CITY OF SURPRISE
Regular City Council Work Session Agenda
16000 N. Civic Center Plaza
Surprise, AZ 85374

Tuesday, December 5, 2017 @ 4:00 PM
COUNCIL CHAMBERS

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A. Call To Order

B. Roll Call

C. Pledge of Allegiance

D. Call To The Public:

INSTRUCTIONS: In order to address the City Council, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the City Clerk before the meeting begins.
Download the Call to the Public form *(PDF download requires Adobe Acrobat Reader)*
Fill out the Call to the Public form online If submitting form electronically, please submit to City Clerk at least one hour before the meeting start time.
The Call to the Public form is also available at the front counter.

Note: A.R.S. 38-431.01(H)- During this time members of the public may address City Council only on issues within the jurisdiction of the City Council which are not an item on the agenda. At the conclusion of the open call, City Council may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

Approval of items on the Consent Agenda – all items with an asterisk (*) are considered to be routine matters and will be enacted by one motion and one roll call vote to the City Council. There will be no separate discussion on these items unless a Councilmember requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.

E. Regular City Council Work Session Agenda:

Regular Agenda Item - Non-Public Hearing:

1.	District Citywide	Presentation and discussion on Wireless Facilities located in the Right-Of-Way.	None Hobart Wingard, City Planner
2.	District Citywide	Presentation and discussion pertaining to Council Meeting invocations.	None Council Members Remley and Hall

F. Executive Session:

For information Purposes; Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, but for only the following purposes:

- discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- discussion or consideration of records exempt by law from public inspection (A.R.S. §38-401.03 (A)(2));
- discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S.§38-431.03 (a)(4));
- discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town. A.R.S. §38-401.03 (A)(6)).
- discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

Confidentiality Requirements Pursuant to A.R.S. §38-431.03(C)(D): Any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney by agreement of the City Council, or as otherwise ordered by a court of competent jurisdiction.

The council may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

G. Adjournment:

SHERRY ANN AGUILAR, CITY CLERK, MMC

POSTED:

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.

CITY OF SURPRISE
Regular City Council Work Session

December 5, 2017 @ 4:00:00 PM

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Council Meeting Date:	December 5, 2017	Contact Person:	Hobart Wingard, City Planner
Submitting Department:	CD	District:	Citywide
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion

Agenda Wording:

Presentation and discussion on Wireless Facilities located in the Right-Of-Way.

Motion:

No action.

Background:

HB 2365 requires municipalities to allow what are known as “small wireless facilities” (SWFs) or “small cells” to be installed within the public right-of-way and easements. Small cells are different from typical wireless facilities. As the name implies, they are much smaller and cover limited areas. Small cells are low-powered wireless base stations that typically provide coverage for targeted indoor and outdoor areas of varying sizes (e.g., homes, office buildings, shopping malls, and stadiums). Small wireless facilities allow wireless service providers to add capacity to their networks by providing improved access for cell phone coverage and high-speed wireless data services not being served by traditional cell sites.

Objective Analysis:

While the fees for wireless facilities are minimal, the increased wireless activities should expand and provide enhanced coverage for both residents and businesses.

Policy Compliant:

Surprise General Plan 2035: The Land Use element of the General Plan 2035 recognizes the significance of properly designed wireless facilities for community design and economic development. The proposed modifications to the code will be in compliance with the General Plan. Federal Law: Section 6409 (the “Spectrum Act”) of the Middle Class Tax Relief and Job Creation Act of 2012 , and implementing regulations adopted by the Federal Communications Commission (“FCC”), mandate that states and local governments approve certain wireless broadband facility siting requests for modifications and collocations of wireless transmission equipment on existing towers or base stations that do not result in a substantial change to the physical dimensions of the tower or base station. The proposed modifications to the code will be in compliance with the Spectrum Act. Arizona State Law: HB 2365 establishes a statewide policy surrounding the deployment of small wireless facilities – more commonly known as

“small cells” – that will enhance the existing 4G LTE network, accelerate investment in mobile broadband infrastructure, and ready the State of Arizona for the next wave of economic development in the digital economy via 5G technology. The proposed modifications to the code will be in compliance with HB 2365.

Financial Impact:

All activity related to ongoing development of the City of Surprise has an economic and financial impact on the city and the region.

Budget Impact:

There is no anticipated budget impact related to this item.

FTE Impact:

This item does not have an impact on current staff levels.

ATTACHMENTS:

Click to download

- 00 - FS17-483 Wireless Telecommunication Facilities-Staff Report
- 01 - FS17-483 - Wireless Telecommunication Facilities - HB 2365
- 02-Notice of Intent for ROW Wireless Facilities Fees
- Presentation

SMALL WIRELESS FACILITIES IN ROW

REPORT TO THE MAYOR AND CITY COUNCIL

Case:	**FS17-483**
Project Name:	Small Wireless Facilities (SWF) in Public Rights-of-way (ROW)
Council District:	Citywide
Meeting Date:	**December 5, 2017**
Planner:	Hobart Wingard, 623-222-3156, hobart.wingard@surpriseaz.gov
Owner:	City of Surprise
Applicant:	City of Surprise
Request:	Discussion only regarding modifying the Surprise Municipal Code to adopt regulations and fees for locating wireless facilities within public ROWs.
General Plan Conformance:	The proposal is consistent with the Surprise General Plan

DESCRIPTION:

The Arizona Legislature adopted House Bill ("HB") 2365 during the 2017 legislative session. *See* Laws 2017, Chapter 124. HB 2365 added new Article 8 to Arizona Revised Statutes ("ARS") Title 9 entitled "Use of Public Highways by Wireless Providers." The new statutes are ARS Sections 9-591 through 9-598.

HB 2365 requires municipalities to allow what are known as "small wireless facilities" (SWFs) or "small cells" to be installed within the public right-of-way and easements. Small cells are different from typical wireless facilities. As the name implies, they are much smaller and cover limited areas. Small cells are low-powered wireless base stations that typically provide coverage for targeted indoor and outdoor areas of varying sizes (e.g., homes, office buildings, shopping malls, and stadiums). Small wireless facilities allow wireless service providers to add capacity to their networks by providing improved access for cell phone coverage and high-speed wireless data services not being served by traditional cell sites.

Small cells typically are attached to vertical structures within the right-of-way, such as light poles, utility poles, and traffic signal poles, to form a network. HB 2365 allows wireless providers to

construct, install, modify, mount, maintain, operate, and replace utility poles associated with the collocation of small cells and to do the same for monopoles that are associated with the collocation of all wireless facilities, not just small cells.

HB 2365 limits the extent to which municipalities (and counties under statutes added to ARS, Title 11) may regulate zoning approval, installation, location, number, and appearance of small wireless facilities and monopoles. Applications to install small wireless facilities are required to be approved unless the desired utility pole does not comply with:

(1) Applicable codes (e.g., Uniform Building Code, Uniform Electrical Code, etc.);

(2) Code provisions or regulations that concern public safety;

(3) Objective design standards;

(4) Reasonable stealth and concealment requirements;

(5) Undergrounding requirements (but such requirements may not prohibit the replacement of utility poles or monopoles);

(6) Contractual requirements between a municipality and a private property owner concerning design standards for utility poles in the public right-of-way (e.g., APS); or

(7) Reasonable spacing requirements concerning the location of new utility poles in the right-of-way.

City staff is proposing changes and additions to the Surprise Land Development Ordinances to regulate small wireless facilities and monopoles within the parameters of HB 2365.

FEES:

HB 2365 also imposes a cap on fees for SWFs. Staff is proposing ROW encroachment fees and application fees for small wireless facilities and wireless facilities on or in monopoles in the ROW. The fee schedule for SWFs in the ROW will be consistent with the statutorily-authorized application fees relating to small wireless facilities and wireless facilities on or in monopoles in the right-of-way. These fees will be applicable to wireless providers as defined by A.R.S. § 9-591(24).

The proposed fees are summarized as follows:

	Current Amount	Proposed Amount	
Annual Use Fees (1)			
• ROW Use Fee	$ None	$ 50	Per year x number of SWFs
• ROW Use Fee for Monopoles and associated wireless facilities	$ None	$ 50	Per year x number of SWFs
Application for collocating SWFs (Existing with no modifications) (2)			
• One (1) to five (5) applications	$ None	$ 100	Each

• Six (6) through 25 applications	$ None	$ 50	Each
Application for utility pole and monopole (New or existing with modifications)			
• New, replacement, or modified utility poles not subject to zoning review (3)	$ None	$ 400	Each
• New, replacement, or modified monopoles, utility poles, collocations, or wireless facilities subject to zoning review (4)	$ None	$ 400	Each

(1) ARS statute maximum of $50 (Direct and actual cost to manage ROW)
(2) ARS statute maximum of $100 (1 to 5) and $50 (6 to 25)
(3) ARS statute maximum of $1,000
(4) ARS statute maximum of $1,500

PROPOSED TIMELINE:

December 5, 2017: Discussion with Mayor and City Council during workshop on implementing HB 2365 and the fees required for Wireless Facilities in the ROW.

December 7, 2017: Presentation with public hearing to the Planning and Zoning Commission regarding the Zoning Text Amendment for Wireless Facilities followed by written recommendation to the City Council.

December 19, 2017: Discussion with Mayor and City Council during workshop on HB 2365, technical information about the SWF technology, the Zoning Text Amendment, and the Master License Agreement.

January 2, 2018: Discussion and action on Zoning Text Amendment, Master License Agreement, and Terms and Conditions for SWFs.

February 6, 2018: Discussion and action on the fee schedule for wireless facilities in the ROW to be enacted as an emergency measure due to the statutory deadline imposed by HB 2365.

February 9, 2018: The new law becomes effective.

CONFORMANCE WITH ADOPTED REGULATIONS:

Surprise General Plan 2035: The Land Use element of the General Plan 2035 recognizes the significance of properly designed wireless facilities for community design and economic development. The proposed modifications to the code will be in compliance with the General Plan.

Federal Law: Section 6409 (the "Spectrum Act") of the Middle Class Tax Relief and Job Creation Act of 2012 , and implementing regulations adopted by the Federal Communications Commission ("FCC"), mandate that states and local governments approve certain wireless broadband facility siting requests for modifications and collocations of wireless transmission equipment on existing towers or base stations that do not result in a substantial change to the physical dimensions of the tower or base station. The proposed modifications to the code will be in compliance with the Spectrum Act.

Arizona State Law: HB 2365 establishes a statewide policy surrounding the deployment of small wireless facilities – more commonly known as "small cells" – that will enhance the existing 4G LTE network, accelerate investment in mobile broadband infrastructure, and ready the State of Arizona for the next wave of economic development in the digital economy via 5G technology. The proposed modifications to the code will be in compliance with HB 2365.

SUMMARY:

The proposed Zoning Text Amendment, Master License agreement, Terms and Conditions, and fee schedule for wireless facilities in the ROW will provide opportunity for the city to expand wireless services to the residents and businesses that are located within the city while conforming to federal and state law.

Attachments:

01 – HB 2365
02 – Proposed Fee Schedule

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

CHAPTER 124

HOUSE BILL 2365

AN ACT

AMENDING TITLE 9, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 11, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 13; RELATING TO WIRELESS SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 9, chapter 5, Arizona Revised Statutes, is amended by adding article 8, to read:

ARTICLE 8. USE OF PUBLIC HIGHWAYS BY WIRELESS PROVIDERS

9-591. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ANTENNA" MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS AND THAT IS USED IN PROVIDING WIRELESS SERVICES.

2. "APPLICABLE CODES" MEANS UNIFORM BUILDING, FIRE, ELECTRICAL, PLUMBING OR MECHANICAL CODES THAT ARE ADOPTED BY A RECOGNIZED NATIONAL CODE ORGANIZATION OR LOCAL AMENDMENTS TO THOSE CODES THAT ARE ENACTED TO ADDRESS THREATS OF DESTRUCTION OF PROPERTY OR INJURY TO PERSONS AND TO AN EXTENT THAT IS NOT INCONSISTENT WITH THIS ARTICLE.

3. "APPLICANT" MEANS ANY PERSON THAT SUBMITS AN APPLICATION AND THAT IS A WIRELESS PROVIDER.

4. "APPLICATION" MEANS A REQUEST THAT IS SUBMITTED BY AN APPLICANT TO AN AUTHORITY FOR A PERMIT TO COLLOCATE SMALL WIRELESS FACILITIES OR TO APPROVE THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE.

5. "AUTHORITY" MEANS ANY CITY, TOWN, SPECIAL DISTRICT OR POLITICAL SUBDIVISION OF THIS STATE THAT IS AUTHORIZED TO MAKE LEGISLATIVE, QUASI-JUDICIAL OR ADMINISTRATIVE DECISIONS CONCERNING AN APPLICATION. AUTHORITY DOES NOT INCLUDE ANY STATE COURT THAT HAS JURISDICTION OVER AN AUTHORITY AND DOES NOT INCLUDE A COUNTY, SPECIAL TAXING DISTRICT, OR ELECTRIC COOPERATIVE.

6. "AUTHORITY UTILITY POLE" MEANS A UTILITY POLE THAT IS OWNED OR OPERATED BY AN AUTHORITY AND THAT IS IN A RIGHT-OF-WAY. AUTHORITY UTILITY POLE DOES NOT INCLUDE A UTILITY POLE FOR ELECTRIC DISTRIBUTION.

7. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 9-505. CABLE OPERATOR DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

8. "COLLOCATE" OR "COLLOCATION" MEANS TO INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE WIRELESS FACILITIES ON, WITHIN OR ADJACENT TO A WIRELESS SUPPORT STRUCTURE OR UTILITY POLE.

9. "COMMUNICATIONS SERVICE" MEANS CABLE SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 522(6), INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(24), TELECOMMUNICATIONS SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(53) OR WIRELESS SERVICE.

10. "COMMUNICATIONS SERVICE PROVIDER" MEANS A CABLE OPERATOR, A PROVIDER OF INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(24), A TELECOMMUNICATIONS CARRIER AS DEFINED IN 47 UNITED STATES CODE SECTION 153(51) OR A WIRELESS SERVICES PROVIDER.

11. "FEE" MEANS A ONE-TIME CHARGE.

12. "LAW" MEANS ANY FEDERAL, STATE OR LOCAL LAW, STATUTE, COMMON LAW, CODE, RULE, REGULATION, ORDER OR ORDINANCE.

13. "MONOPOLE" MEANS A WIRELESS SUPPORT STRUCTURE THAT IS NOT MORE THAN FORTY INCHES IN DIAMETER AT THE GROUND LEVEL AND THAT HAS ALL OF THE WIRELESS FACILITIES MOUNTED ON THE POLE OR CONTAINED INSIDE OF THE POLE.

14. "PERMIT" MEANS WRITTEN PERMISSION REQUIRED BY AN AUTHORITY TO INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE A UTILITY POLE OR MONOPOLE, TO COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE OR TO COLLOCATE WIRELESS FACILITIES ON A MONOPOLE.

15. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, TRUST OR OTHER ENTITY OR ORGANIZATION, INCLUDING AN AUTHORITY.

16. "PRIVATE EASEMENT" MEANS AN EASEMENT OR OTHER REAL PROPERTY RIGHT THAT IS ONLY FOR THE BENEFIT OF THE GRANTOR AND GRANTEE AND THE GRANTOR'S OR GRANTEE'S SUCCESSORS AND ASSIGNS.

17. "RATE" MEANS A RECURRING CHARGE.

18. "RIGHT-OF-WAY" MEANS THE AREA ON, BELOW OR ABOVE A PUBLIC ROADWAY, HIGHWAY, STREET, SIDEWALK, ALLEY OR UTILITY EASEMENT. RIGHT-OF-WAY DOES NOT INCLUDE A FEDERAL INTERSTATE HIGHWAY, A STATE HIGHWAY OR STATE ROUTE UNDER THE JURISDICTION OF THE DEPARTMENT OF TRANSPORTATION, A PRIVATE EASEMENT, PROPERTY THAT IS OWNED BY A SPECIAL TAXING DISTRICT, OR A UTILITY EASEMENT THAT DOES NOT AUTHORIZE THE DEPLOYMENT SOUGHT BY THE WIRELESS PROVIDER.

19. "SMALL WIRELESS FACILITY" MEANS A WIRELESS FACILITY THAT MEETS BOTH OF THE FOLLOWING QUALIFICATIONS:

(a) ALL ANTENNAS ARE LOCATED INSIDE AN ENCLOSURE OF NOT MORE THAN SIX CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA THAT HAS EXPOSED ELEMENTS, THE ANTENNA AND ALL OF THE ANTENNA'S EXPOSED ELEMENTS COULD FIT WITHIN AN IMAGINARY ENCLOSURE OF NOT MORE THAN SIX CUBIC FEET IN VOLUME.

(b) ALL OTHER WIRELESS EQUIPMENT ASSOCIATED WITH THE FACILITY IS CUMULATIVELY NOT MORE THAN TWENTY-EIGHT CUBIC FEET IN VOLUME, OR FIFTY CUBIC FEET IN VOLUME IF THE EQUIPMENT WAS GROUND MOUNTED BEFORE THE EFFECTIVE DATE OF THIS SECTION. THE FOLLOWING TYPES OF ASSOCIATED ANCILLARY EQUIPMENT ARE NOT INCLUDED IN THE CALCULATION OF EQUIPMENT VOLUME PURSUANT TO THIS SUBDIVISION:

(i) AN ELECTRIC METER.

(ii) CONCEALMENT ELEMENTS.

(iii) A TELECOMMUNICATIONS DEMARCATION BOX.

(iv) GROUNDING EQUIPMENT.

(v) A POWER TRANSFER SWITCH.

(vi) A CUTOFF SWITCH.

(vii) VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER SERVICES.

20. "SPECIAL TAXING DISTRICT" MEANS A SPECIAL DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 11, 12, 17, 18, 19, 20 OR 22.

21. "UTILITY POLE" MEANS A POLE OR SIMILAR STRUCTURE THAT IS USED IN WHOLE OR IN PART FOR COMMUNICATIONS SERVICES, ELECTRIC DISTRIBUTION, LIGHTING OR TRAFFIC SIGNALS. UTILITY POLE DOES NOT INCLUDE A MONOPOLE.

22. "WIRELESS FACILITY":

(a) MEANS EQUIPMENT AT A FIXED LOCATION THAT ENABLES WIRELESS COMMUNICATIONS BETWEEN USER EQUIPMENT AND A COMMUNICATIONS NETWORK, INCLUDING BOTH OF THE FOLLOWING:

(i) EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS.

(ii) RADIO TRANSCEIVERS, ANTENNAS, COAXIAL OR FIBER-OPTIC CABLES, REGULAR AND BACKUP POWER SUPPLIES AND COMPARABLE EQUIPMENT, REGARDLESS OF TECHNOLOGICAL CONFIGURATION.

(b) INCLUDES SMALL WIRELESS FACILITIES.

(c) DOES NOT INCLUDE THE STRUCTURE OR IMPROVEMENTS ON, UNDER OR WITHIN WHICH THE EQUIPMENT IS COLLOCATED, WIRELINE BACKHAUL FACILITIES, COAXIAL OR FIBER-OPTIC CABLE THAT IS BETWEEN WIRELESS SUPPORT STRUCTURES OR UTILITY POLES OR COAXIAL OR FIBER-OPTIC CABLE THAT IS OTHERWISE NOT IMMEDIATELY ADJACENT TO, OR DIRECTLY ASSOCIATED WITH, AN ANTENNA.

(d) DOES NOT INCLUDE WI-FI RADIO EQUIPMENT DESCRIBED IN SECTION 9-506, SUBSECTION I OR MICROCELL EQUIPMENT DESCRIBED IN SECTION 9-584, SUBSECTION E.

23. "WIRELESS INFRASTRUCTURE PROVIDER" MEANS ANY PERSON THAT IS AUTHORIZED TO PROVIDE TELECOMMUNICATIONS SERVICE IN THIS STATE AND THAT BUILDS OR INSTALLS WIRELESS COMMUNICATIONS TRANSMISSION EQUIPMENT, WIRELESS FACILITIES, UTILITY POLES OR MONOPOLES BUT THAT IS NOT A WIRELESS SERVICES PROVIDER. WIRELESS INFRASTRUCTURE PROVIDER DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

24. "WIRELESS PROVIDER" MEANS A CABLE OPERATOR, WIRELESS INFRASTRUCTURE PROVIDER OR WIRELESS SERVICES PROVIDER.

25. "WIRELESS SERVICES" MEANS ANY SERVICES THAT ARE PROVIDED TO THE PUBLIC AND THAT USE LICENSED OR UNLICENSED SPECTRUM, WHETHER AT A FIXED LOCATION OR MOBILE, USING WIRELESS FACILITIES.

26. "WIRELESS SERVICES PROVIDER" MEANS A PERSON THAT PROVIDES WIRELESS SERVICES. WIRELESS SERVICES PROVIDER DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

27. "WIRELESS SUPPORT STRUCTURE":

(a) MEANS:

(i) A FREESTANDING STRUCTURE, SUCH AS A MONOPOLE.

(ii) A TOWER, EITHER GUYED OR SELF-SUPPORTING.

(iii) A SIGN OR BILLBOARD.

(iv) ANY OTHER EXISTING OR PROPOSED STRUCTURE DESIGNED TO SUPPORT OR CAPABLE OF SUPPORTING SMALL WIRELESS FACILITIES.

(b) DOES NOT INCLUDE A UTILITY POLE.

9-592. Applicability; wireless provider; use of right-of-way; rates, fees and terms; right to access; damage and repair

A. THIS SECTION APPLIES TO THE ACTIVITIES OF A WIRELESS PROVIDER WITHIN A RIGHT-OF-WAY.

B. AN AUTHORITY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH A WIRELESS PROVIDER FOR USE OF A RIGHT-OF-WAY FOR ANY OF THE FOLLOWING:

1. THE CONSTRUCTION, INSTALLATION, MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT OF UTILITY POLES OR MONOPOLES.

2. THE COLLOCATION OF SMALL WIRELESS FACILITIES ON UTILITY POLES OR WIRELESS SUPPORT STRUCTURES.

3. THE COLLOCATION OF WIRELESS FACILITIES ON MONOPOLES.

C. AN AUTHORITY MAY CHARGE A WIRELESS PROVIDER A RATE OR FEE FOR THE USE OF A RIGHT-OF-WAY FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT OF A UTILITY POLE IN THE RIGHT-OF-WAY OR THE COLLOCATION OF A SMALL WIRELESS FACILITY IN THE RIGHT-OF-WAY, ONLY IF THE AUTHORITY CHARGES OTHER COMMUNICATIONS SERVICE PROVIDERS OR PUBLICLY, COOPERATIVELY OR MUNICIPALLY OWNED UTILITIES FOR THE USE OF THE RIGHT-OF-WAY AND THE AUTHORITY HAS THE LEGAL AUTHORITY TO DO SO. IF AN AUTHORITY CHARGES A RATE OR FEE PURSUANT TO THIS SECTION, THE RATE OR FEE FOR A WIRELESS PROVIDER MUST BE:

1. LIMITED TO NOT MORE THAN THE DIRECT AND ACTUAL COST OF MANAGING THE RIGHT-OF-WAY.

2. COMPETITIVELY NEUTRAL IN REGARD TO OTHER USERS OF THE RIGHT-OF-WAY, INCLUDING INVESTOR-OWNED, AUTHORITY-OWNED OR COOPERATIVELY OWNED ENTITIES, UNLESS OTHER USERS ARE EXEMPT FROM SUCH RATES OR FEES UNDER APPLICABLE LAW.

D. A RATE OR FEE CHARGED PURSUANT TO SUBSECTION C OF THIS SECTION MAY NOT DO ANY OF THE FOLLOWING:

1. RESULT IN A DOUBLE RECOVERY WHERE EXISTING RATES, FEES OR TAXES ALREADY RECOVER THE DIRECT AND ACTUAL COSTS OF MANAGING A RIGHT-OF-WAY.

2. BE IN THE FORM OF A FRANCHISE OR OTHER FEE BASED ON REVENUE OR CUSTOMER COUNTS.

3. BE UNREASONABLE OR DISCRIMINATORY.

4. EXCEED AN ANNUAL AMOUNT EQUAL TO FIFTY DOLLARS MULTIPLIED BY THE NUMBER OF SMALL WIRELESS FACILITIES THAT ARE IN THE AUTHORITY'S GEOGRAPHIC JURISDICTION AND THAT ARE PLACED BY THE WIRELESS PROVIDER IN THE RIGHT-OF-WAY.

E. AN AUTHORITY SHALL ESTABLISH AND MAKE AVAILABLE RATES, FEES AND TERMS FOR ALL OF THE FOLLOWING, WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION OR THREE MONTHS AFTER RECEIVING THE FIRST REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER:

1. THE CONSTRUCTION, INSTALLATION, MOUNTING, MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT OF A UTILITY POLE OR MONOPOLE BY A WIRELESS PROVIDER IN A RIGHT-OF-WAY.

2. THE COLLOCATION OF A SMALL WIRELESS FACILITY BY A WIRELESS PROVIDER IN A RIGHT-OF-WAY.

3. THE COLLOCATION OF A WIRELESS FACILITY ON OR WITHIN A MONOPOLE BY A WIRELESS PROVIDER IN A RIGHT-OF-WAY.

F. THE RATES, FEES AND TERMS ESTABLISHED PURSUANT TO SUBSECTION E OF THIS SECTION MUST BE MADE AVAILABLE FOR ACCEPTANCE BY A WIRELESS PROVIDER. AT THE WIRELESS PROVIDER'S OPTION, A WIRELESS PROVIDER MAY REQUEST DIFFERENT OR ADDITIONAL TERMS THAT THE PARTIES SHALL NEGOTIATE IN GOOD FAITH. DOCUMENTS THAT REFLECT RATES, FEES AND TERMS WITH EACH WIRELESS PROVIDER ARE PUBLIC RECORDS. RATES, FEES AND TERMS MUST COMPLY WITH THIS ARTICLE, AND THE TERMS:

1. MAY NOT BE UNREASONABLE OR DISCRIMINATORY.

2. MAY INCLUDE REQUIREMENTS APPLICABLE TO OTHER USERS OF THE RIGHT-OF-WAY.

3. MAY REQUIRE THAT THE WIRELESS PROVIDER'S OPERATION OF THE SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY DOES NOT INTERFERE WITH THE AUTHORITY'S PUBLIC SAFETY COMMUNICATIONS.

