be upon the person raising the defense.

E. Dismissal; Conditions: The hearing officer shall dismiss the notice of the violation if:

1. The hearing officer finds that no violation of this title occurred;
2. The city attorney has recommended dismissal and provided the hearing officer with

good cause for the dismissal; or

3. The hearing officer finds that the person who requested the hearing has established either of the following defenses:

a. At the time the notice was given, possession of the vehicle had been acquired in violation of the criminal laws of the state; or

b. Compliance with the provisions of this title would have presented an imminent and irreparable injury to persons or property.

F. **Reduction In Penalty:** The hearing officer may reduce the penalty provided in this title if they finds that the violation occurred, but the person requesting the hearing has established one of the following defenses:

1. At the time of the violation, possession of the vehicle had been acquired pursuant to a written lease agreement or similar written agreement;

2. The vehicle was mechanically incapable of being moved from the location; provided, however, that this defense shall not apply to any vehicle which remained in the location for more than six (6) hours; or

3. Any markings, signs or other indicia of the applicable parking regulations (if required under this title) were not clearly visible or comprehensible.

G. **Recommendation Of City Attorney For Reduction:** The hearing officer may also reduce the penalty provided in this title if the city attorney recommends the reduction of the penalty and provides the hearing officer with good cause for the reduction.

H. **Limitation In Reductions:** In no event shall the hearing officer reduce the penalty under subsection F or G of this section below the sum of twenty-five dollars (\$25.00).

I. **Payment Of Penalty:** If the hearing officer finds that a violation of this title occurred and no applicable defense exists, the hearing officer may, in the interests of justice and on behalf of the city, enter into an agreement for the timely or periodic payment of the applicable penalty.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-1A-7)

7-1A-8: COLLECTION

If any penalty imposed pursuant to this title remains unpaid after forty (40) days from the receipt of the notice or after ten (10) days after the date of a hearing pursuant to CCNO 7-1 A-7, the city may file an action to recover the penalty. The action may be filed in the city court. In any such action, the city shall be entitled to recover its costs and attorney

fees. The city may use any legal means to collect a judgment received in any such action.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-8)

7-1 A-9: APPEALS

A. Authority: Any person who is found to have violated this title in a hearing held pursuant to CCNO 7-1A-7 may appeal the hearing officer's decision to the district court.

B. Limitation Of Allegation: The person may only allege that the decision in the hearing was arbitrary, capricious or illegal.

C. Time Limit: An appeal under this section shall be barred unless it is filed within thirty (30) days after the hearing officer's decision is final.

D. Record Of Proceedings To Court: The city shall transmit the record of its proceedings to the reviewing district court. The record shall include the hearing officer's findings, orders and a true and correct transcript of the hearing.

E. Evidence Considered: The district court may not accept or consider any evidence that is not included in the record unless the evidence was offered to the hearing officer and the district court determines that the hearing officer improperly excluded the evidence.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-1A-9)

7-2 : PROPER LOOKOUT AND CONTROL BY DRIVER

7-2-1 : SAFE AND PROPER LOOKOUT

7-2-2 : DRIVING TO RIGHT

7-2-1 : SAFE AND PROPER LOOKOUT

A. Required: No person shall drive a motor vehicle within the corporate limits of the city in such a manner as to endanger life or property by failing to keep a safe and proper lookout for other traffic, objects or persons.

B. Penalty: Every person convicted of violating the provisions of this section is guilty of a Class C misdemeanor and shall be subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 10.08.010 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-2-1)

7-2-2 : DRIVING TO RIGHT

A. Required: The driver of a motor vehicle traveling upon roadways within the corporate limits of the city shall hold such motor vehicle under control and as near the right-hand edge of the roadway as reasonably possible.

B. Penalty: Any person violating the provisions of this section is guilty of a Class C misdemeanor and shall be subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 10.08.020 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-2-2)

7-3 : STOPPING, STANDING AND PARKING

7-3-1 : PROHIBITED PARKING

7-3-2 : BLOCKING TRAVELED ROADWAY

7-3-3 : MOVING VEHICLE INTO PROHIBITED AREA

7-3-4 : WINTER PARKING REGULATIONS

7-3-5 : DISPLAYING VEHICLES FOR SALE

7-3-6 : IMPOUNDMENT; FEE

7-3-7 : PARKING UNATTACHED TRAILERS PROHIBITED

7-3-8 : PENALTY

ARTICLE A: COMMERCIAL VEHICLES

ARTICLE B: RECREATIONAL VEHICLES

7-3-1: PROHIBITED PARKING

It is unlawful for the operator of any vehicle to stop, stand or park such vehicle in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device:

- A. On a sidewalk;
- B. In front of a public or private driveway;
- C. Within an intersection;
- D. Within five feet (5') of a fire hydrant;
- E. Within twenty feet (20') of a crosswalk at an intersection;

- F. On a crosswalk;
- G. Within thirty feet (30') upon the approach of any flashing beacon, stop sign or traffic control signal location at the side of a roadway;
- H. Between a safety zone and the adjacent curb or within thirty feet (30') of points on the curb immediately opposite ends of a safety zone, unless the chief of police indicates a different length by signs or markings;
- I. Within twenty feet (20') of the driveway entrance to any fire station and on the side of a street immediately opposite the entrance to any fire station, within seventy-five feet (75') of such entrance when properly signposted;
- J. Alongside or opposite any street excavation or obstruction when standing, stopping or parking would obstruct traffic;
- K. On the roadway side of any vehicle stopped or parked at the edge of a street or at the curb of a street;
- L. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
- M. At any place where official signs prohibit stopping, standing or parking.

HISTORY

Adopted by Ord. 1987 Code § 10.16.010 on 1/1/1987

(Code 2002, § 7-3-1)

7-3-2 : BLOCKING TRAVELED ROADWAY

It is unlawful for any operator of any vehicle to stop, stand or park any vehicle upon any street, highway or alley, in such a manner or under such conditions as to leave available less than ten feet (10') of the traveled portion of the width of such roadway for the free movement of vehicular traffic, except that an operator may stop temporarily during the actual loading or unloading of passengers, or when necessary in obedience to traffic regulations, or signs or signals, or a peace officer.

HISTORY

Adopted by Ord. 1987 Code § 10.16.020 on 1/1/1987

(Code 2002, § 7-3-2)

7-3-3 : MOVING VEHICLE INTO PROHIBITED AREA

No person shall move a vehicle not lawfully under their control into any such prohibited area or away from a curb such distance as is unlawful.

HISTORY

Adopted by Ord. 1987 Code § 10.16.030 on 1/1/1987

(Code 2002, § 7-3-3)

7-3-4 : WINTER PARKING REGULATIONS

A. Definitions: As used in this section, the following terms shall have the following meanings:

PARK, PARKED AND PARKING: The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

SNOWSTORM: An event of snowfall which is anticipated to result in accumulations of snow sufficient to necessitate the removal of snow from the public streets and roadways.

VEHICLE: Any device, means or mechanism in or on which persons, goods or other items of personal property may be carried from one place to another. The term "vehicle" includes, but is not limited to, automobiles, trucks, trailers of all kinds, motorcycles, off-highway vehicles, motor homes, recreational vehicles and tractors.

B. Prohibited Parking:

1. It is unlawful for the owner of any vehicle to park their vehicle, or allow their vehicle to be parked, on any public street or roadway in the city between the hours of 12:00 midnight and 6:00 a.m. from November 15 through March 15 of each year, except for physicians or emergency vehicles in emergency situations.

2. It is unlawful for the owner of any vehicle to park their vehicle, or allow their vehicle to be parked, on any public street or roadway in the city during any snowstorm or within twenty-four (24) hours following the cessation of snow after any snowstorm.

C. Penalty: A violation of this section may be charged as a civil violation.

D. Removal: Any vehicle found parked in violation of this section shall be deemed a public nuisance and may be removed or towed away by or under the direction of the police department or the department of public works.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 7-3-4)

7-3-5 : DISPLAYING VEHICLES FOR SALE

No person shall park a vehicle, boat, trailer or other item upon or within one hundred feet (100') of any street or highway for the principal purpose of displaying such vehicle or item

for sale. Nothing contained herein shall prohibit the display of vehicles or other items for sale in residential zones where the vehicle or other item is displayed upon the owner's premises or upon a street or roadway abutting said premises. Violation of this section shall be considered an infraction.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 7-3-5)

7-3-6 : IMPOUNDMENT; FEE

Any vehicle parked upon any public street in the city at a place, in any manner, or for a length of time prohibited by any ordinance of this city, if unoccupied, may be removed and impounded by the chief of police or any police officer and a service charge in such amount as established by resolution of the city council shall be paid to the city before such vehicle is released from pound. The payment of such service fee shall not release the owner, chauffeur, driver or operator of such vehicle from any penalty imposed for violation of traffic laws or ordinances.

HISTORY

Adopted by Ord. 1987 Code § 10.16.040 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-3-6)

7-3-7 : PARKING UNATTACHED TRAILERS PROHIBITED

Except in the case of recreational vehicles as regulated by CCNO 7-3B-2, no person shall park a trailer that is not attached to a registered vehicle upon any street or highway for more than twenty-four (24) hours and no person shall park a trailer on private property not belonging to the trailer owner, whether attached or unattached, without the express consent of the property owner or the owner's authorized agent. Violation of this section shall be considered an infraction.

HISTORY

Adopted by Ord. 2011-18 on 10/11/2011

(Code 2002, § 7-3-8)

7-3-8 : PENALTY

Any person violating any of the provisions of this chapter shall be liable for a civil penalty as described in CCNO 7-1, Article A.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-3-7)

ARTICLE A: COMMERCIAL VEHICLES

7-3A-1: DEFINITIONS

7-3A-2: PROHIBITED PARKING

7-3A-3: PENALTY

7-3A-1: DEFINITIONS

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

BUS: Every motor vehicle designed for carrying more than fifteen (15) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

COMMERCIAL TRUCK: Every motor vehicle designed, used or maintained primarily for the transportation of property and whose gross weight exceeds two (2) tons.

COMMERCIAL VEHICLE: Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power, and which are primarily used for hire or compensation.

FARM TRACTOR: Every motor vehicle designed and used primarily as a farm implement, for drawing plows, mowing machines and other implements of husbandry.

PARK OR PARKING: The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

RESIDENTIAL DISTRICT: The territory contiguous to and including a street when the property on such street for a distance of three hundred feet (300') or more is in the main improved with private residences.

STREET: The entire width between the boundary line of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic, and the adjacent property customarily intended for pedestrians or the parking of vehicles, except parking lots adjacent to businesses, schools or churches.

TRAILER: Every vehicle with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle.

TRUCK TRACTOR: Every motor vehicle designed and used primarily for drawing other vehicles or trailers and not so constructed as to carry a load other than a part of the weight of the vehicle or trailer and load so drawn.