4. SUBJECT TO SUBSECTION K OF THIS SECTION AND SECTION 9-593, SUBSECTION F, MAY NOT REQUIRE THE PLACEMENT OF SMALL WIRELESS FACILITIES ON ANY SPECIFIC UTILITY POLE OR CATEGORY OF POLES OR REQUIRE MULTIPLE ANTENNA SYSTEMS ON A SINGLE UTILITY POLE.

5. SUBJECT TO SUBSECTION K OF THIS SECTION AND SECTION 9-593, SUBSECTION F, MAY NOT LIMIT THE PLACEMENT OF SMALL WIRELESS FACILITIES BY MINIMUM SEPARATION DISTANCES.

G. AGREEMENTS BETWEEN AUTHORITIES AND WIRELESS PROVIDERS THAT ARE IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION AND THAT RELATE TO THE COLLOCATION OF SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY, INCLUDING THE COLLOCATION OF SMALL WIRELESS FACILITIES ON AUTHORITY UTILITY POLES, REMAIN IN EFFECT, SUBJECT TO APPLICABLE TERMINATION PROVISIONS. THE WIRELESS PROVIDER MAY ACCEPT THE RATES, FEES AND TERMS ESTABLISHED UNDER SUBSECTIONS E AND F OF THIS SECTION FOR SMALL WIRELESS FACILITIES AND UTILITY POLES THAT ARE THE SUBJECT OF AN APPLICATION SUBMITTED AFTER THE RATES, FEES AND TERMS BECOME EFFECTIVE.

H. SUBJECT TO THIS SECTION AND THE APPROVAL OF AN APPLICATION, IF REQUIRED, A WIRELESS PROVIDER MAY DO ANY OF THE FOLLOWING:

1. COLLOCATE SMALL WIRELESS FACILITIES.

2. CONSTRUCT, INSTALL, MODIFY, MOUNT, MAINTAIN, OPERATE AND REPLACE UTILITY POLES THAT ARE ASSOCIATED WITH THE COLLOCATION OF SMALL WIRELESS FACILITIES ALONG, ACROSS, ON AND UNDER THE RIGHT-OF-WAY.

3. CONSTRUCT, INSTALL, MODIFY, MOUNT, MAINTAIN, OPERATE AND REPLACE MONOPOLES THAT ARE ASSOCIATED WITH THE COLLOCATION OF WIRELESS FACILITIES ALONG, ACROSS, ON AND UNDER THE RIGHT-OF-WAY. THE INSTALLATION, MODIFICATION AND REPLACEMENT OF MONOPOLES ARE SUBJECT TO REVIEW UNDER SECTION 9-594 REGARDLESS OF THE HEIGHT OF THE MONOPOLE.

I. SUBJECT TO SUBSECTION K, PARAGRAPH 2, SUBDIVISION (c) OF THIS SECTION, A NEW, REPLACEMENT OR MODIFIED UTILITY POLE THAT IS ASSOCIATED WITH THE COLLOCATION OF SMALL WIRELESS FACILITIES AND THAT IS INSTALLED IN THE RIGHT-OF-WAY IS NOT SUBJECT TO ZONING REVIEW AND APPROVAL UNDER SECTION 9-594 IF THE UTILITY POLE DOES NOT EXCEED THE GREATER OF EITHER:

1. TEN FEET IN HEIGHT ABOVE THE TALLEST EXISTING UTILITY POLE, OTHER THAN A UTILITY POLE SUPPORTING ONLY WIRELESS FACILITIES, THAT IS IN PLACE ON THE EFFECTIVE DATE OF THIS SECTION, THAT IS LOCATED WITHIN FIVE HUNDRED FEET OF THE NEW, REPLACEMENT OR MODIFIED UTILITY POLE AND THAT IS IN THE SAME RIGHT-OF-WAY WITHIN THE JURISDICTIONAL BOUNDARY OF THE AUTHORITY, BUT NOT MORE THAN FIFTY FEET ABOVE GROUND LEVEL.

2. FORTY FEET ABOVE GROUND LEVEL.

J. NEW SMALL WIRELESS FACILITIES COLLOCATED ON A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE IN THE RIGHT-OF-WAY ARE NOT SUBJECT TO ZONING REVIEW AND APPROVAL IF THEY DO NOT EXTEND MORE THAN TEN FEET ABOVE THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE AND DO NOT EXCEED FIFTY FEET ABOVE GROUND LEVEL.

K. AN AUTHORITY MAY REQUIRE AN APPLICATION UNDER THIS SECTION FOR THE INSTALLATION OF NEW, REPLACEMENT OR MODIFIED UTILITY POLES ASSOCIATED WITH THE COLLOCATION OF SMALL WIRELESS FACILITIES. AN AUTHORITY SHALL APPROVE AN APPLICATION UNLESS THE AUTHORITY FINDS THAT THE UTILITY POLE FAILS TO COMPLY WITH ANY OF THE FOLLOWING:

1. APPLICABLE CODES.

2. LOCAL CODE PROVISIONS OR REGULATIONS THAT CONCERN ANY OF THE FOLLOWING:

(a) PUBLIC SAFETY.

(b) OBJECTIVE DESIGN STANDARDS AND REASONABLE STEALTH AND CONCEALMENT REQUIREMENTS.

(c) UNDERGROUNDING REQUIREMENTS THAT PROHIBIT THE INSTALLATION OF NEW OR THE MODIFICATION OF EXISTING UTILITY POLES OR MONOPOLES IN A RIGHT-OF-WAY WITHOUT PRIOR APPROVAL, IF SUCH REQUIREMENTS INCLUDE A WAIVER, ZONING OR ANOTHER PROCESS THAT ADDRESSES REQUESTS TO INSTALL SUCH NEW UTILITY POLES OR MONOPOLES OR MODIFY SUCH EXISTING UTILITY POLES OR MONOPOLES AND DO NOT PROHIBIT THE REPLACEMENT OF UTILITY POLES OR MONOPOLES.

3. REQUIREMENTS THAT ARE IMPOSED BY A CONTRACT BETWEEN AN AUTHORITY AND A PRIVATE PROPERTY OWNER AND THAT CONCERN DESIGN STANDARDS APPLICABLE TO UTILITY POLES IN THE RIGHT-OF-WAY.

4. THE AUTHORITY'S PUBLIC SAFETY AND REASONABLE SPACING REQUIREMENTS THAT CONCERN THE LOCATION OF NEW UTILITY POLES IN A RIGHT-OF-WAY.

L. AN AUTHORITY SHALL PROCESS APPLICATIONS UNDER SUBSECTION K OF THIS SECTION IN COMPLIANCE WITH APPLICABLE LAW. IF AN AUTHORITY FAILS TO APPROVE OR DENY AN APPLICATION WITHIN THE TIME FRAME SPECIFIED BY APPLICABLE LAW, THE APPLICATION SHALL BE DEEMED APPROVED. ANY APPLICATION

FEE IS SUBJECT TO THE REQUIREMENTS PROVIDED IN SECTION 9-593, SUBSECTION I. THE TOTAL APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED SEVEN HUNDRED FIFTY DOLLARS.

M. THE CONSTRUCTION, INSTALLATION, MOUNTING, MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT FOR WHICH A PERMIT IS GRANTED SHALL BE COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE DATE, UNLESS THE AUTHORITY AND WIRELESS PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY IS CAUSED BY A LACK OF COMMERCIAL POWER AT THE SITE. APPROVAL OF AN APPLICATION BY AN AUTHORITY AUTHORIZES THE APPLICANT TO DO BOTH OF THE FOLLOWING:

1. UNDERTAKE THE REQUESTED DEPLOYMENT.

2. SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS, THE AUTHORITY'S TERMS AS DESCRIBED IN THIS SECTION AND THE WIRELESS PROVIDER'S RIGHT TO TERMINATE AT ANY TIME, OPERATE AND MAINTAIN THE WIRELESS PROVIDER'S NEW, MODIFIED OR REPLACEMENT UTILITY POLE FOR A PERIOD OF NOT LESS THAN TEN YEARS, WHICH MUST BE RENEWED FOR EQUIVALENT DURATIONS UNLESS THE AUTHORITY MAKES A FINDING THAT THE NEW OR MODIFIED UTILITY POLE DOES NOT COMPLY WITH THE REQUIREMENTS DESCRIBED IN SUBSECTION K OF THIS SECTION.

N. AN AUTHORITY MAY REQUIRE A WIRELESS PROVIDER TO REPAIR ALL DAMAGE TO THE AUTHORITY'S PROPERTY AND THE RIGHT-OF-WAY THAT IS CAUSED BY THE ACTIVITIES OF THE WIRELESS PROVIDER OR THE WIRELESS PROVIDER'S CONTRACTOR WHILE OCCUPYING, INSTALLING, REPAIRING OR MAINTAINING SMALL WIRELESS FACILITIES, WIRELESS SUPPORT STRUCTURES OR UTILITY POLES IN THE RIGHT-OF-WAY AND TO RETURN THE DAMAGED PROPERTY TO THE SAME CONDITION AS BEFORE THE DAMAGE PURSUANT TO THE COMPETITIVELY NEUTRAL, REASONABLE REQUIREMENTS AND SPECIFICATIONS OF THE AUTHORITY. IF THE WIRELESS PROVIDER FAILS TO MAKE THE REPAIRS REQUIRED BY THE AUTHORITY WITHIN A REASONABLE TIME AFTER THE AUTHORITY PROVIDES WRITTEN NOTICE TO THE WIRELESS PROVIDER, THE AUTHORITY MAY MAKE THE REPAIRS AND CHARGE THE APPLICABLE PARTY THE REASONABLE, DOCUMENTED COST OF THE REPAIRS.

O. THIS ARTICLE DOES NOT RELIEVE A WIRELESS PROVIDER FROM ANY APPLICABLE REQUIREMENT TO OBTAIN A FRANCHISE, LICENSE OR OTHER PERMISSION TO PROVIDE COMMUNICATIONS SERVICE OR TO INSTALL, PLACE, MAINTAIN OR OPERATE FACILITIES OR STRUCTURES THAT ARE NOT AUTHORIZED BY THIS ARTICLE IN THE RIGHT-OF-WAY TO PROVIDE A COMMUNICATIONS SERVICE.

9-593. Applicability; collocation of small wireless facilities; permits; application; fee

A. THIS SECTION APPLIES TO THE ACTIVITIES OF A WIRELESS PROVIDER WITHIN A RIGHT-OF-WAY.

B. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 9-592, 9-594, 9-595, 9-597, 9-598 AND 9-599, AS APPLICABLE, AN AUTHORITY MAY NOT PROHIBIT, REGULATE OR CHARGE FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES.

C. SUBJECT TO THIS SECTION AND SECTION 9-592, SUBSECTION J, A SMALL WIRELESS FACILITY IS CLASSIFIED AS A PERMITTED USE AND IS NOT SUBJECT TO

ZONING REVIEW OR APPROVAL IF THE SMALL WIRELESS FACILITY IS COLLOCATED IN A RIGHT-OF-WAY IN ANY ZONE.

D. AN AUTHORITY MAY REQUIRE AN APPLICANT TO OBTAIN ONE OR MORE PERMITS TO COLLOCATE A SMALL WIRELESS FACILITY IF THE PERMIT REQUIREMENT IS OF GENERAL APPLICABILITY AND DOES NOT APPLY EXCLUSIVELY TO WIRELESS FACILITIES. AN APPLICANT SEEKING TO COLLOCATE MULTIPLE SMALL WIRELESS FACILITIES WITHIN THE JURISDICTION OF A SINGLE AUTHORITY MAY FILE A CONSOLIDATED APPLICATION FOR THE COLLOCATION OF UP TO TWENTY-FIVE SMALL WIRELESS FACILITIES IF THE COLLOCATIONS EACH INVOLVE SUBSTANTIALLY THE SAME TYPE OF SMALL WIRELESS FACILITIES AND SUBSTANTIALLY THE SAME TYPE OF STRUCTURE.

E. AN APPLICATION MUST INCLUDE AN ATTESTATION THAT THE SMALL WIRELESS FACILITIES WILL BE COLLOCATED ON THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE AND THAT THE SMALL WIRELESS FACILITIES WILL BE OPERATIONAL FOR USE BY A WIRELESS SERVICES PROVIDER TO PROVIDE SERVICE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE DATE, UNLESS THE AUTHORITY AND THE WIRELESS PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY IS CAUSED BY A LACK OF COMMERCIAL POWER AT THE SITE.

F. AN AUTHORITY:

1. SHALL ACCEPT APPLICATIONS FOR, PROCESS AND ISSUE PERMITS TO COLLOCATE SMALL WIRELESS FACILITIES.

2. WITHIN TWENTY DAYS AFTER RECEIVING AN APPLICATION, SHALL DETERMINE AND NOTIFY THE APPLICANT WHETHER THE APPLICATION IS COMPLETE. IF AN APPLICANT IS NOT NOTIFIED WITHIN THE TWENTY-DAY PERIOD, THE APPLICATION IS DEEMED COMPLETE. IF AN APPLICATION IS INCOMPLETE, THE AUTHORITY MUST SPECIFICALLY IDENTIFY THE INFORMATION MISSING FROM THE APPLICATION.

3. SHALL PROCESS EACH APPLICATION ON A NONDISCRIMINATORY BASIS. A COMPLETE APPLICATION IS DEEMED APPROVED IF THE AUTHORITY FAILS TO APPROVE OR DENY THE APPLICATION WITHIN SEVENTY-FIVE DAYS AFTER RECEIVING A COMPLETE APPLICATION.

4. SHALL APPROVE AN APPLICATION UNLESS THE APPLICATION DOES NOT MEET THE APPLICABLE CODES, LOCAL CODE PROVISIONS OR REGULATIONS THAT CONCERN PUBLIC SAFETY, OBJECTIVE DESIGN STANDARDS FOR DECORATIVE UTILITY POLES OR REASONABLE STEALTH AND CONCEALMENT REQUIREMENTS OR PUBLIC SAFETY AND REASONABLE SPACING REQUIREMENTS CONCERNING THE LOCATION OF GROUND-MOUNTED EQUIPMENT IN A RIGHT-OF-WAY. IF AN AUTHORITY DETERMINES THAT APPLICABLE CODES OR LOCAL CODE PROVISIONS OR REGULATIONS REQUIRE THAT THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE BE REPLACED BEFORE THE REQUESTED COLLOCATION, APPROVAL MAY BE CONDITIONED ON SUCH REPLACEMENT OF THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE. THE WIRELESS PROVIDER'S REQUEST FOR A REPLACEMENT UTILITY POLE OR WIRELESS SUPPORT STRUCTURE WILL BE PROCESSED PURSUANT TO SECTION 9-592.

5. IF AN APPLICATION IS DENIED, SHALL DOCUMENT THE BASIS FOR THE DENIAL, INCLUDING THE SPECIFIC CODE PROVISIONS, REGULATIONS OR

REQUIREMENTS ON WHICH THE DENIAL WAS BASED, AND SEND THE DOCUMENTATION TO THE APPLICANT ON OR BEFORE THE DATE THAT THE APPLICATION IS DENIED. THE APPLICANT MAY CURE THE DEFICIENCIES IDENTIFIED BY THE AUTHORITY AND RESUBMIT THE APPLICATION WITHIN THIRTY DAYS AFTER THE DENIAL WITHOUT PAYING AN ADDITIONAL APPLICATION FEE. THE AUTHORITY SHALL APPROVE OR DENY THE REVISED APPLICATION WITHIN THIRTY DAYS AFTER RECEIVING THE REVISED APPLICATION. ANY SUBSEQUENT REVIEW IS LIMITED TO THE DEFICIENCIES CITED IN THE DENIAL.

6. IF AN APPLICATION INCLUDES MULTIPLE SMALL WIRELESS FACILITIES, MAY REMOVE SMALL WIRELESS FACILITY COLLOCATIONS FROM THE APPLICATION AND TREAT SEPARATELY SMALL WIRELESS FACILITY COLLOCATIONS FOR WHICH INCOMPLETE INFORMATION HAS BEEN PROVIDED OR THAT DO NOT QUALIFY FOR CONSOLIDATED TREATMENT OR THAT ARE DENIED. THE AUTHORITY MAY ISSUE SEPARATE PERMITS FOR EACH COLLOCATION THAT IS APPROVED IN A CONSOLIDATED APPLICATION.

G. AN AUTHORITY MAY NOT:

1. DIRECTLY OR INDIRECTLY REQUIRE AN APPLICANT TO PERFORM SERVICES THAT ARE UNRELATED TO THE COLLOCATION FOR WHICH APPROVAL IS SOUGHT, SUCH AS IN-KIND CONTRIBUTIONS TO THE AUTHORITY, INCLUDING RESERVING FIBER, CONDUIT OR POLE SPACE ON THE WIRELESS PROVIDER'S MONOPOLE OR UTILITY POLE FOR THE AUTHORITY.

2. REQUIRE AN APPLICANT TO PROVIDE MORE INFORMATION TO OBTAIN A PERMIT THAN THE AUTHORITY REQUIRES OF A COMMUNICATIONS SERVICE PROVIDER THAT IS NOT A WIRELESS PROVIDER AND THAT REQUESTS TO ATTACH FACILITIES TO A STRUCTURE. AN AUTHORITY MAY REQUIRE THE APPLICANT TO CERTIFY THAT THE SMALL WIRELESS FACILITIES TO BE COLLOCATED COMPLY WITH THE FEDERAL COMMUNICATIONS COMMISSION'S REGULATIONS CONCERNING RADIO FREQUENCY EMISSIONS REFERENCED IN 47 UNITED STATES CODE SECTION 332(c)(7)(B)(iv).

3. INSTITUTE, EITHER EXPRESSLY OR DE FACTO, A MORATORIUM ON FILING, RECEIVING OR PROCESSING APPLICATIONS OR ISSUING PERMITS OR OTHER APPROVALS, IF ANY, FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY.

4. REQUIRE AN APPLICATION FOR ROUTINE MAINTENANCE OR THE REPLACEMENT OF SMALL WIRELESS FACILITIES WITH SMALL WIRELESS FACILITIES THAT ARE SUBSTANTIALLY SIMILAR OR THE SAME SIZE OR SMALLER. AN AUTHORITY MAY REQUIRE A PERMIT TO WORK WITHIN A RIGHT-OF-WAY FOR SUCH ACTIVITIES, IF APPLICABLE. A PERMIT ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

H. COLLOCATION FOR WHICH A PERMIT IS GRANTED SHALL BE COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE DATE, UNLESS THE AUTHORITY AND THE WIRELESS PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY IS CAUSED BY THE LACK OF COMMERCIAL POWER AT THE SITE. APPROVAL OF AN APPLICATION BY AN AUTHORITY ALLOWS THE APPLICANT TO DO BOTH OF THE FOLLOWING:

1. COLLOCATE THE SMALL WIRELESS FACILITIES.

2. SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS, THE WIRELESS PROVIDER'S RIGHT TO TERMINATE AT ANY TIME AND THE AUTHORITY'S TERMS

DESCRIBED IN SECTION 9-592, OPERATE AND MAINTAIN THE SMALL WIRELESS FACILITIES FOR A PERIOD OF NOT LESS THAN TEN YEARS, WHICH MUST BE RENEWED FOR EQUIVALENT DURATIONS UNLESS THE AUTHORITY MAKES A FINDING THAT THE SMALL WIRELESS FACILITIES DO NOT COMPLY WITH THE APPLICABLE CODES OR LOCAL CODE PROVISIONS OR REGULATIONS DESCRIBED IN SUBSECTION F, PARAGRAPH 4 OF THIS SECTION.

I. AN AUTHORITY MAY CHARGE AN APPLICATION FEE THAT IS LIMITED TO THE ACTUAL, DIRECT AND REASONABLE COSTS THAT ARE INCURRED BY THE AUTHORITY AND THAT RELATE TO THE GRANTING OR PROCESSING OF AN APPLICATION. AN APPLICATION FEE SHALL BE REASONABLY RELATED IN TIME TO THE INCURRING OF SUCH COSTS. IF SUCH COSTS ARE ALREADY RECOVERED BY EXISTING FEES, RATES OR TAXES THAT ARE PAID BY A WIRELESS PROVIDER, AN AUTHORITY MAY NOT CHARGE AN APPLICATION FEE TO RECOVER SUCH COSTS. AN APPLICATION FEE MAY NOT INCLUDE:

1. THIRD-PARTY TRAVEL EXPENSES THAT ARE INCURRED TO REVIEW AN APPLICATION.

2. THE DIRECT PAYMENT OR REIMBURSEMENT OF THIRD-PARTY RATES OR FEES THAT ARE CHARGED ON A CONTINGENCY BASIS OR PURSUANT TO A RESULT-BASED ARRANGEMENT.

J. THE TOTAL APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED ONE HUNDRED DOLLARS EACH FOR UP TO FIVE SMALL WIRELESS FACILITIES ADDRESSED IN AN APPLICATION AND FIFTY DOLLARS FOR EACH ADDITIONAL SMALL WIRELESS FACILITY ADDRESSED IN THE APPLICATION.

K. THIS ARTICLE DOES NOT ALLOW A PERSON TO COLLOCATE SMALL WIRELESS FACILITIES ON A PRIVATELY OWNED UTILITY POLE, A PRIVATELY OWNED WIRELESS SUPPORT STRUCTURE OR PRIVATE PROPERTY WITHOUT THE CONSENT OF THE PROPERTY OWNER.

9-594. Structures subject to zoning; time frames; application; fees

A. THE FOLLOWING ACTIVITIES THAT TAKE PLACE INSIDE OF A RIGHT-OF-WAY ARE SUBJECT TO THIS SECTION AND ALL OF THE AUTHORITY'S CODES AND REGULATIONS, INCLUDING THE AUTHORITY'S ZONING CODES AND OTHER REGULATORY PROCESSES GOVERNING USE OF THE RIGHTS-OF-WAY, UNLESS THE ACTIVITIES ARE EXEMPT FROM ZONING REVIEW AND APPROVAL UNDER SECTION 9-592, SUBSECTION I OR J OR SECTION 9-593, SUBSECTION C:

1. THE INSTALLATION OF NEW MONOPOLES, UTILITY POLES OR WIRELESS FACILITIES.

2. THE COLLOCATION OF WIRELESS FACILITIES.

B. NOTWITHSTANDING ANY PROVISION IN THIS ARTICLE TO THE CONTRARY, THE CONSTRUCTION, INSTALLATION, MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT OF A MONOPOLE OR ASSOCIATED WIRELESS FACILITY IN A RIGHT-OF-WAY IS SUBJECT TO ALL OF THE AUTHORITY'S CODES AND REGULATIONS, INCLUDING THE AUTHORITY'S ZONING CODES AND OTHER REGULATORY PROCESSES GOVERNING USE OF THE RIGHTS-OF-WAY.

C. AN AUTHORITY SHALL:

1. ACCEPT AND PROCESS APPLICATIONS FOR THE MODIFICATION OF EXISTING OR THE INSTALLATION OF NEW MONOPOLES, UTILITY POLES OR WIRELESS FACILITIES AND THE COLLOCATION OF WIRELESS FACILITIES.

2. WITHIN THIRTY DAYS AFTER RECEIVING AN APPLICATION, NOTIFY THE APPLICANT WHETHER THE APPLICATION IS COMPLETE. IF AN APPLICATION IS INCOMPLETE, THE AUTHORITY MUST SPECIFICALLY IDENTIFY THE INFORMATION MISSING FROM THE APPLICATION.

3. PROCESS EACH COMPLETE APPLICATION ON A NONDISCRIMINATORY BASIS. A COMPLETE APPLICATION IS DEEMED APPROVED IF THE AUTHORITY FAILS TO APPROVE OR DENY THE APPLICATION WITHIN ONE HUNDRED FIFTY DAYS AFTER RECEIPT OF AN APPLICATION FOR THE MODIFICATION OF EXISTING OR THE INSTALLATION OF NEW MONOPOLES, UTILITY POLES OR WIRELESS FACILITIES OR WITHIN NINETY DAYS AFTER RECEIPT OF A COMPLETE APPLICATION FOR THE COLLOCATION OF WIRELESS FACILITIES. THE TIME PERIOD FOR APPROVAL MAY BE TOLLED TO ACCOMMODATE TIMELY REQUESTS FOR INFORMATION REQUIRED TO COMPLETE THE APPLICATION OR MAY BE EXTENDED BY MUTUAL AGREEMENT BETWEEN THE APPLICANT AND AUTHORITY.

4. IF A COMPLETE APPLICATION IS DENIED, NOTIFY THE APPLICANT IN WRITING AND PROVIDE SUBSTANTIAL SUPPORTING EVIDENCE OF THE REASON FOR DENIAL IN THE WRITTEN RECORD. THE WRITTEN NOTIFICATION OF THE DENIAL AND THE SUPPORTING EVIDENCE SHALL BE PUBLICLY RELEASED CONTEMPORANEOUSLY. THERE MUST BE A REASONABLE BASIS FOR THE DENIAL OF AN APPLICATION. AN AUTHORITY MAY NOT DENY AN APPLICATION IF THE DENIAL IS DISCRIMINATORY AGAINST THE APPLICANT WITH RESPECT TO THE PLACEMENT OF THE FACILITIES OF OTHER WIRELESS PROVIDERS.

D. AN AUTHORITY MAY NOT:

1. REQUIRE AN APPLICANT TO SUBMIT INFORMATION ABOUT THE APPLICANT'S BUSINESS DECISIONS REGARDING THE NEED FOR THE MONOPOLE, UTILITY POLE OR WIRELESS FACILITIES.

2. REQUIRE AN APPLICANT TO SUBMIT INFORMATION ABOUT, OR EVALUATE AN APPLICANT'S BUSINESS DECISIONS REGARDING, THE APPLICANT'S SERVICE, CUSTOMER DEMAND FOR SERVICE OR QUALITY OF SERVICE.