HISTORY

Adopted by Ord. 1987 Code § 10.16.090 on 1/1/1987

(Code 2002, § 7-3A-1)

7-3A-2: PROHIBITED PARKING

No person shall park any bus, farm tractor, truck tractor, trailer, commercial truck or other commercial vehicle upon any street within a residential district.

HISTORY

Adopted by Ord. 1987 Code § 10.16.100 on 1/1/1987

(Code 2002, § 7-3A-2)

7-3A-3: PENALTY

Any person violating any of the provisions of this article shall be liable for a civil penalty as described in CCNO 7-1, Article A.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-3A-3)

ARTICLE B: RECREATIONAL VEHICLES

7-3B-1: DEFINITIONS

7-3B-2: PROHIBITED PARKING

7-3B-3: PENALTY

7-3B-1: DEFINITIONS

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

PARK OR PARKING: The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

RECREATIONAL VEHICLE: Travel trailers, motor homes, enclosed campers, boats, utility trailers, and other like vehicles, trailers and facilities used primarily for recreational and utility purposes.

RESIDENTIAL DISTRICT: The property contiguous to and including a street when such property for a distance of three hundred feet (300') or more is in the main improved with private residences.

STREET: The entire width between the boundary line of every way publicly maintained when any part thereof is opened to the use of the public for purposes of vehicular traffic.

HISTORY

Adopted by Ord. 1987 Code § 10.16.120 on 1/1/1987

(Code 2002, § 7-3B-1)

7-3B-2: PROHIBITED PARKING

A. Specified: No person shall park any recreational vehicle upon any street within a residential district for a period of more than two (2) consecutive days and no more than ten (10) days total during any calendar month without a special permit from the city.

B. Removal: Any recreational vehicle parked in violation of this section shall be deemed a public nuisance and may be removed and towed away by or under the direction of the police department.

HISTORY

Adopted by Ord. 2010-18 on 11/30/2010

(Code 2002, § 7-3B-2)

7-3 B-3: PENALTY

Any person violating any of the provisions of this article shall be liable for a civil penalty as described in CCNO 7-1, Article A.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-3B-3)

7-4 : ROAD REGULATIONS

7-4-1 : SECURING LOADS

7-4-1 : SECURING LOADS

A. Required:

1. No vehicle shall be driven or moved on any street or highway within the city unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting or leaking, or otherwise escaping therefrom.

2. All materials of any kind whatsoever conveyed or hauled through or upon any public streets and/or highways of the city, shall be transported in such manner as to prevent such materials from falling from the transporting vehicles and littering such street

or highways. If necessary to prevent such littering of street or highways, the material thus transported shall be securely tied down or shall be tightly covered with heavy canvas or other suitable covering.

B. Penalty: Any person, firm or corporation violating any provisions of this section is guilty of a Class C misdemeanor and, upon conviction, shall be subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 10.20.020 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-4-1)

7-5 : OFF ROAD VEHICLE OPERATION

7-5-1 : PRIVATE STREET DEFINED

7-5-2 : PRIVATE PROPERTY RESTRICTIONS

7-5-3 : PUBLIC PROPERTY RESTRICTIONS

7-5-4 : WRITTEN PERMISSION; POSSESSION REQUIRED

7-5-5 : EXCEPTIONS

7-5-6 : RECREATIONAL VEHICLES ON WATERSHED LAND

7-5-7 : PENALTY

7-5-1 : PRIVATE STREET DEFINED

As used in this chapter, the term "private street" means a street over which private persons have an easement to travel and does not include driveways, paths or other ways over which no one has a right to travel, except by license.

HISTORY

Adopted by Ord. 1987 Code § 10.24.010 on 1/1/1987

(Code 2002, § 7-5-1)

7-5-2 : PRIVATE PROPERTY RESTRICTIONS

It is unlawful for any persons to operate any type of motor vehicle, including, but not limited to, motorcycles, trail bikes, dune buggies, motor scooters or jeeps, upon the private property of another, except a highway or private street, without first obtaining the written permission of the person in lawful possession of the property or, if the property is unoccupied, the owner of such property.

HISTORY

Adopted by Ord. 1987 Code § 10.24.020 on 1/1/1987

(Code 2002, § 7-5-2)

7-5-3 : PUBLIC PROPERTY RESTRICTIONS

- A. It is unlawful for any person to operate any type of motor vehicle, including, but not limited to, motorcycles, trail bikes, dune buggies, motor scooters or jeeps, upon any public property, except a highway or private street, without first obtaining the written permission of the public entity which is in possession of such property or, if the property is unoccupied, the public entity which owns such property.
- B. A violation of this section shall be considered a Class C misdemeanor and may be charged under U.C.A. 1953, § 41-22-12.
- C. A second violation of this section shall be considered a Class C misdemeanor.
- D. Three (3) or more violations of this section shall be considered a Class B misdemeanor.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 7-5-3)

7-5-4 : WRITTEN PERMISSION; POSSESSION REQUIRED

- A. Every person who operates any type of motor vehicle upon the private property of another or upon any public property, except a highway or private street, at all times while so operating such motor vehicle, shall maintain in their possession the written permission required by CCNO 7-5-2 and CCNO 7-5-3, except that, if the same document grants permission to two (2) or more persons, a person named in such document need not have it in their possession while another person named in the same document, riding in the same group and not more than three hundred feet (300') from such person, has such document in their possession.
- B. The first violation of this provision shall be charged as an infraction.
- C. The second violation of this provision shall be charged as a Class C misdemeanor.
- D. Three (3) or more violations of this provision shall be charged as Class B misdemeanors.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 7-5-4)

7-5-5 : EXCEPTIONS

This chapter does not prohibit the use of such property by the following:

- A. Emergency vehicles;
- B. Vehicles of commerce in the course of the conduct of normal business;
- C. Vehicles being operated on property devoted to commercial or industrial purposes where such operation is in conjunction with commercial or industrial use and where such operation is implied or expressly given by the person in possession of such property;
- D. Vehicles operated on property actually used for residential purposes and where such vehicles are there at the expressed or implied invitation of the owner or occupant;
- E. Vehicles being operated on public or private parking lots where permission to operate is implied or expressly given by the person in possession of the lot.

HISTORY

Adopted by Ord. 1987 Code § 10.24.050 on 1/1/1987

(Code 2002, § 7-5-5)

7-5-6 : RECREATIONAL VEHICLES ON WATERSHED LAND

- A. The Utah Recreation Vehicle Act, comprising U.C.A. 1953, ch. 41-22, is adopted and terms and provisions thereof made applicable to the operation of snowmobiles, all terrain and other recreation vehicles.
- B. It is a Class C misdemeanor, subject to penalty as provided in CCNO 1-4-1, for any person to violate any of the provisions of the Utah Recreation Vehicle Act so adopted, unless such violation is by such Act or other law of the city or the state declared to be a felony.

HISTORY

Adopted by Ord. 1987 Code § 10.24.060 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-5-6)

7-5-7 : PENALTY

Any person violating any provision of this chapter shall be guilty of a Class C misdemeanor and, upon conviction, shall be subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 10.24.070 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 7-5-7)

7-6 : ²⁶~~PARKING FOR DISABLED PERSONS HANDICAPPED PARKING FACILITIES~~**7-6-1 : DEFINITIONS****7-6-2 : PARKING OF APPROPRIATELY MARKED VEHICLES****7-6-3 : ABUSE OF PARKING PRIVILEGE****7-6-4 : PENALTY****7-6-1 : 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:

DISABLED PARKING: Any publicly-owned or privately-owned parking stall which is clearly marked as being restricted for disabled use only, whether that marking is a sign or logo painted in the parking area.

DISABLED PERSON: Any person who has lost, or has lost the use of, both legs, or is so severely disabled or disabled as to be unable to ambulate without the aid of a wheelchair or other mechanical device, or without causing extreme discomfort or danger to their health and medical well-being, and who drives or is transported in a motor vehicle carrying distinctive logo disabled license plates, or a transferable motor vehicle identification card displayed in the rear window of that vehicle.

HISTORY

Adopted by Ord. 1987 Code § 10.32.010 on 1/1/1987

(Code 2002, § 7-6-1)

7-6-2 : PARKING OF APPROPRIATELY MARKED VEHICLES

- A. Any disabled person shall be allowed to park a vehicle in metered parking zones and disabled parking areas, other than those available for emergency use, without charge, if such vehicle carries a distinctive logo disabled license plate or transferable identification card. Parking shall be allowed in a manner which allows access to the automobile by the disabled person.
- B. No person shall park a vehicle in a disabled parking space unless such a vehicle carries a distinctive logo disabled license plate or transferable identification card.
- C. Violation of disabled parking as set forth herein may be enforced on public property and on private property which is used or intended to be used by the public.
- D. The parking privileges granted by this section shall also apply to vehicles displaying a distinctive disabled license plate or transferable identification card issued by another state if displayed on a vehicle utilized by a disabled person.

²⁶ The word "handicapped" is changed to "disabled" throughout the chapter.

HISTORY

Adopted by Ord. 1987 Code § 10.32.020 on 1/1/1987

(Code 2002, § 7-6-2)

7-6-3 : ABUSE OF PARKING PRIVILEGE

A. Every person in whose name a vehicle is registered or licensed shall be responsible for any such parking of the vehicle in violation of this chapter. It shall be no defense to such charge that the vehicle was illegally parked by another unless it is shown that at such time the vehicle was being used without the consent of the registered owner thereof.

B. Any disabled person who abuses the rights and privileges conferred under this chapter or allows individuals who are not disabled to use those parking privileges shall be in violation of this section.

HISTORY

Adopted by Ord. 1987 Code § 10.32.030 on 1/1/1987

(Code 2002, § 7-6-3)

7-6-4 : PENALTY

Any person violating any of the provisions of this chapter shall be liable for a civil penalty as described in CCNO 7-1, Article A.

HISTORY

Adopted by Ord. 2003-12 on 5/27/2003

(Code 2002, § 7-6-4)

7-7 : OTHER STREET AND SIDEWALK USE RESTRICTIONS**ARTICLE ²⁷ C: OBSTRUCTING PUBLIC WAYS**

7-7-1 : OBSTRUCTING SIDEWALK

7-7-2 : OBSTRUCTING STREET

7-7-3 : HORNS AND SIGNALING DEVICES

7-7-4 : TRUCK IDLING

7-7-5 : MOTOR VEHICLE OPERATION

7-7-1 : OBSTRUCTING SIDEWALK

It is unlawful and punishable as a Class B misdemeanor, upon conviction, as provided in

²⁷ I recommend the provisions of this article be moved to the streets title and placed in the recommended new article with other street and sidewalk use restrictions. **DONE**

CCNO 1-4-1, for any person to remain standing, lying or sitting on any sidewalk for a longer period than two (2) minutes in such a manner as to obstruct the free passage of foot travelers thereon, or willfully to remain standing, lying or sitting thereon in such manner for more than one minute after being requested to move by any police officer, or willfully to remain on the sidewalk in front of any dwelling, house or place of business in such a manner as to obstruct the free passage of any other person into or out of such dwelling, house or place of business.

HISTORY

Adopted by Ord. 1987 Code § 9.74.010 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2C-1)

7-7-2 : OBSTRUCTING STREET

It is unlawful and punishable as a Class B misdemeanor, upon conviction, as provided in CCNO 1-4-1, for any person to remain standing, lying or sitting on the street or highway in such a manner as to obstruct the free passage of vehicular or pedestrian traffic thereon, or willfully to remain on such street or highway in such a manner as to obstruct the free passage of any persons or vehicle into or out of any property abutting upon such street or highway or any property having access to such street or highway.

HISTORY

Adopted by Ord. 1987 Code § 9.74.020 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 6-2C-2)

~~ARTICLE A: ADMINISTRATION AND ENFORCEMENT~~

7-7-3: ²⁸HORNS AND SIGNALING DEVICES

No person shall, at any time, sound any horn or audible signal device on any automobile, motorcycle, bus or other vehicle, except as a danger signal or traffic warning as provided under the Utah Motor Vehicle Act; create by means of any such signaling device any unreasonably loud or harsh sound; or sound any such device for an unnecessary or unreasonable period of time.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 5-3-1)

7-7-4 : ²⁹TRUCK IDLING

No person shall operate an engine of any standing motor vehicle with a weight in excess of ten thousand (10,000) pounds manufacturer's gross vehicle weight (GVA) for a period in excess of ten (10) minutes when such vehicle is parked on a residential premises, on a premises next to a residential premises, or on a public street next to a residential premises; provided, however, that vehicles confined and operated within an enclosed structure, or vehicles being used directly in construction activity or the operation of construction equipment, shall not be subject to the provisions of this section.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 5-3-2)

7-7-5 : ³⁰MOTOR VEHICLE OPERATION

No person shall operate or cause to be operated any motor vehicle unless the exhaust system of the vehicle is:

- A. Free from defects that affect sound reduction;
- B. Equipped with a muffler or other noise dissipative device; or
- C. Not equipped with any cutout, bypass or similar device.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010

(Code 2002, § 5-3-3)

7-8 : ³¹RESTRICTED VEHICLES

7-8-1 : USE OF ROADS BY RESTRICTED VEHICLES

7-8-1 : USE OF ROADS BY RESTRICTED VEHICLES

A. All restricted vehicles shall be prohibited from using any road within the city limits except for:

1. Washington Boulevard (400 East) - between 2600 North and 1500 North.
-

2. 2700 North - between Washington Boulevard (400 East) and 300 West.
- B. Restricted vehicles which are making local deliveries in the city municipal limits are not subject to these restrictions.
- C. Any restricted vehicle which violates this section is guilty of a Class B misdemeanor, subject to the penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 2016-30 on 9/20/2016

(Code 2002, § 8-7-1)

PROOFS

8: PUBLIC WAYS AND PROPERTY

8-1 : DEFINITIONS

8-2 : EXCAVATIONS AND STREET CUTS

8-3 : STREET AND SIDEWALK USE AND MAINTENANCE ~~PROHIBITED STRUCTURES~~

8-4 : TREES AND OTHER LANDSCAPE VEGETATION

8-5 : PARKS

8-6 : TELECOMMUNICATIONS; USE OF RIGHTS-OF-WAY

8-1 : DEFINITIONS

8-1-1 : DEFINITIONS, EXCAVATIONS AND STREET CUTS

8-1-2 : DEFINITIONS, TREES

8-1-3 : DEFINITIONS, TELECOMMUNICATIONS; USE OF RIGHT-OF-WAY

8-1-1 : ³²DEFINITIONS, EXCAVATIONS AND STREET CUTS

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

~~APPLICANT: Any person who makes application for a permit.~~

BUILDING OFFICIAL: The building official, or their authorized representative.

BUSINESS: Any place in the city in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.

~~CITY: North Ogden City, a municipal corporation of the state of Utah.~~

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

ENGINEERING REGULATIONS, REGULATIONS, SPECIFICATIONS AND/OR DESIGN STANDARDS: The latest published version of the city public works standards, as supplemented and updated by engineering regulations, specifications, design standards or criteria published or adopted by the city.

FAILURE: A work site restoration which fails to meet building official specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or other surface irregularities.

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

³² I recommend that definitions from throughout the title be collected in a single definitions section. CITY: Agree. **DONE**

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

PERMIT HOLDER: Any person that has been issued a permit and thereby has agreed to fulfill the requirements of this title.

~~**PERSON:** Means and includes any natural person, partnership, firm, association, provider, corporation, company, organization or entity of any kind.~~

PIPE DRIVEWAY: A driveway approach that uses a pipe or other means to bridge the gutter.

PRIVATE DRAIN LINE: A pipe installed solely for the transmission of water collected or generated on private property, such as drainage, spring water or stormwater, or condensate into the public drainage system.

PROPERTY OWNER: Persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.

PROVIDER: An operator, infrastructure provider, reseller, system lessee or public utility company.

PUBLIC UTILITY COMPANY: Any company subject to the jurisdiction of the state public service commission, or any mutual corporation providing gas, electricity, water, telephone or other utility product or services for use by the general public.

PUBLIC WAY: Means and includes all public rights-of-way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys and public drainageways. The term "public way" does not, however, include utility easements not within public ways of the city.

RESELLER: Refers to any person that provides 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 and does not install any system in the rights-of-way.

RESIDENT: The persons currently making their home at a particular dwelling.

RESTRICTED VEHICLE: Any vehicle designed for the commercial delivery of gravel, earth, aggregate, asphalt, concrete, or other similar material which has a gross vehicle weight rating (GVWR) of thirty thousand (30,000) pounds or more.

STORM DRAIN: A dedicated pipe, conduit, waterway or ditch installed in a right-of-way or easement for the transmission of stormwater and drainage water. The term "storm drain" does not include private drain lines.

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

TELECOMMUNICATIONS SYSTEM OR 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 construction, ownership, operation, use or maintenance of a telecommunications system.

WORK SITE RESTORATION: Means and includes the restoring of the original ground or paved hard surface area to comply with engineering regulations, and includes, but is not limited to, repair, cleanup, backfilling, compaction and stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-1)

8-1-2 : DEFINITIONS, TREES

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

ARBORICULTURAL: Having to do with the accepted practices of tree care.

CITY FORESTER: A person designated in writing by the city administrator to manage the city urban tree forestry program.

CITY STREET RIGHT-OF-WAY: Any city-owned roadway, street, lane or right-of-way used or available for public transportation.

FLUSH: Cutting within the branch bark collar or ridge of a branch when pruning.

PARK: A parcel of land dedicated to the public or owned by the city, either in fee simple or absolute, or implied or expressly dedicated to the public for the primary purpose of recreation and/or green space.

PARK TREE: Any tree or shrub or other woody vegetation on park property.

PRIVATE TREE: Any tree, shrub, or other woody vegetation not on public property.

PROPERTY OWNER: The record owner or contract purchaser of any parcel of land.

PROTECTIVE GROUND COVER: A landscaping technique which utilizes a variation of plants, grass, shrubs, trees, mulch, underlayment, rocks, and other similar natural and manmade components as determined by the building official, which are used to control weeds, erosion, dust, runoff, and other nuisances from harming neighboring property owners. Protective ground cover shall be a conscious effort through planning, designing, and cultivation of the property. Allowing the natural growth of any plant variety which

takes root does not qualify as protective ground cover. Natural landscaping is allowed when care is taken to remove nonnative species of plants. It shall be unlawful for the owner or occupant of any real property to allow to grow on such property any noxious weeds or other noxious vegetable growth as determined by the Utah Noxious Weed Act or Weber County health department to be especially injurious to public health, crops, livestock, land, or other property.

PUBLIC PROPERTY: Property owned by the city, either in fee simple or absolute, or implied or expressly dedicated to the public for the present or future use, for purposes of pedestrian, or vehicular traffic, or for public easements.

PUBLIC TREE: Any tree, shrub, or other woody vegetation on public property.

SHRUB: A perennial, multiple stemmed woody plant often formed by a number of vertical or semi-upright branches arising from close or at ground level and whose height at maturity is usually between three feet (3') and fifteen feet (15').

STREET TREE: Any tree, shrub, or other woody vegetation on lands with city street rights-of-way.

TOPPING: Lopping, rounding over or leaving long branch stubs when pruning; not pruning to an auxiliary branch.

TREE: A woody perennial plant, generally with one main stem and usually over ten feet (10') tall at maturity.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008
Amended by Ord. 2014-08 on 4/22/2014

(Code 2002, § 8-5-3)

8-1-3 : DEFINITIONS, TELECOMMUNICATIONS; USE OF RIGHT-OF-WAY

For purposes of this title, the following terms, phrases, words and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. The terms "shall" and "will" are mandatory, and the term "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICATION: The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights-of-way of all, or a part, of the city. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the 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 by a provider; and any other matter pertaining to a proposed system or service.

~~CITY: North Ogden City, Utah.~~

COMPLETION DATE: The date that a provider begins providing services to customers in the 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 OR 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 "controlling person"). Control or controlling interest, as used herein, may be held simultaneously by more than one person or group of persons.

FCC: The federal communications commission or any successor thereto.

FRANCHISE: The rights and obligations extended by the 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. Any such authorization, in whatever form granted, shall not mean or include:

- A. Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city;
- B. 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 or a private entity, or for excavating or performing other work in or along the rights-of-way.

FRANCHISE AGREEMENT: A contract entered into in accordance with the provisions of this title between the city and a franchisee that sets forth, subject to this title, 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 U.C.A. 1953, ch. 11-26, as amended.

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.

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.

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

PSC: The public service commission or any successor thereto.

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

PERSONAL WIRELESS SERVICES FACILITIES: Has the same meaning provided in section 704 of the Act (47 USC 332(c)(7)(c)), which includes what is commonly known as cellular and PSC 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.

RESELLER: Refers to 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: The surface of and the space above and below any public street, sidewalk, alley or other public way of any type whatsoever, now or hereafter existing as such within the city.

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

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 SERVICE OR SERVICES: Any telecommunications services provided by a provider within the city that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the city, except that these terms do not include "cable service," as that term is 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 OR 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. Telecommunications system or systems also includes an open video system.