3. INSTITUTE, EITHER EXPRESSLY OR DE FACTO, A MORATORIUM ON FILING, RECEIVING OR PROCESSING APPLICATIONS OR ISSUING DECISIONS FOR MODIFICATIONS OR INSTALLATIONS THAT ARE NOT A PERMITTED USE.

E. AN AUTHORITY, IN ADDITION TO OTHER RIGHTS THE AUTHORITY HAS UNDER FEDERAL, STATE OR LOCAL LAW, MAY:

1. ADOPT REASONABLE REQUIREMENTS REGARDING THE APPEARANCE AND CONCEALMENT OF FACILITIES, INCLUDING THOSE RELATING TO MATERIALS USED FOR ARRANGING, SCREENING OR LANDSCAPING.

2. ADOPT SETBACK OR FALL ZONE REQUIREMENTS THAT ARE SUBSTANTIALLY SIMILAR TO SETBACK OR FALL ZONE REQUIREMENTS THAT ARE IMPOSED ON OTHER TYPES OF COMMERCIAL STRUCTURES OF A SIMILAR HEIGHT.

3. CHARGE AN APPLICATION FEE. ANY APPLICATION FEE IS SUBJECT TO THE REQUIREMENTS PROVIDED IN SECTION 9-593, SUBSECTION I. THE TOTAL

APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED ONE THOUSAND DOLLARS FOR THE MODIFICATION OF EXISTING OR THE INSTALLATION OF NEW MONOPOLES OR UTILITY POLES OR FOR THE COLLOCATION OF WIRELESS FACILITIES.

4. CHARGE A RATE OR FEE FOR THE USE OF THE RIGHT-OF-WAY FOR THE INSTALLATION OF A MONOPOLE AND ASSOCIATED WIRELESS FACILITY THAT IS LIMITED TO NOT MORE THAN THE DIRECT AND ACTUAL COSTS OF MANAGING THE RIGHT-OF-WAY AND THAT IS NOT IN THE FORM OF A FRANCHISE OR OTHER FEE BASED ON REVENUE OR CUSTOMER COUNTS.

F. AN APPLICANT'S BUSINESS DECISIONS REGARDING THE TYPE AND LOCATION OF WIRELESS FACILITIES, MONOPOLES OR UTILITY POLES OR THE TECHNOLOGY TO BE USED ARE PRESUMED TO BE REASONABLE. THIS PRESUMPTION DOES NOT APPLY TO THE HEIGHT OR APPEARANCE OF WIRELESS FACILITIES, MONOPOLES OR UTILITY POLES. AN AUTHORITY MAY CONSIDER THE HEIGHT OF SUCH STRUCTURES IN THE ZONING OR OTHER REGULATORY REVIEW, PROVIDED THAT THE AUTHORITY DOES NOT UNREASONABLY DISCRIMINATE BETWEEN THE APPLICANT AND OTHER COMMUNICATIONS SERVICE PROVIDERS THAT INSTALL WIRELESS FACILITIES.

G. SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS, THE AUTHORITY'S TERMS DESCRIBED IN SECTION 9-592 AND THE WIRELESS PROVIDER'S RIGHT TO TERMINATE AT ANY TIME, THE APPROVAL TERM OF AN APPLICATION SHALL BE FOR A PERIOD OF NOT LESS THAN TEN YEARS, WHICH MUST BE RENEWED FOR EQUIVALENT DURATIONS UNLESS THE AUTHORITY MAKES A FINDING THAT THE STRUCTURE OR FACILITIES DO NOT COMPLY WITH THE APPLICABLE CODES OR TERMS OF THE ZONING OR OTHER REGULATORY PROCESS APPROVAL. CONSTRUCTION OF THE APPROVED STRUCTURE OR FACILITIES SHALL BE COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE DATE, UNLESS THE AUTHORITY AND THE WIRELESS PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY IS CAUSED BY THE LACK OF COMMERCIAL POWER AT THE SITE.

9-595. Access to authority utility poles; rates and fees; collocations for other commercial projects or uses

A. AN AUTHORITY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH ANY PERSON FOR THE RIGHT TO ATTACH TO AUTHORITY UTILITY POLES.

B. THE RATES AND FEES FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES ON AUTHORITY UTILITY POLES SHALL BE NONDISCRIMINATORY REGARDLESS OF THE SERVICES PROVIDED BY THE COLLOCATING PERSON.

C. THE RATE TO COLLOCATE SMALL WIRELESS FACILITIES ON AUTHORITY UTILITY POLES MAY NOT EXCEED FIFTY DOLLARS PER AUTHORITY UTILITY POLE, PER YEAR.

D. AN AUTHORITY SHALL ESTABLISH AND MAKE AVAILABLE RATES, FEES AND TERMS FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES ON AUTHORITY UTILITY POLES WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION OR THREE MONTHS AFTER RECEIVING A REQUEST TO COLLOCATE THE FIRST SMALL WIRELESS FACILITY ON SUCH POLES, WHICHEVER IS LATER. THE RATES, FEES AND TERMS SHALL BE MADE AVAILABLE FOR ACCEPTANCE BY A WIRELESS PROVIDER. AT THE WIRELESS PROVIDER'S OPTION, A WIRELESS PROVIDER MAY REQUEST DIFFERENT OR ADDITIONAL TERMS THAT THE PARTIES SHALL NEGOTIATE IN GOOD

FAITH. DOCUMENTS REFLECTING RATES, FEES AND TERMS WITH EACH WIRELESS PROVIDER SHALL BE MADE PUBLICLY AVAILABLE. THE RATES, FEES AND TERMS SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

1. THE RATES, FEES AND TERMS MUST BE NONDISCRIMINATORY, COMPETITIVELY NEUTRAL AND COMMERCIALLY REASONABLE AND COMPLY WITH THIS SECTION AND SECTION 9-592, SUBSECTIONS E AND F. REQUESTS FOR COLLOCATING A SMALL WIRELESS FACILITY ON AN AUTHORITY UTILITY POLE WILL BE PROCESSED PURSUANT TO SECTION 9-593. THE AUTHORITY MAY REQUIRE A WIRELESS PROVIDER TO REPLACE THE AUTHORITY UTILITY POLE IF THE AUTHORITY DETERMINES THAT APPLICABLE CODES OR LOCAL CODE OR REGULATORY PROVISIONS THAT CONCERN PUBLIC SAFETY REQUIRE REPLACEMENT OF THE AUTHORITY UTILITY POLE. THE WIRELESS PROVIDER'S REQUEST TO INSTALL A REPLACEMENT UTILITY POLE WILL BE PROCESSED PURSUANT TO SECTION 9-592. THE AUTHORITY SHALL RETAIN OWNERSHIP OF THE UTILITY POLE.

2. TERMS MUST REASONABLY ACCOMMODATE POWER SUPPLY AND ELECTRIC METERING FOR THE SMALL WIRELESS FACILITY.

E. AN AUTHORITY MAY PROHIBIT, REGULATE AND CHARGE FOR THE COLLOCATION OF A WIRELESS FACILITY ON A WIRELESS SUPPORT STRUCTURE OWNED BY THE AUTHORITY.

9-596. Scope of local authority

A. SUBJECT TO THIS ARTICLE AND APPLICABLE FEDERAL LAW, AN AUTHORITY MAY EXERCISE ZONING, LAND USE, PLANNING AND PERMITTING AUTHORITY AND THE AUTHORITY'S POLICE POWER WITHIN THE AUTHORITY'S TERRITORIAL BOUNDARIES, INCLUDING FOR THE INSTALLATION, MODIFICATION AND REPLACEMENT OF WIRELESS SUPPORT STRUCTURES AND UTILITY POLES.

B. AN AUTHORITY DOES NOT HAVE ANY JURISDICTION OR AUTHORITY OVER THE DESIGN, ENGINEERING, CONSTRUCTION, INSTALLATION OR OPERATION OF ANY SMALL WIRELESS FACILITY LOCATED IN AN INTERIOR STRUCTURE OR ON THE SITE OF ANY CAMPUS, STADIUM OR ATHLETIC FACILITY THAT IS NOT OWNED OR CONTROLLED BY THE AUTHORITY, OTHER THAN TO REQUIRE COMPLIANCE WITH APPLICABLE CODES.

C. THIS ARTICLE DOES NOT AUTHORIZE THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE, INCLUDING AN AUTHORITY, TO REQUIRE SMALL WIRELESS FACILITY DEPLOYMENT OR TO REGULATE WIRELESS SERVICES.

D. IF AN AUTHORITY DETERMINES THAT A UTILITY POLE, MONOPOLE OR WIRELESS SUPPORT STRUCTURE OF A WIRELESS PROVIDER WILL BE RELOCATED TO ACCOMMODATE A PUBLIC PROJECT, ALL WIRELESS FACILITIES DEPLOYED ON SUCH UTILITY POLE, MONOPOLE OR WIRELESS SUPPORT STRUCTURE SHALL BE RELOCATED AT NO COST TO THE AUTHORITY.

9-597. Dispute resolution

A COURT OF COMPETENT JURISDICTION IN THIS STATE SHALL DETERMINE ALL DISPUTES ARISING UNDER THIS ARTICLE.

9-598. General requirements for use of the right-of-way

STRUCTURES AND FACILITIES DEPLOYED BY WIRELESS PROVIDERS PURSUANT TO THIS ARTICLE SHALL BE CONSTRUCTED, MAINTAINED AND LOCATED AS TO NOT OBSTRUCT, ENDANGER OR HINDER THE USUAL TRAVEL OR PUBLIC SAFETY ON THE

RIGHT-OF-WAY, DAMAGE OR INTERFERE WITH ANY OTHER UTILITY FACILITIES IN THE RIGHT-OF-WAY OR INTERFERE WITH A UTILITY'S USE OF THE UTILITY'S FACILITIES IN THE RIGHT-OF-WAY. CONSTRUCTION AND MAINTENANCE BY THE WIRELESS PROVIDER SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AND ALL APPLICABLE LAWS AND REGULATIONS FOR THE PROTECTION OF UNDERGROUND AND OVERHEAD UTILITY FACILITIES. AN AUTHORITY SHALL TREAT A WIRELESS PROVIDER'S FACILITIES LOCATED WITHIN A RIGHT-OF-WAY ON AN EQUAL BASIS WITH OTHER UTILITY FACILITIES, EXCEPT THAT AN AUTHORITY MAY ADOPT REASONABLE REGULATIONS TO ADDRESS THE SEPARATION OF THE WIRELESS PROVIDER'S FACILITIES FROM THE OTHER UTILITY FACILITIES WITHIN THE RIGHT-OF-WAY TO PREVENT ANY DAMAGE TO OR INTERFERENCE WITH SUCH OTHER UTILITY FACILITIES OR INTERFERENCE WITH A UTILITY'S USE OF THE UTILITY'S FACILITIES LOCATED OR TO BE LOCATED WITHIN THE RIGHT-OF-WAY.

9-599. Applicability

THIS ARTICLE DOES NOT:

1. AFFECT THE AUTHORITY OF A SPECIAL TAXING DISTRICT, INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE THAT OWNS, CONTROLS OR OPERATES UTILITY POLES OR WIRELESS SUPPORT STRUCTURES TO DENY, LIMIT, RESTRICT OR DETERMINE THE RATES, FEES, TERMS AND CONDITIONS FOR THE USE OF OR ATTACHMENT TO ITS UTILITY POLES OR WIRELESS SUPPORT STRUCTURES BY A WIRELESS PROVIDER.

2. CONFER ON ANY AUTHORITY ANY ZONING, LAND USE, PLANNING, PERMITTING OR OTHER REGULATORY AUTHORITY OVER THE UTILITY POLES, WIRELESS SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES OWNED, CONTROLLED OR OPERATED BY A SPECIAL TAXING DISTRICT, INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE OR THE INSTALLATION OF SUCH UTILITY POLES, WIRELESS SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES BY A SPECIAL TAXING DISTRICT, INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE.

3. AMEND, MODIFY OR OTHERWISE AFFECT ANY PRIVATE EASEMENT. ANY AND ALL RIGHTS FOR THE USE OF A RIGHT-OF-WAY ARE SUBJECT TO THE RIGHTS GRANTED PURSUANT TO ANY PRIVATE EASEMENT.

4. APPLY TO ANY AUTHORITY WITHIN TEN MILES OF THE BORDER OF MEXICO THAT IS NEGOTIATING A CONTRACT OR HAS A CONTRACT IN PLACE ON OR BEFORE JULY 1, 2018 AND THAT CONTRACT ASSISTS AND SUPPORTS NATIONAL SECURITY OBJECTIVES ALONG THE BORDER OF THE UNITED STATES AND MEXICO.

Sec. 2. Title 11, Arizona Revised Statutes, is amended by adding chapter 13, to read:

CHAPTER 13

WIRELESS STRUCTURES AND FACILITIES

ARTICLE 1. GENERAL PROVISIONS

11-1801. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ANTENNA" MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS AND THAT IS USED IN PROVIDING WIRELESS SERVICES.