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

HISTORY

Adopted by Ord. 1987 Code § 12.20.040 on 1/1/1987

(Code 2002, § 8-2-2)

8-2 : EXCAVATIONS AND STREET CUTS

8-2-1 : PERMIT REQUIRED FOR WORK IN PUBLIC WAYS; BASIS FOR ISSUANCE

8-2-2 : APPLICATION FOR PERMIT

8-2-3 : EMERGENCY WORK EXCEPTION

8-2-4 : FEE FOR PERMIT

8-2-5 : CONTENTS OF PERMIT; DURATION; EXTENSIONS

8-2-6 : TRANSFER, ASSIGNMENT PROHIBITED

8-2-7 : COMPLIANCE; SITE PERMIT HOLDER IDENTIFICATION; BARRICADES

8-2-8 : OTHER HIGHWAY PERMITS

8-2-9 : RELOCATION OF STRUCTURES IN PUBLIC WAYS

8-2-10 : IMPACT ON EXISTING IMPROVEMENTS

8-2-11 : RESTORATION OF PUBLIC PROPERTY

8-2-12 : INSURANCE REQUIREMENTS

8-2-13 : BOND; WHEN REQUIRED, CONDITIONS, WARRANTY

8-2-14 : HOLD HARMLESS AGREEMENT; LIMITATIONS ON CITY LIABILITY

8-2-15 : WORK WITHOUT PERMIT

8-2-16 : FAILURE TO COMPLY; DEFAULT IN PERFORMANCE

8-2-17 : FAILURE TO CONFORM TO DESIGN STANDARDS

8-2-18 : APPEAL OF SUSPENSION, REVOCATION OR STOP WORK ORDER

8-2-19 : TAMPERING WITH PROTECTIVE BARRICADES AND BARRIERS

8-2-20 : CONFLICT WITH GOVERNING PROVISIONS

8-2-21 : PENALTY

8-2-1 : PERMIT REQUIRED FOR WORK IN PUBLIC WAYS; BASIS FOR ISSUANCE

Any person desiring to perform work of any kind in a public way within the city shall make application for a permit. The decision by the city to issue a permit shall include, among other factors determined by the city, the following:

A. The capacity of the public way to accommodate the facilities or structures proposed to be installed in the public way;

B. The capacity of the public way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the public way, such as electrical power, telephone, gas, sewer and water;

C. The damage or disruption, if any, of public or private facilities, improvements or landscaping previously existing in the public way;

D. The public interest in minimizing the cost and disruption of construction from numerous excavations of the public way.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-2)

8-2-2 : APPLICATION FOR PERMIT

Application for a permit shall be filed with the public works inspection department on a form or forms to be furnished by the city. Property owners and/or tenants for whom work is being done shall be responsible for obtaining the permits; provided, however, contractors may obtain the permit in the contractor's name.

A. Eligible Persons: No person shall be eligible to apply for or receive permits to do work within the public ways of the city, save and except the following:

1. Contractors licensed by the state as general contractors;
2. Providers;
3. Persons offering a service which requires occupation of the public way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or sign boards or other structures.

B. Denial Based On Past Performance: The city may deny the issuance of permits to contractors, utility companies or other permit applicants who have shown by past performance that, in the opinion of the city, they will not consistently conform to the engineering regulations, specifications, design standards or the requirements of this chapter.

C. Plans May Be Required: When necessary, in the judgment of the city engineer, to fully determine the relationship of the work proposed to existing or proposed facilities within the public ways, or to determine whether the work proposed complies with the engineering regulations, construction specifications and design standards, the building official may require the filing of engineering plans, specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

D. Commencement Unlawful Without Approval And Permit: It shall be unlawful for any person to commence work upon any public way until the city has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary in this chapter.

E. Appeal: The disapproval or denial of an application by the city may be appealed by the applicant to the city administrator by filing of a written notice of appeal within ten (10) days of the action of the city. The city manager shall hear such appeal, if written request therefor is timely filed as soon as practicable, and render their decision within two (2) weeks following notice of such appeal.

F. Limited Authority Of City Engineer: In approving or disapproving work within any public way, or permits therefor, in the inspection of such work; in reviewing plans, sketches or specifications; and generally in the exercise of the authority conferred upon them by this chapter, the City Engineer shall act in such manner as to preserve and protect the public way and the use thereof, but shall have no authority to govern the actions or inaction of permit holders and applicants or other persons which have no relationship to the use, preservation or protection of the public way.

G. Routine Maintenance Work By Government Employees: It shall be lawful for a city, county, state, federal or other government employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefor.

H. Hand Digging Excavations: A permit is not required from the city for hand digging excavations for installation or repair of sprinkler systems and landscaping within the nonpaved areas of the public way. However, conformance to all city specifications is required.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-3)

8-2-3 : EMERGENCY WORK EXCEPTION

A. Authorized: Any person maintaining pipes, lines or facilities in the public 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.

B. Business Hours: In the event that emergency work is commenced on or within any public way of the city during regular business hours, the city shall be notified within one-half-hour (30 minutes) 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 city engineering regulations, the manual on uniform traffic control devices and other applicable laws, regulations or generally recognized practices in the industry.

C. Other Than Business Hours: Any person commencing emergency work in the public way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which city offices are open for business after such work is commenced. A permit for such

emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the building official.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-4)

8-2-4 : FEE FOR PERMIT

A. Required: permit holder The applicant shall pay the fee for the permit as outlined in the consolidated fee schedule as posted on the city website. Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the public way or diminution of the useful life of the public way, and other costs to the city associated with the work to be done under the permit. All costs shall be assessed in a nondiscriminatory manner.

B. Waiver: The City Administrator/Manager may waive permit fees or penalties, or a portion thereof, provided for in this chapter, when they determines that such permit fee or penalty:

1. Pertains to construction or rehabilitation of housing for persons whose income is below the median income level for the city; or
2. Pertains to an encroachment on the public way involving a beautification project which furthers specific goals and objectives set forth in the city strategic plan, master plans or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping.

C. Additional Charges: Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection and work site restoration associated with each undertaking may be charged by the city to each permit holder, in addition to the permit fee.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-5)

8-2-5 : CONTENTS OF PERMIT; DURATION; EXTENSIONS

A. Starting And Estimated Completion Dates:

1. Each permit application shall state the starting date and estimated completion date. Work shall be completed within five (5) days from the starting date or as determined by the building official. Such determination shall be based upon factors reasonably related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed, the following:

- a. The scope of work to be performed under the permit;
 - b. Maintaining the safe and effective flow of pedestrian and vehicular traffic on the public way affected by the work;
 - c. Protecting the existing improvements to the public way impacted by the work;
 - d. The season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the public way by the public;
 - e. Use of the public way for extraordinary events anticipated by the city.
2. The city shall be notified by the permit holder of commencement of the work within twenty-four (24) hours prior to commencing work. The permit shall be valid for the time period specified in the permit. The building official shall inspect the work and the work site restoration.
- B. Extension: If the work is not completed during such period, prior to the expiration of the permit, the permit holder may apply to the building official for an additional permit or an extension, which may be granted by the city for good cause shown.
- C. Length Of Extension: The length of the extension requested by the permit holder shall be subject to the approval of the city. No extension shall be made that allows work to be completed in the winter period without payment of winter fees.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-6)

8-2-6 : TRANSFER, ASSIGNMENT PROHIBITED

Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permit holder from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit 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.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-7)

8-2-7 : COMPLIANCE; SITE PERMIT HOLDER PERMIT HOLDER IDENTIFICATION; BARRICADES

- A. Compliance With Specifications: The work performed in the public way shall conform to the requirements of the engineering regulations, design standards, construction specifications and traffic control regulations of the city, copies of which shall be available from the building official, kept on file in the office of the city recorder and be open to public inspection during office hours.
- B. Site Permit holder Permit holder Identification: Where a job site is left unattended, before completion of the work, signage with minimum two-inch (2") high letters shall be attached to a barricade or otherwise posted at the site, indicating the permit holder permit holder's name or company name, telephone number and after hours telephone number.
- C. Barricades: All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the public way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permit holder permit holder's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the city; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the city. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The police department and fire department shall be notified at least twenty-four (24) hours in advance of any planned excavation requiring street closure or traffic detour.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-8)

8-2-8 : OTHER HIGHWAY PERMITS

- A. Applicability: Holders of permits for work on highways owned or under the jurisdiction of other government entities, but located within the city limits, shall not be required to obtain permits from the city under the provisions of this chapter, unless the work extends beyond the back side of the curb, or beyond any other designated jurisdictional boundary. ~~No Any~~ city permit shall ~~not~~ be construed to permit or allow work on a county road or a state highway within the city without an applicable county or state permit.
- B. Authority Of Building Official: The building official, in their discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the permit holder permit holder of said governmental entity for the protection of traffic and safety of persons and property. Notwithstanding the foregoing, nothing in this chapter shall be construed to impose any duty, implied or express, on the city or its employees, officers, agents or assigns, relative to the protection of traffic and safety of persons or property, arising out of the issuance of any permit issued by government entities other than the city, or arising out of any work performed on any public way owned or within the jurisdiction of the city.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-9)

8-2-9 : RELOCATION OF STRUCTURES IN PUBLIC WAYS

A. Authority: The building official may direct any person owning or maintaining facilities or structures in the public way to alter, modify or relocate such facilities or structures as the building official may require. Sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the city, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the city. In the event that such person refuses or neglects to conform to the directive of the city, the city shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the city all costs incurred by the city in connection with such work performed by the city, including also design, engineering, construction, materials, insurance, court costs and attorney fees.

B. Conditions: Any directive by the building official shall be based upon any of the following:

1. The facility or structure was installed, erected or is being maintained contrary to law, or determined by the building official to be structurally unsound or defective;
2. The facility or structure constitutes a "nuisance," as that term is defined under state statute;
3. The permit under which the facility or structure was installed has expired or has been revoked;
4. The public way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or
5. The grades or lines of the public way are to be altered or changed.

C. Failure To Comply: Any person owning or maintaining facilities or structures in the public way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the building official shall be guilty of a Class B misdemeanor, subject to penalty as provided in CCNO 1-4-1. All costs of alteration, modification or relocation shall be borne by the person owning or maintaining the facilities or structures involved.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 8-1-10)

8-2-10 : IMPACT ON EXISTING IMPROVEMENTS

A. Temporary Sidewalk Or Curb Ramp: If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with city standards for such.

B. Temporary Gravel Surface: Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.

C. Disturbance Of Property:

1. At any time a permit holder disturbs the yard, residence or the real or personal property of a private property owner or the city, such permit holder shall ensure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.

2. The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the permit holder. Further, a permit holder shall reimburse a property owner or the city for any actual damage caused by the permit holder, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this subsection shall require the permit holder to pay a subscriber or private property owner when that subscriber or private property owner requests that the permit holder remove, replace or relocate improvements associated with the service provided by the permit holder to the property owner and when the permit holder exercises due care in the performance of that service, or when the subscriber or private property owner provided false information to the permit holder on which the permit holder relied to its detriment.

D. Included Acts: Examples of types of acts specifically included in this section are the following:

1. Removal of sod, lawn, shrubbery, flowers, trees, driveways or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other appurtenances of the permit holder;

2. Installation or removal of equipment or other appurtenances of the permit holder's system within a private property owner's property or residence which requires drilling, excavating, plastering or the like on the part of the permit holder;

3. Temporarily relocating or moving a piece of personal property or a fixture of a private property owner (such as a motor vehicle, fence, air conditioning unit, heating unit, or the like) in order to perform some sort of construction, maintenance or repair by the permit holder; or

4. Permanently removing a permit holder's equipment or other appurtenances due to the revocation, termination or nonrenewal of the franchise (if applicable).

E. Interruption Of Water Flow: Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the city engineer prior to the blockage of the channel.

F. Applicable To Subcontractor Or Independent Contractor: The requirements imposed upon the permit holder extend to any subcontractor or independent contractor that the permit holder might employ to perform the tasks pursuant to the permit.

G. Exception To Applicability: The requirements of this section shall not apply to the removal by a permit holder of a permanent structure placed by a property owner in a public way, unless such property owner has received prior written permission from the city granting the property owner the right to install a permanent structure on a public way, and such written permission has been recorded in the office of the county recorder.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-11)

8-2-11 : RESTORATION OF PUBLIC PROPERTY

A. Required: The permit holder shall, at the permit holder's own expense, restore the surface of any public way to its original condition and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall conform to the engineering regulations, design standards and specifications promulgated by the city and shall be accomplished within the time limits set forth in the permit, unless the department grants additional time in writing.

B. Restoration By City: At the permit holder's option, the permit holder doing the actual excavation work may request that the city restore the surface to its original condition. The fee for such resurfacing shall be determined by the building official in accordance with the city's reasonable costs for such work and shall be charged to the person, firm or corporation making the excavation. The city, prior to the release of the bond, shall receive payment for said work.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-12)

8-2-12 : INSURANCE REQUIREMENTS

A. Minimum Required By State: All contractors shall have at least the minimum

insurance required by the state before a permit is issued. The applicant shall furnish to the city evidence of the required insurance.

B. **Property Owners:** A property owner performing work adjacent to their residence may submit proof of the homeowner's insurance policy in lieu of the insurance requirements of this section.

C. **Public Utility Company:** A public utility company provider may be relieved of the obligation of submitting certificates of insurance under the following circumstances: If such company shall submit satisfactory evidence in advance that:

1. Such company is insured in the amounts set forth in this chapter or has complied with state requirements to become self-insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and
2. Said coverage provides to the city the same scope of coverage that would otherwise be provided by a separate policy as required by this chapter; or
3. The work to be performed under the permit issued to the applicant is to be performed by the city, in which case insurance requirements shall be negotiated between the city and the applicant by separate agreement.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-13)

8-2-13 : BOND; WHEN REQUIRED, CONDITIONS, WARRANTY

A. **Type, Amount Of Bond:** Except as noted in this chapter, each applicant, before being issued a permit, shall provide the city with an acceptable security (this may include a corporate surety bond, cash bond or letter of credit, as determined by the city) in the amount to be approved by the city to guarantee faithful performance of the work authorized by a permit granted pursuant to this chapter. The amount of the security required may be increased or decreased at the discretion of the building official whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of security otherwise required under this chapter. The form of the security and the entity issuing the security shall be subject to the approval of the city attorney. With the exception of public utilities franchised by the city and having specialized equipment and experience in resurfacing, all contractors shall at a minimum, provide a financial or payment performance bond approved by the city in the sum of two thousand dollars (\$2,000.00). In lieu of submitting a performance bond, the contractor may deposit with the city a minimum resurfacing deposit of three hundred dollars (\$300.00) for each excavation permit. The city shall hold this deposit or guarantee bond for a period of twenty-four (24) months as surety against any defects or workmanship.

B. **Public Utilities:** Public utilities franchised by the city shall not be required to file any security if such requirement is expressly waived in the franchise documents.

C. Conditions: The security required by this section shall be conditioned as follows:

1. The permit holder shall fully comply with the requirements of city ordinances and regulations, specifications and standards promulgated by the city relative to work in the public way, and respond to the city in damages for failure to conform therewith;
2. After work is commenced, the permit holder shall proceed with diligence and expedition and shall promptly complete such work and restore the public way to construction specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;
3. The permit holder shall guarantee the materials and workmanship for a period of two (2) years from completion of such work, with reasonable wear and tear excepted; and
4. Unless authorized by the building official on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within three (3) calendar days, and within seven (7) calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to engineering regulations. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the permit holder shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-14)

8-2-14 : HOLD HARMLESS AGREEMENT; LIMITATIONS ON CITY LIABILITY

- A. The permit holder agrees to save the city, its officers, employees and agents harmless from any and all costs, damages and liabilities, which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this chapter shall constitute such an agreement by the permit holder to this section.
- B. This chapter shall neither be construed as imposing upon the city, its officers, employees and agents, any liability or responsibility for damages to any person injured by or by reason of the performance of any work within the public way, or under a permit issued pursuant to this chapter; nor shall the city, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-15)

8-2-15 : WORK WITHOUT PERMIT

- A. Stop Work Order: A stop work order may be issued by the city directed to any person or persons doing or causing any work to be done in the public way without a permit.
- B. Fee: Any person found to be doing work in the public way without having obtained a permit, as provided in this chapter, shall be required to pay a permit fee equal to two (2) times the normal permit fee. For replacement work, where a fee is not normally charged, the normal permit fee for new construction shall apply.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-16)

8-2-16 : FAILURE TO COMPLY; DEFAULT IN PERFORMANCE

- A. Violations: Any permit may be revoked or suspended and a stop work order issued by the building official, after notice to the permit holder for:
1. Violation of any condition of the permit, the bond, or of any provision of this chapter;
 2. Violation of any provision of any other ordinance of the city or law relating to the work; or
 3. Existence of any condition or the doing of any act that does constitute, may constitute, or cause a condition endangering life or property.
- B. Immediate Effect: A suspension or revocation by the building official, and a stop work order, shall take effect immediately upon entry thereof by the building official and notice to the person performing the work in the public way. Notice to the person performing the work shall be accomplished when the building official has posted a stop work order at the location of the work and written notice has been mailed, return receipt requested, to the address indicated by the permit holder on the permit.
- C. Notice Of Default: Whenever the building official finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the building official to be reasonably necessary for the completion of the work.
- D. Performance By City: In the event that the surety (or principal), within a

reasonable time following the giving of such notice (taking into consideration the necessities of the situation, the nature of the work, the requirements of public safety and for the protection of persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the city for the cost of doing the work, as set forth in the notice, the city may perform the work, at the discretion of the building official, with city forces or contract forces, or both, and suit may be commenced by the city attorney against the contractor and bonding company and such other persons as may be liable, to recover the entire amount due to the city, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-17)

8-2-17 : FAILURE TO CONFORM TO DESIGN STANDARDS

For failure to conform to the design standards and regulations, the city may:

- A. Suspend or revoke the permit;
- B. Issue a stop work order;
- C. Order removal and replacement of faulty work;
- D. Require an extended warranty period; and/or
- E. Negotiate a cash settlement to be applied toward future maintenance costs.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-18)

8-2-18 : APPEAL OF SUSPENSION, REVOCATION OR STOP WORK ORDER

Any suspension, revocation or stop work order by the building official may be appealed by the permit holder to the city administrator by filing a written notice of appeal within ten (10) days of the action of the building official. The city administrator shall hear such appeal, if written request therefor is timely filed, as soon as practicable, and render their decision within a reasonable time following filing of notice of appeal.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-19)

8-2-19 : TAMPERING WITH PROTECTIVE BARRICADES AND BARRIERS

It shall be unlawful for any person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-20)

8-2-20 : CONFLICT WITH GOVERNING PROVISIONS

Should there be a conflict between the provisions of this chapter and the provisions of any other ordinance, agreement, franchise or other document governing the excavation of a public way, the more restrictive provisions of the aforesaid documents shall apply.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

(Code 2002, § 8-1-21)

8-2-21 : PENALTY

Unless otherwise specified in this chapter, a violation of any provision of this chapter, or failure to comply with an order of suspension, revocation or stop work, shall be a Class B misdemeanor, subject to penalty as provided in CCNO 1-4-1. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this chapter.

HISTORY

Adopted by Ord. 2004-06 on 5/11/2004

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 8-1-22)

8-3 : ³³STREET AND SIDEWALK USE AND MAINTENANCE PROHIBITED STRUCTURES

~~8-3-1 : OBSTRUCTION PROHIBITED-STREET DEFINED~~

~~8-3-2 : SNOW AND ICE REMOVAL~~~~8-3-3 : PENALTY~~**~~8-3-1 : OBSTRUCTION PROHIBITED STREET DEFINED~~**

A. Definitions: The term "street" is defined as any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made such in an action for the partition of real property, and includes the entire area within the right-of-way.

HISTORY

Adopted by Ord. 1987 Code § 12.06.010 on 1/1/1987

(Code 2002, § 8-3-1)

~~8-3-2 : OBSTRUCTION PROHIBITED~~

B. Obstruction Prohibited: No pole, pipeline, conduit, sewer, ditch, culvert, permanent sign, fence, or any other structure or object of any kind or character, shall be placed, constructed or maintained upon or within any street except as permitted by, and in accordance with, ordinances or regulations authorizing the placement of such structures.

HISTORY

Adopted by Ord. 1987 Code § 12.06.020 on 1/1/1987

(Code 2002, § 8-3-2)

~~8-3-3 : PENALTY~~

C. Penalty: Any person who violates the provisions of this section shall be guilty of a Class B misdemeanor and shall be subject to penalty as provided in CCNO 1-4-1.

HISTORY

Adopted by Ord. 1987 Code § 12.06.030, 12.06.020, 12.06.010 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 8-3-1--8-3-3)

~~8-4 :³⁴ SNOW AND ICE REMOVAL~~~~8-4-1 : REMOVAL FROM SIDEWALK~~~~8-4-2 : DISCHARGING UPON ABUTTING STREET OR SIDEWALK~~**~~8-4-1 : REMOVAL FROM SIDEWALK~~**

8-3-2: SNOW AND ICE REMOVAL

A. Required: It is unlawful for any person, firm or corporation owning, having charge of, having control of, or occupying any property, building or lot, part of lot, land or real estate of any kind abutting on any public street in the city to fail, neglect or refuse to remove promptly and effectively all snow and ice from the sidewalk in front of such property. In case of any such failure, refusal or neglect, the public works director may cause the removal of such snow and/or ice and charge the cost thereof to the person so owning, having charge of, having control of, or occupying such property.

~~2. — Penalty: Any person violating any provision of this section is guilty of a Class B misdemeanor and, upon conviction, shall be subject to penalty as provided in CCNO 1-4-1.~~

HISTORY

~~Adopted by Ord. 1987 Code § 12.08.010 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006~~

~~(Code 2002, § 8-4-1)~~

~~8-4-2 : DISCHARGING UPON ABUTTING STREET OR SIDEWALK~~

B. Discharge Upon Abutting Street Or Sidewalk:

1. Prohibited: It is unlawful for any person owning, occupying or having control of any premises to suffer, cause or permit water, snow or ice which has accumulated on such premises, regardless of the source, to be discharged upon the sidewalk or street abutting such premises.