2. "APPLICABLE CODES" MEANS UNIFORM BUILDING, FIRE, ELECTRICAL, PLUMBING OR MECHANICAL CODES THAT ARE ADOPTED BY A RECOGNIZED NATIONAL CODE ORGANIZATION OR LOCAL AMENDMENTS TO THOSE CODES THAT ARE ENACTED TO ADDRESS THREATS OF DESTRUCTION OF PROPERTY OR INJURY TO PERSONS AND TO AN EXTENT THAT IS NOT INCONSISTENT WITH THIS ARTICLE.

3. "APPLICANT" MEANS ANY PERSON THAT SUBMITS AN APPLICATION AND THAT IS A WIRELESS PROVIDER.

4. "APPLICATION" MEANS A REQUEST THAT IS SUBMITTED BY AN APPLICANT TO A COUNTY ON A FORM PROVIDED BY THE COUNTY FOR A PERMIT TO COLLOCATE SMALL WIRELESS FACILITIES OR TO APPROVE THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE.

5. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 9-505. CABLE OPERATOR DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

6. "COLLOCATE" OR "COLLOCATION" MEANS TO INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE WIRELESS FACILITIES ON, WITHIN OR ADJACENT TO A WIRELESS SUPPORT STRUCTURE OR UTILITY POLE.

7. "COMMUNICATIONS SERVICE" MEANS CABLE SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 522(6), INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(24), TELECOMMUNICATIONS SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(53) OR WIRELESS SERVICE.

8. "COMMUNICATIONS SERVICE PROVIDER" MEANS A CABLE OPERATOR, A PROVIDER OF INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(24), A TELECOMMUNICATIONS CARRIER AS DEFINED IN 47 UNITED STATES CODE SECTION 153(51) OR A WIRELESS SERVICES PROVIDER.

9. "COUNTY UTILITY POLE" MEANS A UTILITY POLE THAT IS OWNED OR OPERATED BY A COUNTY AND THAT IS IN A RIGHT-OF-WAY.

10. "FEE" MEANS A ONE-TIME CHARGE TO PROCESS AN APPLICATION AND INSPECT ANY WORK PERFORMED BY AN APPLICANT PURSUANT TO A PERMIT ISSUED BY THE COUNTY.

11. "LAW" MEANS ANY FEDERAL, STATE OR LOCAL LAW, STATUTE, COMMON LAW, CODE, RULE, REGULATION, ORDER OR ORDINANCE.

12. "PERMIT" MEANS WRITTEN PERMISSION ISSUED BY A COUNTY TO INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE A UTILITY POLE OR TO COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE.

13. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, TRUST OR OTHER ENTITY OR ORGANIZATION, INCLUDING A COUNTY.

14. "PRIVATE EASEMENT" MEANS AN EASEMENT OR OTHER REAL PROPERTY RIGHT THAT IS ONLY FOR THE BENEFIT OF THE GRANTOR AND GRANTEE AND THE GRANTOR'S OR GRANTEE'S SUCCESSORS AND ASSIGNS.

15. "RATE" MEANS A ONE-TIME CHARGE FOR THE GRANTING OF A RIGHT TO USE A PORTION OF A RIGHT-OF-WAY AS SPECIFIED IN A PERMIT OR TO COLLOCATE A SMALL WIRELESS FACILITY ON OR ADJACENT TO A UTILITY POLE OR TO INSTALL, MODIFY OR REPLACE A UTILITY POLE AS SPECIFIED IN A PERMIT.

16. "RIGHT-OF-WAY" MEANS THE AREA ON, BELOW OR ABOVE A COUNTY ROADWAY, HIGHWAY, STREET, SIDEWALK, ALLEY OR UTILITY EASEMENT. RIGHT-OF-WAY DOES NOT INCLUDE A FEDERAL INTERSTATE HIGHWAY, A STATE HIGHWAY OR STATE ROUTE UNDER THE JURISDICTION OF THE DEPARTMENT OF TRANSPORTATION, A PRIVATE EASEMENT, PROPERTY THAT IS OWNED BY A SPECIAL TAXING DISTRICT, OR A UTILITY EASEMENT THAT DOES NOT AUTHORIZE THE DEPLOYMENT SOUGHT BY THE WIRELESS PROVIDER.

17. "SMALL WIRELESS FACILITY" MEANS A WIRELESS FACILITY THAT MEETS BOTH OF THE FOLLOWING QUALIFICATIONS:

(a) ALL ANTENNAS ARE LOCATED INSIDE AN ENCLOSURE OF NOT MORE THAN SIX CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA THAT HAS EXPOSED ELEMENTS, THE ANTENNA AND ALL OF THE ANTENNA'S EXPOSED ELEMENTS COULD FIT WITHIN AN IMAGINARY ENCLOSURE OF NOT MORE THAN SIX CUBIC FEET IN VOLUME.

(b) ALL OTHER WIRELESS EQUIPMENT ASSOCIATED WITH THE FACILITY IS CUMULATIVELY NOT MORE THAN TWENTY-EIGHT CUBIC FEET IN VOLUME, OR FIFTY CUBIC FEET IN VOLUME IF THE EQUIPMENT WAS GROUND MOUNTED BEFORE THE EFFECTIVE DATE OF THIS SECTION. THE FOLLOWING TYPES OF ASSOCIATED ANCILLARY EQUIPMENT ARE NOT INCLUDED IN THE CALCULATION OF EQUIPMENT VOLUME PURSUANT TO THIS SUBDIVISION:

(i) AN ELECTRIC METER.

(ii) CONCEALMENT ELEMENTS.

(iii) A TELECOMMUNICATIONS DEMARCATION BOX.

(iv) GROUNDING EQUIPMENT.

(v) A POWER TRANSFER SWITCH.

(vi) A CUTOFF SWITCH.

(vii) VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER SERVICES.

18. "SPECIAL TAXING DISTRICT" MEANS A SPECIAL DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 11, 12, 17, 18, 19, 20 OR 22.

19. "UTILITY POLE" MEANS A POLE OR SIMILAR STRUCTURE THAT IS USED IN WHOLE OR IN PART FOR COMMUNICATIONS SERVICES, ELECTRIC DISTRIBUTION, LIGHTING OR TRAFFIC SIGNALS OR A SIMILAR FUNCTION.

20. "WIRELESS FACILITY":

(a) MEANS EQUIPMENT AT A FIXED LOCATION THAT ENABLES WIRELESS COMMUNICATIONS BETWEEN USER EQUIPMENT AND A COMMUNICATIONS NETWORK, INCLUDING BOTH OF THE FOLLOWING:

(i) EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS.

(ii) RADIO TRANSCEIVERS, ANTENNAS, COAXIAL OR FIBER-OPTIC CABLES, REGULAR AND BACKUP POWER SUPPLIES AND COMPARABLE EQUIPMENT, REGARDLESS OF TECHNOLOGICAL CONFIGURATION.

(b) INCLUDES SMALL WIRELESS FACILITIES.

(c) DOES NOT INCLUDE THE STRUCTURE OR IMPROVEMENTS ON, UNDER OR WITHIN WHICH THE EQUIPMENT IS COLLOCATED, WIRELINE BACKHAUL FACILITIES, COAXIAL OR FIBER-OPTIC CABLE THAT IS BETWEEN WIRELESS SUPPORT STRUCTURES

OR UTILITY POLES OR COAXIAL OR FIBER-OPTIC CABLE THAT IS OTHERWISE NOT IMMEDIATELY ADJACENT TO, OR DIRECTLY ASSOCIATED WITH, AN ANTENNA.

(d) DOES NOT INCLUDE WI-FI RADIO EQUIPMENT DESCRIBED IN SECTION 9-506, SUBSECTION I OR MICROCELL EQUIPMENT DESCRIBED IN SECTION 9-584, SUBSECTION E.

21. "WIRELESS INFRASTRUCTURE PROVIDER" MEANS ANY PERSON THAT IS AUTHORIZED TO PROVIDE TELECOMMUNICATIONS SERVICE IN THIS STATE AND THAT BUILDS OR INSTALLS WIRELESS COMMUNICATIONS TRANSMISSION EQUIPMENT, WIRELESS FACILITIES OR UTILITY POLES BUT THAT IS NOT A WIRELESS SERVICES PROVIDER. WIRELESS INFRASTRUCTURE PROVIDER DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

22. "WIRELESS PROVIDER" MEANS A CABLE OPERATOR, WIRELESS INFRASTRUCTURE PROVIDER OR WIRELESS SERVICES PROVIDER.

23. "WIRELESS SERVICES" MEANS ANY SERVICES THAT ARE PROVIDED TO THE PUBLIC AND THAT USE LICENSED OR UNLICENSED SPECTRUM, WHETHER AT A FIXED LOCATION OR MOBILE, USING WIRELESS FACILITIES.

24. "WIRELESS SERVICES PROVIDER" MEANS A PERSON THAT PROVIDES WIRELESS SERVICES. WIRELESS SERVICES PROVIDER DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

25. "WIRELESS SUPPORT STRUCTURE":

(a) MEANS:

(i) A FREESTANDING STRUCTURE.

(ii) A TOWER, EITHER GUYED OR SELF-SUPPORTING.

(iii) ANY OTHER EXISTING OR PROPOSED STRUCTURE DESIGNED TO SUPPORT OR CAPABLE OF SUPPORTING SMALL WIRELESS FACILITIES.

(b) DOES NOT INCLUDE A UTILITY POLE.

11-1802. Exclusive arrangements prohibited; permit; rates, fees and terms; access and use of county structures

A. A COUNTY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH ANY WIRELESS PROVIDER FOR USE OF A RIGHT-OF-WAY FOR THE CONSTRUCTION, OPERATION OR MAINTENANCE OF UTILITY POLES OR THE COLLOCATION OF SMALL WIRELESS FACILITIES ON UTILITY POLES OR WIRELESS SUPPORT STRUCTURES.

B. SUBJECT TO SUBSECTION C OF THIS SECTION, A COUNTY MAY REQUIRE A PERMIT AND CHARGE A FEE FOR PROCESSING AN APPLICATION BY A WIRELESS PROVIDER AND CONDUCTING ASSOCIATED INSPECTIONS FOR THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE IN A RIGHT-OF-WAY. ANY FEE CHARGED PURSUANT TO THIS SECTION MUST BE REASONABLE AND CONFORM TO AUTHORIZED AND PUBLISHED FEES FOR SIMILAR PERMITS ISSUED BY THE COUNTY AND MAY NOT EXCEED ONE HUNDRED DOLLARS PER COLLOCATION OR INSTALLATION.

C. FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE IN THE RIGHT-OF-WAY THAT IS NOT OWNED BY THE COUNTY AND THAT DOES NOT INCLUDE GROUND-MOUNTED EQUIPMENT, THE

COUNTY MAY NOT CHARGE A WIRELESS PROVIDER A RATE OR FEE AND MAY NOT REQUIRE A PERMIT.

D. A COUNTY MAY CHARGE A WIRELESS PROVIDER A RATE FOR THE WIRELESS PROVIDER'S USE OF A RIGHT-OF-WAY IN ACCORDANCE WITH THIS SECTION. THE COUNTY MAY:

1. FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE THAT IS NOT OWNED BY THE COUNTY THAT INCLUDES GROUND-MOUNTED EQUIPMENT, CHARGE A RATE FOR THE GROUND-MOUNTED EQUIPMENT USING THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION, REQUIRE AN APPLICATION AND CHARGE A FEE. THE RATE FOR GROUND-MOUNTED EQUIPMENT MAY NOT EXCEED ONE HUNDRED SEVENTY-FIVE DOLLARS.

2. FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A COUNTY UTILITY POLE THAT DOES NOT INCLUDE GROUND-MOUNTED EQUIPMENT, CHARGE A RATE USING THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION THAT DOES NOT EXCEED TWENTY DOLLARS. IF THE COLLOCATION INCLUDES GROUND-MOUNTED EQUIPMENT, THE COUNTY MAY CHARGE AN ADDITIONAL RATE USING THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION. THE RATE FOR GROUND-MOUNTED EQUIPMENT MAY NOT EXCEED ONE HUNDRED SEVENTY-FIVE DOLLARS.

3. FOR THE INSTALLATION OF A UTILITY POLE, TOGETHER WITH THE COLLOCATION OF SMALL WIRELESS FACILITIES, THAT WILL NOT BE OWNED BY THE COUNTY, CHARGE A WIRELESS PROVIDER A RATE USING THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION. THE RATE MAY NOT EXCEED ONE HUNDRED SEVENTY-FIVE DOLLARS. AN ADDITIONAL RATE MAY NOT BE CHARGED FOR COLLOCATED SMALL WIRELESS FACILITIES, INCLUDING GROUND-MOUNTED EQUIPMENT THAT IS REQUESTED IN THE APPLICATION.

4. FOR THE REPLACEMENT OF A UTILITY POLE OWNED BY THE COUNTY, REQUIRE THE APPLICANT TO COMPLY WITH THE COUNTY'S PROCESSES AND REQUIREMENTS FOR INSTALLING SUCH STRUCTURES. THE COUNTY MAY NOT CHARGE A RATE FOR THE REPLACED UTILITY POLE.