2. Penalty: Any person violating any provision of subsection A of this section is guilty of a Class B misdemeanor and shall be subject to penalty as provided in CCNO 1-4-1.

HISTORY

~~Adopted by Ord. 1987 Code § 12.08.020, 12.08.010 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006~~

~~(Code 2002, § 8-4-1--8-4-2)~~

8-4 : TREES AND OTHER LANDSCAPE VEGETATION

8-4-1 : PURPOSE

8-4-2 : TREE BOARD

8-4-3 : PUBLIC TREES

8-4-4 : PRIVATE TREES

8-4-5 : CITY AUTHORITY

8-4-6 : LICENSING OF PRIVATE TREE CARE FIRMS

8-4-7 : ENFORCEMENT

~~8-5-1 : TITLE~~

~~This chapter shall be known as the NORTH OGDEN TREE ORDINANCE.~~

HISTORY

~~Adopted by Ord. 2008-01 on 1/8/2008~~

~~(Code 2002, § 8-5-1)~~

8-4-1 : PURPOSE

The purpose of this chapter is to establish policies, regulations, and standards necessary to ensure that the city will continue to realize the benefits provided by its urban forest. The provisions of this chapter are enacted to establish the tree board as part of the parks and beautification committee; provide guidance to the tree board; establish requirements of tree care personnel working on public trees; coordinate maintenance of public trees; promote education for all citizens on proper tree care practices and encourage tree diversity; and nurture community participation in tree care and planting.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008

(Code 2002, § 8-5-2)

8-4-2 : TREE BOARD

The city parks supervisor and public works director will function in addition as the city tree board. The city tree board will be noted as the tree board in this chapter. Their additional function, duty and authority of the city tree board is limited by this chapter.

- A. The tree board shall draft and recommend necessary amendments to this chapter ~~the tree ordinance~~.
- B. The tree board shall create, draft, and recommend the North Ogden City Tree Specifications Manual, which will have guidelines for tree selection, planting, maintenance, and removal of trees in the city public areas. The board will present the manual to the mayor and city council, for approval by resolution. The tree board will review the Tree Specifications Manual annually.
- C. The board may assist the city as needed with fundraising, Arbor Day celebrations, and educational programs and materials. The board may also assist the city with preparing a community forestry plan.
- D. The board will keep the council apprised of its activities.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008

(Code 2002, § 8-5-4)

8-4-3 : PUBLIC TREES

A. Duties Of Adjacent Property Owner; Planting And Removal:

1. No person shall plant or remove trees or other plants in or upon parking strips or public grounds without first obtaining an encroachment permit from the city.
2. A condition of the encroachment permit shall be the acceptance by the permit holder of responsibility for the repair and replacement of any damage to sprinkling systems or adjacent property caused during the work under the permit.
3. No tree shall be planted in city rights-of-way except of the species recommended in the Trees and Park Strips Guide, unless in writing approved by the parks and recreation department or approved by the planning commission as part of a streetscape review identified in CCNO 11-10-31 and designed as per the city public works standards after receiving a recommendation from the parks and recreation department. If an existing tree is not on the current tree list, but the parks and recreation department does not consider it an immediate concern due to pests, disease, or hazard, current removal of the tree is not required.
4. No tree shall be planted so as, in the opinion of the city forester or a law enforcement officer, to cause a traffic hazard and all trees shall be planted according to the guidelines.
5. In parking strips of four and one-half feet (4 1/2') or less in width, trees must be centered when planted. In parking strips wider than four and one-half feet (4 1/2'), no tree shall be planted closer than three feet (3') from the curb.
6. Tree damage to curb and/or sidewalks will be the homeowner's responsibility for the cost of removal and/or repair.

B. Tree Maintenance: It shall be the duty of any person growing a tree within a public street right-of-way or responsible for trees growing on property abutting on public grounds supporting trees or plants to provide adequate maintenance:

1. Sufficient water, mulching, and protection from compaction or injury by vehicles or other causes.
2. Prune the public trees so as to not cause a hazard to public places or interfere with the proper lighting of public streets by the streetlights and so that the minimum clearance of any overhanging portion thereof shall be nine feet (9'). The trees shall be at least fifty feet (50') from any intersection and shall be pruned as to not block any traffic signs. See North Ogden City Tree Specifications Manual for acceptable pruning methods.
3. Treat or remove any tree or plant that has died or that is diseased or insect infested as to constitute a hazard to trees or plants in public grounds. If there is a new invasive pest or disease that is considered a great threat, the tree will be removed or treated

immediately. Stump should be ground or dug out if required by the city forester.

C. Unlawful To Abuse Public Tree:

1. Neglect, Abuse, Poison Or Mutilate: It shall be a violation of this chapter for any person to neglect, abuse, poison, or mutilate any public tree or shrub.
2. Top Or Flush Cut: It shall be a violation of this chapter to top any public tree or to flush cut any branch on public trees except in an emergency.
3. Consequence Of Violation: Violation of this chapter is a Class C misdemeanor and shall, at the discretion of the city, also subject the offender to other civil remedies available to the city for its reasonable costs to restore or replace any such damaged, neglected, abused, poisoned, mutilated, topped or flush cut public tree.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008
Amended by Ord. 2019-14 on 8/27/2019

(Code 2002, § 8-5-5)

8-4-4 : PRIVATE TREES

When the city forester shall find it necessary to order the trimming, preservation, or removal of trees or plants upon private property due to serious epidemic, disease, or pest, or hazardous conditions, which pose a threat to public safety or the welfare of the urban forest, the city forester shall serve a written order to correct the dangerous condition upon the owner, operator, occupant, or other person responsible for the tree's existence, within the time provided. The order may be served in one of the following ways:

- A. By making personal delivery of the order to the person responsible;
- B. By affixing a copy of the order to the door at the entrance of the premises in violation;
- C. By mailing a copy of the order to the last-known address of the owner of the premises, by registered mail.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008

(Code 2002, § 8-5-6)

8-4-5 : CITY AUTHORITY

- A. The city forester shall have jurisdiction and supervision over all trees, shrubbery, plants, and grassy areas planted or growing in public grounds. The powers and duties of the city forester shall be established by regulation, which powers shall include, but not be

limited to, the power to direct planting, irrigating, pruning, spraying, and removing of shade and ornamental trees and shrubbery now growing or which may hereafter be planted on any public grounds.

B. The city is authorized to do the following with respect to conditions caused by trees or shrubs on city tree planting strips, public parks or other city property:

1. Remove dead limbs or trees, or trees or limbs that have already fallen across city property.
2. Remove diseased or dying trees that are beyond reclamation; or that are a hazard as determined by the city forester.
3. Remove trees or roots directly in the way of street widening projects, new curbs and gutter or sidewalk and curb repairs.
4. Prune all trees and shrubs.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008

(Code 2002, § 8-5-7)

8-4-6 : LICENSING OF PRIVATE TREE CARE FIRMS

Any person, firm, or corporation engaged in the business of trimming or removing public trees shall carry public liability and property damage insurance in an amount to be determined by the city council and policies or certificates thereof shall be filed with the city clerk. They shall also acquire and maintain a license from the city to perform tree work on trees in the right-of-way or public locations. Said license shall be revocable for cause, including, but not limited to, failure to maintain the required insurance, and shall terminate upon its stated date of expiration. Such license may be renewed pursuant to city policies provided the applicant has fully replied with all licensing terms and conditions.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008

(Code 2002, § 8-5-8)

8-4-7 : ENFORCEMENT

A. Interference With Planting, Maintenance, And Removal: No person, firm, or corporation shall interfere with city personnel while engaged in planting, mulching, pruning, or removing any tree, shrub, or plant in any street, or public place within the city.

B. Enforcement: Any person violating any provisions of this chapter shall be punishable by a fine equal to the monetary value of the tree as assessed by a certified

arborist or tree appraiser using the guidelines established by the International Society Of Arboriculture and the degree of damage to the tree. Penalty for violation to be enforced by the city forester or code enforcement officer.

C. Resolution Of Conflicts Between Trees And Structures: Where sidewalk or curb damage due to tree roots occur, every effort shall be made to correct the problem without removing or damaging the tree. The city forester shall be responsible for developing or approving corrective measures in consultation with the city engineer. The city shall not be liable for costs incurred by a property owner for resolution of any such conflict.

D. Liability: Nothing in this chapter or within the specification manual shall be deemed to impose any liability for damages or a duty of care and maintenance upon the city or upon any of its officers or employees, nor to relieve the owner of any private property from the duty to keep the trees, shrubs, or plants upon their property or on street tree areas under the private property owner's control in a safe, healthy condition.

HISTORY

Adopted by Ord. 2008-01 on 1/8/2008

(Code 2002, § 8-5-9)

~~8-5-10: SEVERABILITY~~

~~A. — Should any part or provision of this chapter be declared by a court with competent jurisdiction to be invalid, the same shall not affect the validity of this chapter as a whole or any part thereof other than the part held to be invalid.~~

HISTORY

~~Adopted by Ord. 2008-01 on 1/8/2008~~

~~(Code 2002, § 8-5-10)~~

8-5 : PARKS

8-5-1 : APPLICABILITY OF PROVISIONS

8-5-2 : HOURS DESIGNATED

8-5-3 : PROHIBITED ACTS AND ACTIVITIES

8-5-4 : MEETINGS, PICNICS OR ENTERTAINMENT; PERMIT REQUIRED

8-5-5 : AMPHITHEATER RULES

8-5-6 : PENALTY

8-5-7 : PRIVATE PARK, PLAYGROUND OR RECREATION AREA

8-5-1 : APPLICABILITY OF PROVISIONS

The provisions of this chapter shall not be applicable to any public officer or employee while acting within the scope of their employment. The provisions of this chapter shall apply to all public parks, cemeteries and other public grounds within the corporate limits of the city.

HISTORY

Adopted by Ord. 1987 Code § 12.16.010 on 1/1/1987

(Code 2002, § 8-6-1)

8-5-2 : HOURS DESIGNATED

It is unlawful for any person, other than a peace officer on duty, or a public employee or officer in the discharge of their official duties, to be in or about any park within the corporate limits of the city after the hour of 10:00 p.m., and before the hour of 6:00 a.m. of the following day, except in connection with an organized and authorized sporting event or other city-sponsored activity. The hours referred to in this section shall be deemed to be the time then in current use at the date in question, whether the same is Mountain Standard Time or Daylight Saving Time.

HISTORY

Adopted by Ord. 1987 Code § 12.16.020 on 1/1/1987

(Code 2002, § 8-6-2)

8-5-3 : PROHIBITED ACTS AND ACTIVITIES

A. **Riding Or Driving Off Roadways:** It is unlawful for any person to ride or operate any vehicle or any bicycle or similar device, or any horse or animal, in or about any park within the corporate limits of the city, except upon roadways, or areas lawfully established for that purpose, or to play or practice golf or similar game in any such park.