5. CHARGE A RATE THAT HAS BEEN LAWFULLY ADOPTED AND PUBLISHED. THE RATE SHALL BE BASED ON THE AVERAGE FAIR MARKET VALUE OF THE COUNTY RIGHT-OF-WAY THAT IS SUITABLE FOR THE DEPLOYMENT OF WIRELESS FACILITIES AND UTILITY POLES. ALL MATERIALS USED TO DERIVE THESE VALUES SHALL BE READILY AVAILABLE TO THE PUBLIC AT LEAST NINETY DAYS BEFORE THE ADOPTION OF THE RATE. THE RATE ADOPTED SHALL BE BASED ON NINETY PERCENT OF THE AVERAGE FAIR MARKET VALUES THAT HAVE BEEN DETERMINED AND ARE SUBJECT TO THE APPLICABLE RATE CAPS IN PARAGRAPHS 1, 2 AND 3 OF THIS SUBSECTION.

E. A COUNTY SHALL:

1. ADOPT AN ORDINANCE ESTABLISHING RATES, FEES AND TERMS FOR THE FOLLOWING:

(a) THE INSTALLATION, MODIFICATION OR REPLACEMENT BY A WIRELESS PROVIDER OF A UTILITY POLE LOCATED IN A RIGHT-OF-WAY.

(b) THE COLLOCATION BY A WIRELESS PROVIDER OF A SMALL WIRELESS FACILITY IN A RIGHT-OF-WAY.

(c) THE COLLOCATION BY A WIRELESS PROVIDER OF A SMALL WIRELESS FACILITY ON A COUNTY UTILITY POLE.

2. ADOPT THE ORDINANCE DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION WITHIN THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED UNDER SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY DAYS AFTER RECEIVING THE FIRST REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER.

3. ESTABLISH RATES, FEES AND TERMS THAT COMPLY WITH THIS SECTION. THE TERMS:

(a) MAY NOT BE UNREASONABLE OR DISCRIMINATORY.

(b) MAY INCLUDE REQUIREMENTS APPLICABLE TO OTHER USERS OF THE RIGHT-OF-WAY.

(c) MAY REQUIRE THAT THE WIRELESS PROVIDER'S OPERATION OF THE SMALL WIRELESS FACILITIES AND WIRELESS FACILITIES IN THE RIGHT-OF-WAY DOES NOT INTERFERE WITH THE COUNTY'S PUBLIC SAFETY COMMUNICATIONS.

(d) MAY NOT REQUIRE THE PLACEMENT OF SMALL WIRELESS FACILITIES ON ANY SPECIFIC UTILITY POLE OR CATEGORY OF UTILITY POLES OR REQUIRE MULTIPLE ANTENNA SYSTEMS ON A SINGLE UTILITY POLE.

(e) MAY NOT LIMIT THE PLACEMENT OF POLE-MOUNTED SMALL WIRELESS FACILITIES BY MINIMUM SEPARATION DISTANCES BUT MAY REQUIRE REASONABLE SPACING REQUIREMENTS THAT CONCERN THE LOCATION OF GROUND-MOUNTED EQUIPMENT.

F. AGREEMENTS THAT ARE IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION BETWEEN COUNTIES AND WIRELESS PROVIDERS AND THAT RELATE TO THE COLLOCATION OF SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY, INCLUDING THE COLLOCATION OF SMALL WIRELESS FACILITIES ON COUNTY UTILITY POLES, REMAIN IN EFFECT, SUBJECT TO APPLICABLE TERMINATION PROVISIONS. THE WIRELESS PROVIDER MAY ELECT TO PAY THE RATES AND FEES PROVIDED UNDER SUBSECTION D OF THIS SECTION FOR SMALL WIRELESS FACILITIES AND UTILITY POLES THAT ARE THE SUBJECT OF AN APPLICATION SUBMITTED AFTER THE RATES, FEES AND TERMS BECOME EFFECTIVE, IF THE WIRELESS PROVIDER NOTIFIES THE COUNTY OF THE WIRELESS PROVIDER'S ELECTION AND AGREEMENT TO COMPLY WITH THE TERMS ADOPTED BY THE COUNTY UNDER SUBSECTION E OF THIS SECTION.

G. THIS CHAPTER DOES NOT RELIEVE A WIRELESS PROVIDER FROM ANY APPLICABLE REQUIREMENT TO OBTAIN A FRANCHISE, LICENSE OR OTHER PERMISSION TO PROVIDE COMMUNICATIONS SERVICE OR TO INSTALL, PLACE, MAINTAIN OR OPERATE FACILITIES OR STRUCTURES THAT ARE NOT AUTHORIZED BY THIS CHAPTER IN THE RIGHT-OF-WAY TO PROVIDE A COMMUNICATIONS SERVICE.

11-1803. Access to right-of-way by wireless providers

A. SUBJECT TO THIS SECTION AND SECTIONS 11-1802, 11-1804, 11-1806, 11-1807, 11-1809 AND 11-1810, A WIRELESS PROVIDER MAY CONSTRUCT, INSTALL, MODIFY, MOUNT, MAINTAIN, OPERATE AND REPLACE UTILITY POLES ALONG, ACROSS, ON AND UNDER THE RIGHT-OF-WAY AND COLLOCATE SMALL WIRELESS FACILITIES ON UTILITY POLES AND WIRELESS SUPPORT STRUCTURES.

B. THE FOLLOWING REQUIREMENTS APPLY TO THE CONSTRUCTION, INSTALLATION, MOUNTING, MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT OF UTILITY POLES BY A WIRELESS PROVIDER IN THE RIGHT-OF-WAY AND THE COLLOCATION OF SMALL WIRELESS FACILITIES ON UTILITY POLES OR WIRELESS SUPPORT STRUCTURES BY WIRELESS PROVIDERS IN THE RIGHT-OF-WAY:

1. A COUNTY SHALL ISSUE A PERMIT FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES ON OR ADJACENT TO A COUNTY UTILITY POLE OR THE COLLOCATION OF SMALL WIRELESS FACILITIES WITH GROUND-MOUNTED EQUIPMENT ADJACENT TO ANY OTHER PARTY'S UTILITY POLE OR WIRELESS SUPPORT STRUCTURE IF BOTH OF THE FOLLOWING APPLY:

(a) THE APPLICANT PROVIDES THE SEALED STATEMENT OF A REGISTERED ENGINEER DEMONSTRATING THAT THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE IS STRUCTURALLY SOUND AND ABLE TO SUPPORT THE PROPOSED SMALL WIRELESS FACILITY.

(b) THE COLLOCATION COMPLIES WITH APPLICABLE CODES AND THE TERMS FOR COLLOCATION ADOPTED UNDER SECTION 11-1802, SUBSECTION E.

2. THE COLLOCATION OF SMALL WIRELESS FACILITIES PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION IS A PERMITTED USE IN ALL ZONING DISTRICTS AND ZONING REVIEW AND APPROVAL IS NOT REQUIRED. IF THE APPLICANT FAILS TO DEMONSTRATE THAT A COUNTY UTILITY POLE IS STRUCTURALLY SOUND AND ABLE TO SUPPORT THE PROPOSED SMALL WIRELESS FACILITY, THE COUNTY MAY CONDITION A PERMIT ON REPLACEMENT OF THE COUNTY UTILITY POLE AT THE APPLICANT'S EXPENSE. THE WIRELESS PROVIDER'S REQUEST TO INSTALL A REPLACEMENT UTILITY POLE WILL BE PROCESSED UNDER SECTION 11-1802, SUBSECTION D, PARAGRAPH 4. THE COUNTY SHALL OWN THE REPLACEMENT UTILITY POLE.

3. A COUNTY SHALL ISSUE A PERMIT FOR THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE IF ALL OF THE FOLLOWING APPLY:

(a) THE APPLICANT PROVIDES THE SEALED STATEMENT OF A REGISTERED ENGINEER DEMONSTRATING THAT THE UTILITY POLE IS STRUCTURALLY SOUND AND ABLE TO SUPPORT THE PROPOSED SMALL WIRELESS FACILITY.

(b) THE PROPOSED LOCATION OF THE UTILITY POLE COMPLIES WITH REASONABLE RESTRICTIONS ADOPTED BY THE COUNTY THAT REQUIRE DISTANCES OF SEPARATION BETWEEN UTILITY POLES, GROUND-MOUNTED EQUIPMENT AND WIRELESS SUPPORT STRUCTURES.

(c) THE INSTALLATION, MODIFICATION OR REPLACEMENT COMPLIES WITH THE APPLICABLE CODES AND TERMS FOR INSTALLATION, MODIFICATION OR REPLACEMENT ADOPTED UNDER SECTION 11-1802, SUBSECTION E.

4. THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE APPROVED PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION IS A PERMITTED USE IN ALL ZONING DISTRICTS AND SUBJECT TO ONLY ADMINISTRATIVE ZONING REVIEW AND APPROVAL UNLESS THE INSTALLATION, MODIFICATION OR REPLACEMENT WOULD NOT COMPLY WITH THE HEIGHT REQUIREMENTS OF PARAGRAPH 5 OF THIS SUBSECTION, AN UNDERGROUNDING REQUIREMENT DESCRIBED IN PARAGRAPH 6 OF THIS SUBSECTION OR A POLE SPACING REQUIREMENT DESCRIBED IN PARAGRAPH 7 OF THIS SUBSECTION.

5. A PROPOSED OR MODIFIED UTILITY POLE INSTALLED IN A COUNTY RIGHT-OF-WAY MAY NOT EXCEED THE GREATER OF TEN FEET IN HEIGHT ABOVE THE TALLEST UTILITY POLE, OTHER THAN A UTILITY POLE SUPPORTING ONLY WIRELESS FACILITIES, THAT IS IN PLACE ON THE EFFECTIVE DATE OF THIS SECTION AND THAT IS LOCATED WITHIN FIVE HUNDRED FEET OF THE PROPOSED UTILITY POLE IN THE SAME RIGHT-OF-WAY OR FIFTY FEET ABOVE GROUND LEVEL. AN APPLICANT MAY APPLY FOR AN ADMINISTRATIVE WAIVER TO EXCEED THESE HEIGHT LIMITATIONS.

6. WIRELESS PROVIDERS MUST COMPLY WITH UNDERGROUNDING REQUIREMENTS THAT PROHIBIT THE INSTALLATION OF NEW STRUCTURES IN A RIGHT-OF-WAY WITHOUT PRIOR APPROVAL IF SUCH REQUIREMENTS DO NOT PROHIBIT THE REPLACEMENT OF EXISTING STRUCTURES AND FACILITIES. AN APPLICANT MAY APPLY FOR AN ADMINISTRATIVE WAIVER TO INSTALL A UTILITY POLE IN A RIGHT-OF-WAY WHERE SUCH UNDERGROUNDING REQUIREMENTS APPLY.

7. WIRELESS PROVIDERS SHALL COMPLY WITH REASONABLE REQUIREMENTS CONCERNING SPACING BETWEEN UTILITY POLES AND GROUND-MOUNTED EQUIPMENT IN THE RIGHT-OF-WAY. AN APPLICANT MAY APPLY FOR AN ADMINISTRATIVE WAIVER TO INSTALL A UTILITY POLE IN CLOSER PROXIMITY TO ANOTHER POLE OR GROUND-MOUNTED EQUIPMENT THAN THESE SPACING REQUIREMENTS WOULD PERMIT.

C. A COUNTY SHALL ADOPT AN ADMINISTRATIVE WAIVER PROCESS FOR SUBSECTION B, PARAGRAPHS 5, 6 AND 7 OF THIS SECTION THAT COMPLIES WITH SECTION 11-1605. THE APPLICATION PROCESS AND TIME FRAMES SHALL BE ADOPTED WITHIN THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED PURSUANT TO SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY DAYS AFTER RECEIVING A REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER. AN APPLICANT IS ENTITLED TO ALL OF THE RIGHTS GRANTED IN CHAPTER 11, ARTICLE 1 OF THIS TITLE.

11-1804. Collocation of small wireless facilities; permits

A. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 11-1802, 11-1803, 11-1806, 11-1807, 11-1809 AND 11-1810, A COUNTY MAY NOT PROHIBIT, REGULATE OR CHARGE FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES INSIDE A RIGHT-OF-WAY.

B. FOR COLLOCATIONS FOR WHICH AN APPLICATION IS REQUIRED, AN APPLICANT SEEKING TO COLLOCATE MULTIPLE SMALL WIRELESS FACILITIES WITHIN THE JURISDICTION OF A SINGLE COUNTY MAY FILE A CONSOLIDATED APPLICATION FOR THE COLLOCATION OF UP TO THIRTY-FIVE SMALL WIRELESS FACILITIES WITHIN A RIGHT-OF-WAY IF THE COLLOCATIONS EACH INVOLVE SUBSTANTIALLY THE SAME TYPE OF SMALL WIRELESS FACILITIES AND SUBSTANTIALLY THE SAME TYPE OF UTILITY POLE OR WIRELESS SUPPORT STRUCTURE. THE COUNTY MAY REMOVE FROM THE CONSOLIDATED APPLICATION AND TREAT SEPARATELY SMALL WIRELESS FACILITY COLLOCATIONS FOR WHICH INCOMPLETE INFORMATION HAS BEEN PROVIDED, THAT DO NOT QUALIFY FOR CONSOLIDATED TREATMENT OR THAT ARE DENIED. THE COUNTY MAY ISSUE SEPARATE PERMITS FOR EACH COLLOCATION THAT IS APPROVED IN A CONSOLIDATED APPLICATION. APPLICATION FEES, IF REQUIRED, SHALL BE CAPPED AT ONE HUNDRED DOLLARS FOR EACH SMALL WIRELESS FACILITY FOR UP TO FIVE

SMALL WIRELESS FACILITIES ADDRESSED IN A SINGLE APPLICATION AND SIXTY-FIVE DOLLARS FOR EACH ADDITIONAL SMALL WIRELESS FACILITY ADDRESSED IN THE APPLICATION.