B. **Trailer Parking:** It is unlawful to park or stop any trailer at any place within a park except for such time as may be reasonably required to load or unload.

C. **Sleeping In Park:** It is unlawful for any person to sleep overnight at any place in any park unless specifically permitted as part of a city-sponsored event.

D. **Hitching Horses:** It is unlawful for a person to hitch or fasten any horse or other animal to any tree, shrub, fountain, monument, lamppost or any other ornament or improvement situated in any park. This rule does not apply to equipment specifically designed for hitching horses in the equestrian area.

E. **Injuring Or Picking Grass Or Plants:** It is unlawful for any person to willfully pull any grass, pick any flower or part of any plant, or to in any way deface or injure any grass, plant, tree or shrub within any park.

F. **Alcohol; Vandalism; Animals At-Large:** It is unlawful for any person to:

1. Have in their possession or to consume any alcohol or alcoholic beverage;

2. To scratch, cut, injure or deface, or write upon any of the buildings, fences or structures;

3. To pollute any of the fountains, streams or improvements within such parks;
 4. To smoke or use any tobacco product, including electronic cigarettes, in the parks;
or
 5. For the owners or person in charge of any dog or other animal to permit such dog or other animal to run at-large within any park area not designated as an off-leash area.
- G. Firearms, Fireworks or Explosives: It is unlawful for any person to fire or discharge any firearm, firecracker, fireworks or explosives within any park.
- H. Littering: It is unlawful for any person to litter any park, or to leave or deposit any garbage, junk or refuse of any kind, other than in receptacles provided for that purpose.
- I. Posted Rules: It is unlawful for any person to disregard rules posted by the city on parks or other publicly-owned property.
- J. Penalty: Violation of this section shall be an infraction.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010
Amended by Ord. 2017-20 on 9/26/2017

(Code 2002, § 8-6-3)

8-5-4 : MEETINGS, PICNICS OR ENTERTAINMENT; PERMIT REQUIRED

It shall be unlawful for any person to hold a meeting, gathering, picnic, musical, theatrical or other entertainment in any park without first obtaining a permit therefor which shall set forth the name, address, telephone number of the person responsible therefor, the time, date, location, length of the proposed event and such other information and uniform regulation as the city shall from time to time prescribe.

HISTORY

Adopted by Ord. 1987 Code § 12.16.100 on 1/1/1987

(Code 2002, § 8-6-4)

8-5-5 : AMPHITHEATER RULES

The amphitheater will be used on a priority basis by the city during the show season as established by the parks and recreation director. Other users may reserve the amphitheater, provided all fees are paid and rules are followed. Reservation fees shall be as established in the consolidated fee schedule prior to any rental of the facility.

- A. Use Number Permitted: A maximum of not to exceed three (3) events or productions a week that require the use of any loudspeakers will be allowed at the amphitheater in a calendar week, Sunday to Saturday.

B. Sound Level: Sound broadcast from any loudspeakers at the amphitheater may not exceed a ninety (90) dBc at the park boundaries. All amplified events shall utilize the city-installed sound system unless approved by the parks and recreation director. If the city-owned sound system is unavailable, then speakers may be used which operate within the approved dBc limits.

C. End Time: All events, productions, concerts, festivals, etc., held at the amphitheater must end by 10:00 p.m. with the exception of the 4th of July fireworks and corresponding show. All loudspeakers must be turned off by this time and patrons begin exiting the facility.

D. Time of Loudspeaker Use: No loudspeakers may be used to broadcast sound at the amphitheater before 10:00 a.m. any day of the week unless authorized for city-sponsored events.

E. Outside Agreements: The city may enter into an agreement to partner with or co-sponsor with any outside agency or promoter to bring events to the amphitheater when it is deemed to be beneficial to the amphitheater and a valuable opportunity.

1. All negotiations and agreements/contracts must be finalized to be official. This includes contracts with the promoter and talent agency.

2. All fees including a per ticket fee charged by the city to the partner/promoter must be as in the consolidated fee schedule.

3. Some or all production costs, including lights, sound, talent purchase, director's costs, etc., are to be paid by the promoter or co-sponsoring agency.

4. If ticket sales are to be sold through a ticket outlet other than the current city amphitheater ticket outlet, it must be approved by the parks and recreation director and all payments for ticket sales made to the city within five (5) business days.

5. Ticket sales shall be limited to four (4) tickets per authorized park parking space.

F. Rental By Private Contractors: The amphitheater may be rented by private contractors once the city council has approved the facility for private rentals under the following conditions:

1. The city amphitheater rental agreement is signed and executed by the renter and the city parks and recreation director.

2. All rental fees are paid as per the consolidated fee schedule and are nonrefundable within two (2) months of the event.

3. All city police or Northview fire staff, as deemed necessary by the parks and recreation director, are paid for per the consolidated fee schedule.

G. Parking: All event parking must be located within an approved location as authorized by the city, and be limited to four (4) tickets per authorized park parking

space. The city is allowed to charge for parking or authorize others to charge for parking. No event parking is allowed along the southern curb of Deer Meadows Drive or the eastern curb of Barker Parkway. Homeowners in Deer Meadows Subdivision and their guests may park along the restricted curbs, provided a proper permit is displayed in the window of the vehicle, except on the 4th of July from 9:00 p.m. to 11:00 p.m. Any individual violation of this provision shall be a Class C misdemeanor subject to all associated fines, and subject to immediate towing and impoundment of the vehicle.

H. Interference With Events: It shall be a Class B Misdemeanor for any individual to:

1. Interfere with an event;
2. Obstruct patrons from attending an event;
3. Use loudspeakers within six hundred feet (600') of an event;
4. Attempt to gain admittance to a paid event without a ticket;
5. Use lighting or other visual methods to disrupt an event;
6. Interfere with a scheduled event in any way.

HISTORY

Adopted by Ord. 2010-11 on 10/12/2010
Amended by Ord. 2018-11 on 6/19/2018

(Code 2002, § 8-6-5)

8-5-6 : PENALTY

Unless otherwise specified, any person violating any provision of this chapter shall be deemed guilty of an infraction.

HISTORY

Amended by Ord. 2018-11 on 6/19/2018

(Code 2002, § 8-6-6)

8-5-7 : PRIVATE PARK, PLAYGROUND OR RECREATION AREA

In all residential zones, a private park, playground or recreation area, with or without a swimming pool, shall meet the following requirements:

A. Sanitary Facilities: Adequate restrooms and sanitary facilities shall be provided and

kept available for use by members, their families and guests, and shall be maintained in proper working order and in a clean and sanitary condition and in full compliance with the reasonable standards, rules and regulations established by the county health department.

B. Hours Of Operation: Operation or use of the recreational or other facilities provided is forbidden between the hours of 10:00 p.m. to 6:00 a.m.

C. Setback: All facilities, equipment and buildings shall be set back not less than twenty feet (20') from any property line and shall be located not less than fifty feet (50') from any main building on an adjoining lot and from any area upon which any such main building may be constructed upon said adjoining lot, if no such main building is in existence.

D. Lot Size: The minimum size of the lot or site used for such recreational or other purposes shall be one acre.

E. Lighting: Any lights used to illuminate the premises shall be installed in such manner that the light shall be suitably screened to avoid annoying illumination of lands outside said premises.

HISTORY

Adopted by Ord. 2002-05 on 4/9/2002

(Code 2002, § 11-10-14)

8-6 : ³⁶TELECOMMUNICATIONS; USE OF RIGHTS-OF-WAY

8-6-1 : FINDINGS AND INTENT; AUTHORITY

8-6-2 : ADMINISTRATION; GENERAL PROVISIONS

8-6-3 : APPLICABILITY; EXCEPTIONS

8-6-4 : FRANCHISE REQUIRED

8-6-5 : APPLICATION FOR FRANCHISE

8-6-6 : COMPENSATION, FEES AND PAYMENTS

8-6-7 : INSURANCE, RECORD REQUIREMENTS

8-6-8 : CONSTRUCTION, TECHNICAL REQUIREMENTS

8-6-9 : PRIVATE PROPERTY; OBLIGATION TO NOTIFY

8-6-10 : TRANSFER OF FRANCHISE AND LICENSE

8-6-11 : ENFORCEMENT; RIGHTS OF CITY

8-6-12 : SEVERABILITY

8-6-1 : FINDINGS AND INTENT; AUTHORITY

A. Rights-Of-Way: The city finds that the rights-of-way within the city:

1. Are critical to the travel and transport of persons and property in the business and

³⁶ 8-2: TELECOMMUNICATIONS; USE OF RIGHTS-OF-WAY. I recommend that this chapter be moved to the end of the chapter. **DONE**

social life of the city;

2. Are intended for public uses and must be managed and controlled consistent with that intent;
 3. Can be partially occupied by the facilities of 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 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.
- B. Compensation: The city finds that the city should receive fair and reasonable compensation for use of the rights-of-way.
- C. Local Concern: The 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.
- D. Promotion Of Telecommunications Services: The city finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscriminatory basis, responsive to community and public interest, and to ensure availability for municipal, educational and community services.
- E. Franchise Standards: The city finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:
1. Fairly and reasonably compensates the city on a competitively neutral and nondiscriminatory basis as provided herein;
 2. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;
 3. Fully protects the public interests and the city from any harm that may flow from such commercial use of rights-of-way;
 4. Protects the police powers and rights-of-way management authority of the city in a manner consistent with federal and state law;
 5. Otherwise protects the public interests in the development and use of the city infrastructure;
 6. Protects the public's investment in improvements in the rights-of-way; and
 7. 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.

F. **Power To Manage Rights-Of-Way:** The city adopts this telecommunications chapter pursuant to its power to manage the rights-of-way, pursuant to common law, the Utah 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.010 on 1/1/1987

(Code 2002, § 8-2-1)

8-6-2 : ADMINISTRATION; GENERAL PROVISIONS

- A. **Conflicts:** In the event of a conflict between any provision of this chapter and a franchise entered pursuant to it, the provisions of this chapter in effect at the time the franchise is entered into shall control.
- B. **New Developments:** It shall be the policy of the city to liberally amend this chapter, 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.
- C. **Notices:** All notices from a provider to the city required under this chapter or pursuant to a franchise granted pursuant to this chapter shall be directed to the officer as designated by the mayor. A provider shall provide in any application for a franchise the identity, address and phone number of the person designated to receive notices from the city. A provider shall immediately notify the city of any change in such designated person's name, address or telephone number.
- D. **Exercise Of Police Power:** To the full extent permitted by applicable law either now or in the future, the 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.
- E. **Construction:**
1. **Federal And State Statutes:** This chapter shall be construed in a manner consistent with all applicable federal and state statutes.
 2. **Applicability:** This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the extent permitted by applicable federal or 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.
 3. **Other Applicable Ordinances:** A provider's rights are subject to the police powers of the 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 pursuant to its police powers. In particular, all providers shall comply with the city zoning and other land use requirements.

4. **City Failure To Enforce:** A provider 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.

5. **Construed According To State Law:** This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state.

HISTORY

Adopted by Ord. 1987 Code § 12.20.480, 12.20.500, 12.20.510, 12.20.520, 12.20.530, 12.20.540, 12.20.550, 12.20.560, 12.20.570 on 1/1/1987
Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 8-2-3)

8-6-3 : APPLICABILITY; EXCEPTIONS

A. **Providers:** This chapter 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 chapter shall apply to all future providers and to all providers in the city prior to the effective date hereof, whether operating with or without a franchise as set forth in CCNO 8-6-2E2.

B. **Excluded Activities:**

1. **Cable Television Operators:** This chapter shall not apply to cable television operators otherwise regulated by CCNO 12~~the cable television ordinance~~.

2. **Wireless Service Facilities:** This chapter shall not apply to personal wireless service facilities.

C. **Excluded Providers; Provisions Applicable:** Providers excused by other laws that prohibits the city from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this chapter through the exercise of the city police power and not preempted by other laws shall be applicable.

HISTORY

Adopted by Ord. 1987 Code § 12.20.020, 12.20.030 on 1/1/1987

(Code 2002, § 8-2-4)

8-6-4 : FRANCHISE REQUIRED

- A. **Nonexclusive Franchise; Authority:** The city is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the city rights-of-way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the city and provider.
- B. **Provider Required To Obtain:** Except to the extent preempted by federal or 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 is not preempted or permitted 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.
- C. **Nature 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. 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 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.
- D. **Current Providers; Time Limit To Request:** Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date hereof shall request issuance of a franchise from the 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 CCNO 8-6-11D.
- E. **Nature Of Franchise:** The franchise granted by the city under the provisions of this chapter 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.
- 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, state and local authorities, if required, and shall submit to the city, upon the written request of the city, evidence of all such approvals, permits, authorizations or licenses.
- G. **Term:** No franchise issued pursuant to this chapter 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.050, 12.20.060, 12.20.070, 12.20.080, 12.20.090, 12.20.100, 12.20.110 on 1/1/1987

(Code 2002, § 8-2-5)

8-6-5 : APPLICATION FOR FRANCHISE

A. Required; Form: To obtain a franchise to construct, own, maintain or provide services through any system within the city, to obtain a renewal of a franchise granted pursuant to this chapter or to obtain the city approval of a transfer of a franchise, as provided in CCNO 8-6-10A2, granted pursuant to this chapter, an application must be filed with city on the form prescribed by the city from time to time attached to the ordinance codified herein as exhibit A, which is hereby incorporated by reference. The application form may be changed by the city so long as such changes request information that is consistent with this chapter. ~~Such application form, as amended, is incorporated by reference.~~

B. Criteria: In making a determination as to an application filed pursuant to this section, the city may, but shall not be limited to, request the following from the provider:

1. A copy of the order from the PSC granting a certificate of convenience and necessity.
2. Certification of the provider's financial ability to compensate the 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 CCNO 8-6-8.

C. Determination By City: The 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.220, 12.20.230, 12.20.240 on 1/1/1987

(Code 2002, § 8-2-6)

8-6-6 : COMPENSATION, FEES AND PAYMENTS

A. Compensation; Provider Obligations: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:

1. Application Fee: In order to offset the cost to the 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, at the time of application, a nonrefundable application fee in such amount as established by resolution of the city council.

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.

3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in CCNO 8-2.

B. Due Monthly: 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.

C. Statement Of Calculation; 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.

D. Future Costs: A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the 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 chapter 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.

E. Taxes, Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the city, on the use of the 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 chapter.

F. Interest On Late Payments: In the event that any payment is not actually received by the 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 taxes.

G. Acceptance Of Fee; Not Construed Satisfaction: No acceptance by the 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 may have for additional sums payable.

H. Additional Taxes Or Fees Still Applicable: The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this chapter or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city-owned poles are not waived and remain applicable.

I. Operation After Term; Continuing Obligation And Holdover: In the event 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 chapter 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 as a result of such continued operation after the term, including, but not limited to, damages and restitution.

J. Publication Costs: A provider shall assume any publication costs associated with its franchise that may be required by law.

HISTORY

Adopted by Ord. 1987 Code § 12.20.120, 12.20.130, 12.20.140, 12.20.150, 12.20.160, 12.20.170, 12.20.180, 12.20.190, 12.20.200, 12.20.210 on 1/1/1987

Amended by Ord. 2006 Code on 1/1/2006

(Code 2002, § 8-2-7)

8-6-7 : INSURANCE, RECORD REQUIREMENTS

A. Insurance Required: Prior to the execution of a franchise, a provider will deposit with the 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 as set forth in the franchise.

B. Oversight: The city shall have the right to oversee, regulate and inspect periodically 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 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.

C. Records Maintenance: A provider shall at all times maintain:

1. On file with the city, a full and complete set of plans, records and as-built hardcopy 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 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 herein, as-built maps include file construction prints. Maps shall be drawn to scale. As-built maps, including the compatible electronic format, as provided above, 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 at all times to determine whether a provider is in compliance with the franchise. Should the 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 section. 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 and generally accepted accounting principles shall be deemed to be acceptable under this section.

D. Confidentiality: If the information required to be submitted is proprietary in nature or must be kept confidential by federal, 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, provided that a provider notifies the 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.

E. Provider's Expense: All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a franchise.

F. Right 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 at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the city shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the 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 for the period of such audit. In the event the accounting rendered to the 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 may accept any amount offered by the provider, but the acceptance thereof by the city shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

HISTORY

Adopted by Ord. 1987 Code § 12.20.370, 12.20.380, 12.20.390, 12.20.400, 12.20.410, 12.20.420 on 1/1/1987

(Code 2002, § 8-2-8)

8-6-8 : CONSTRUCTION, TECHNICAL REQUIREMENTS

A. Compliance Required; Excavation Permit: 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 or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with city utilities. A provider shall obtain an excavation permit, pursuant to CCNO 8-2, before commencing any work in the rights-of-way.

B. **Quality And Performance Of Work:** 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 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.

C. **Licenses 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 to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

D. **Relocation Of System:**

1. **New Grades Or Lines; Excavation Requirements:** 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 CCNO 8-2.

2. **Emergency; City Authority To Move System:** The city may, at any time, in case of fire, disaster or other emergency, as determined by the 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, in which event the city shall not be liable therefor to a provider. The 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 section. Notice shall be given as provided in CCNO 8-6-2C.

3. **Temporary Move For Third Party:** A provider shall, upon prior reasonable written notice by the 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 said structure. A provider may impose a reasonable charge on any person other than the city for any such movement of its systems.

4. **Change In Rights-Of-Way; Obligation To Move System:** When the city is changing a right-of-way and makes a written request, a provider is required to move or remove its system from the right-of-way, without cost to the city, to the extent provided in ~~the excavation ordinance, as provided in~~ CCNO 8-2. 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 excavation permit.

E. **Protection Of Structures, Landmarks:** 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 and all designated landmarks, as well as all other structures within any designated landmark district. A provider shall obtain the prior written consent of the city to alter any water main, power facility, sewerage or drainage system, or any other city structure on, over or under the rights-of-way of the city required because of the presence of the system. Any such alteration shall be made by the city or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the city to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the city, any municipal structure or any other rights-of-way of the 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.

F. **Obstructions Prohibited:** 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 without the prior consent of the appropriate authorities.

G. **Safety Precautions:** 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, state and local requirements, including, but not limited to, the national electrical safety code.

H. **Repair Of Rights-Of-Way:** After written reasonable notice to the provider, unless, in the sole determination of the city, an eminent danger exists, any rights-of-way within the city which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the city at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the 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 the entire amount thereof.

I. **Maintenance Of System:** A provider shall:

1. Install and maintain all parts of its system in a nondangerous 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 and all applicable other federal, state and local laws or regulations.
3. At all reasonable times, permit examination by any duly authorized representative of the city of the system and its effect on the rights-of-way.

J. Trimming Trees; Authority: 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.250, 12.20.260, 12.20.270, 12.20.280, 12.20.290, 12.20.300, 12.20.310, 12.20.320, 12.20.330, 12.20.340 on 1/1/1987

(Code 2002, § 8-2-9)

8-6-9 : PRIVATE PROPERTY; OBLIGATION TO NOTIFY

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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.470 on 1/1/1987

(Code 2002, § 8-2-10)

8-6-10 : TRANSFER OF FRANCHISE AND LICENSE

A. Notification Of Sale:

1. PSC Approval: When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposal, in whole or in part, either by force 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 of the nature of the transaction. The notification shall include either:

a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or

b. The successor entity's application, in compliance with CCNO 8-6-5.

2. Transfer Of Franchise: Upon receipt of a notification and certification in accordance with subsection A1a of this section, the city designee, as provided in CCNO 8-6-11A1, shall send notice affirming the transfer of the franchise to the successor entity. If the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application for the transfer. The application shall comply with CCNO 8-6-5.

3. If PSC Approval No Longer Required: If the PSC no longer exists or if its regulations or state law no longer require approval of transactions described in this subsection A, and the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application. The application shall

comply with CCNO 8-6-5.

B. Events Of Sale: 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.350, 12.20.360 on 1/1/1987

(Code 2002, § 8-2-11)

8-6-11 : ENFORCEMENT; RIGHTS OF CITY

A. Enforcement; Remedies:

1. City Designee: The city is responsible for enforcing and administering this chapter, and the city or its designee, as appointed by the mayor, is authorized to give any notice required by law or under any franchise agreement.
2. Enforcement Provisions: Any franchise granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund and rights of termination or revocation.

B. Force Majeure: In the event a provider's performance of any of the terms, conditions or obligations required by this chapter 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 subsection, 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.

C. Extended Operation; Continuity Of Services:

1. Continuation After Expiration: Upon either expiration or revocation of a franchise granted pursuant to this chapter, the 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 chapter and the franchise granted pursuant to this chapter.
 2. Incumbent Local Exchange Carrier; Negotiate Renewal: 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.
- D. Removal Or Abandonment 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 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 chapter or franchise; or
 - c. The provisions of CCNO 8-6-4D 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 Abandoned System: The 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 chapter, 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. In removing its plant, structures and equipment, a 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 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 chapter 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 Abandoned System To City: Upon abandonment of any system in place, a 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 the abandoned system.
 4. Removal 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 chapter, 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 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 chapter, 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.

HISTORY

Adopted by Ord. 1987 Code § 12.20.430, 12.20.440, 12.20.450, 12.20.460 on 1/1/1987

(Code 2002, § 8-2-12)

8-6-12: SEVERABILITY

If any provision of this chapter is held by any federal, state or local court of competent jurisdiction to be invalid as conflicting with any federal or 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 ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that 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 and the provider, provided that the city shall give the provider thirty (30) days' written notice, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, of the change before requiring compliance with such provision.

HISTORY

Adopted by Ord. 1987 Code § 12.20.490 on 1/1/1987

(Code 2002, § 8-2-13)