C. AN APPLICATION SHALL INCLUDE AN ATTESTATION THAT THE SMALL WIRELESS FACILITIES WILL BE COLLOCATED ON THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE AND THAT THE SMALL WIRELESS FACILITIES WILL BE OPERATIONAL FOR USE BY A WIRELESS SERVICES PROVIDER TO PROVIDE SERVICE WITHIN ONE YEAR AFTER THE DATE ON WHICH THE PERMIT IS ISSUED.

11-1805. Applicability; location outside of a county-owned right-of-way

A. THIS SECTION APPLIES TO THE INSTALLATION, MODIFICATION OR REPLACEMENT BY A WIRELESS PROVIDER OF A UTILITY POLE OR THE COLLOCATION BY A WIRELESS PROVIDER OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE OUTSIDE OF THE RIGHT-OF-WAY.

B. THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE IS A PERMITTED USE IN EVERY ZONING DISTRICT IN THE COUNTY EXCEPT FOR SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS.

C. THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE IS NOT A PROHIBITED USE IN ANY ZONING DISTRICT IN THE COUNTY.

D. IN ANY ZONING DISTRICT IN WHICH THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE IS NOT A PERMITTED USE, THE COUNTY SHALL ESTABLISH A PROCEDURE BY WHICH AN APPLICANT MAY SEEK TO INSTALL, MODIFY OR REPLACE A UTILITY POLE OR COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE.

E. EXCEPT AS PROVIDED IN THIS SECTION, ALL ZONING REQUIREMENTS OF THE ZONING DISTRICT IN WHICH THE APPLICANT SEEKS TO INSTALL, MODIFY OR REPLACE A UTILITY POLE OR COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE OUTSIDE THE RIGHT-OF-WAY THAT ARE GENERALLY APPLICABLE TO ALL APPLICANTS WITHIN THAT ZONING DISTRICT APPLY TO THE APPLICANT.

F. THE COUNTY MAY ADOPT REASONABLE ZONING REQUIREMENTS THAT ARE APPLICABLE ONLY TO THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE AND THAT REFLECT SOUND ZONING AND PLANNING.

G. A FEE FOR A ZONING APPLICATION AND APPROVAL REQUIRED UNDER THIS SECTION SHALL CONFORM TO THE FEES APPLICABLE TO SIMILAR APPLICATIONS WITHIN THE COUNTY.

H. FOR ZONING APPLICATIONS REQUIRED UNDER THIS SECTION, A COUNTY SHALL EITHER:

1. INCORPORATE THE APPLICATION PROCESS AND TIME FRAMES FOR THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR WIRELESS SUPPORT STRUCTURES, OR FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES, INTO PROCESSES AND TIME FRAMES PREVIOUSLY ADOPTED BY THE COUNTY PURSUANT TO SECTION 11-1605.

2. ADOPT AN APPLICATION PROCESS AND TIME FRAMES FOR THE INSTALLATION, MODIFICATION OR REPLACEMENT OF UTILITY POLES OR WIRELESS SUPPORT STRUCTURES, OR FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES, THAT COMPLY WITH SECTION 11-1605. THE APPLICATION PROCESS AND TIME FRAMES SHALL BE ADOPTED WITHIN THE PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED UNDER SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY DAYS AFTER RECEIVING A REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER.

11-1806. Application processing

A. A COUNTY SHALL ADOPT AN APPLICATION PROCESS AND TIME FRAMES FOR THE INSTALLATION, MODIFICATION OR REPLACEMENT OF UTILITY POLES OR WIRELESS SUPPORT STRUCTURES INSIDE OF THE RIGHT-OF-WAY OR FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES INSIDE OF THE RIGHT-OF-WAY THAT COMPLY WITH SECTION 11-1605. THE APPLICATION PROCESS AND TIME FRAMES SHALL BE ADOPTED WITHIN THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED PURSUANT TO SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY DAYS AFTER RECEIVING THE FIRST REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER.

B. AN APPLICANT IS ENTITLED TO ALL OF THE RIGHTS GRANTED IN CHAPTER 11, ARTICLE 1 OF THIS TITLE.

C. A COUNTY MAY NOT:

1. DIRECTLY OR INDIRECTLY REQUIRE AN APPLICANT TO PERFORM SERVICES THAT ARE UNRELATED TO THE APPLICATION, SUCH AS IN-KIND CONTRIBUTIONS TO THE COUNTY, INCLUDING RESERVING FIBER, CONDUIT OR POLE SPACE ON THE WIRELESS PROVIDER'S POLE FOR THE COUNTY.

2. REQUIRE AN APPLICANT TO PROVIDE MORE INFORMATION TO OBTAIN A PERMIT THAN THE COUNTY REQUIRES OF A COMMUNICATIONS SERVICE PROVIDER THAT IS NOT A WIRELESS PROVIDER AND THAT REQUESTS TO ATTACH FACILITIES TO A STRUCTURE.

3. INSTITUTE, EITHER EXPRESSLY OR DE FACTO, A MORATORIUM ON FILING, RECEIVING OR PROCESSING APPLICATIONS OR ISSUING PERMITS OR OTHER APPROVALS, IF ANY, FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY.

4. REQUIRE AN APPLICATION FOR ROUTINE MAINTENANCE OR THE REPLACEMENT OF SMALL WIRELESS FACILITIES WITH SMALL WIRELESS FACILITIES THAT ARE SUBSTANTIALLY SIMILAR OR THE SAME SIZE OR SMALLER. A COUNTY MAY REQUIRE A PERMIT TO WORK WITHIN A RIGHT-OF-WAY FOR SUCH ACTIVITIES, IF APPLICABLE. A PERMIT ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

D. ISSUANCE OF A PERMIT BY A COUNTY SHALL ALLOW THE APPLICANT TO DO BOTH OF THE FOLLOWING:

1. COLLOCATE THE SMALL WIRELESS FACILITIES OR CONSTRUCT, INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE, AS SPECIFIED IN THE PERMIT.

2. ON FINAL INSPECTION OF ALL WORK COMPLETED PURSUANT TO THE PERMIT, SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS AND THE WIRELESS PROVIDER'S RIGHT TO TERMINATE AT ANY TIME, OPERATE AND MAINTAIN THE SMALL WIRELESS FACILITIES. A PERMIT MAY NOT STATE A DURATION PERIOD FOR OPERATION AND MAINTENANCE.

E. THIS ARTICLE DOES NOT ALLOW A PERSON TO COLLOCATE SMALL WIRELESS FACILITIES ON A PRIVATELY OWNED UTILITY POLE, A PRIVATELY OWNED WIRELESS SUPPORT STRUCTURE OR PRIVATE PROPERTY WITHOUT THE CONSENT OF THE PROPERTY OWNER.

11-1807. General requirements concerning use of the right-of-way by wireless providers

UTILITY POLES, WIRELESS SUPPORT STRUCTURES AND WIRELESS FACILITIES DEPLOYED BY WIRELESS PROVIDERS PURSUANT TO THIS ARTICLE SHALL BE CONSTRUCTED AND MAINTAINED AS TO NOT OBSTRUCT, ENDANGER OR HINDER THE USUAL TRAVEL OR PUBLIC SAFETY ON THE RIGHT-OF-WAY, DAMAGE OR INTERFERE WITH ANY OTHER UTILITY FACILITIES IN THE RIGHT-OF-WAY OR INTERFERE WITH A UTILITY'S USE OF THE UTILITY'S FACILITIES IN THE RIGHT-OF-WAY. CONSTRUCTION AND MAINTENANCE BY THE WIRELESS PROVIDER SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AND ALL APPLICABLE LAWS AND REGULATIONS FOR THE PROTECTION OF UNDERGROUND AND OVERHEAD UTILITY FACILITIES. A COUNTY SHALL TREAT A WIRELESS PROVIDER'S UTILITY FACILITIES LOCATED WITHIN A RIGHT-OF-WAY ON AN EQUAL BASIS WITH OTHER UTILITY FACILITIES, EXCEPT THAT A COUNTY MAY ADOPT REASONABLE REGULATIONS TO ADDRESS THE SEPARATION OF THE WIRELESS PROVIDER'S UTILITY FACILITIES FROM THE OTHER UTILITY FACILITIES WITHIN THE RIGHT-OF-WAY TO PREVENT ANY DAMAGE TO OR INTERFERENCE WITH OTHER UTILITY FACILITIES OR INTERFERENCE WITH A UTILITY'S USE OF THE UTILITY'S FACILITIES LOCATED OR TO BE LOCATED WITHIN THE RIGHT-OF-WAY.

11-1808. Scope of local authority

A. SUBJECT TO THIS ARTICLE AND APPLICABLE FEDERAL LAW, A COUNTY MAY EXERCISE ZONING, LAND USE, PLANNING AND PERMITTING AUTHORITY AND THE COUNTY'S POLICE POWER WITHIN THE COUNTY'S TERRITORIAL BOUNDARIES, INCLUDING FOR THE INSTALLATION, MODIFICATION AND REPLACEMENT OF WIRELESS SUPPORT STRUCTURES AND UTILITY POLES.

B. A COUNTY DOES NOT HAVE ANY JURISDICTION OR AUTHORITY OVER THE DESIGN, ENGINEERING, CONSTRUCTION, INSTALLATION OR OPERATION OF ANY SMALL WIRELESS FACILITY LOCATED IN AN INTERIOR STRUCTURE OR ON THE SITE OF ANY CAMPUS, STADIUM OR ATHLETIC FACILITY THAT IS NOT OWNED OR CONTROLLED BY THE COUNTY OTHER THAN TO COMPLY WITH APPLICABLE CODES.

C. THIS ARTICLE DOES NOT AUTHORIZE THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A COUNTY, TO REQUIRE SMALL WIRELESS FACILITY DEPLOYMENT OR TO REGULATE WIRELESS SERVICES.

11-1809. Dispute resolution

A COURT OF COMPETENT JURISDICTION IN THIS STATE SHALL DETERMINE ALL DISPUTES ARISING UNDER THIS ARTICLE.

11-1810. Applicability

THIS ARTICLE DOES NOT:

1. AFFECT THE AUTHORITY OF A SPECIAL TAXING DISTRICT, INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE THAT OWNS, CONTROLS OR OPERATES UTILITY POLES OR WIRELESS SUPPORT STRUCTURES TO DENY, LIMIT, RESTRICT OR DETERMINE THE RATES, FEES, TERMS AND CONDITIONS FOR THE USE OF OR ATTACHMENT TO ITS UTILITY POLES OR WIRELESS SUPPORT STRUCTURES BY A WIRELESS PROVIDER.

2. CONFER ON ANY COUNTY ANY ZONING, LAND USE, PLANNING, PERMITTING OR OTHER REGULATORY AUTHORITY OVER THE UTILITY POLES, WIRELESS SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES OWNED, CONTROLLED OR OPERATED BY A SPECIAL TAXING DISTRICT OR THE INSTALLATION OF SUCH UTILITY POLES, WIRELESS SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES BY A SPECIAL TAXING DISTRICT.

3. AMEND, MODIFY OR OTHERWISE AFFECT ANY PRIVATE EASEMENT. ANY AND ALL RIGHTS FOR THE USE OF A RIGHT-OF-WAY ARE SUBJECT TO THE RIGHTS GRANTED PURSUANT TO ANY PRIVATE EASEMENT.

APPROVED BY THE GOVERNOR MARCH 31, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2017.

Notice of Intent for Right-Of-Way Wireless Facilities Fees

Pursuant to Arizona Revised Statutes (A.R.S) § 9-499.15 notice is hereby given that the City of Surprise intends to discuss and take action to establish new Right-Of-Way fees at the Regular City Council Meeting on February 6, 2018 at 6:00 p.m. at the Surprise City Council Chambers, 16000 N. Civic Center Plaza Surprise, AZ 85374. A schedule of the proposed fee including the amount of the fee and a written report or data that supports the fee is available on the City's website located at https://www.surpriseaz.gov/ and at the City Clerk's Office, 16000 N. Civic Center Plaza Surprise, AZ 85374.

Fees	Current Amount	Proposed Amount	Measurement
Annual Use Fees (1)			
• Right-Of-Way Use Fee	$ None	$ 50	Per year x number of Small Wireless Facilities
• Right-Of-Way Use Fee for Monopoles and associated wireless facilities	$ None	$ 50	Per year x number of Small Wireless Facilities
Application for collocating Small Wireless Facilities (Existing with no modifications) (2)			
• One (1) to five (5) applications	$ None	$ 100	Each
• Six (6) through 20 applications	$ None	$ 50	Each
Application for utility pole and monopole (New or existing with modifications)			
• New, replacement, or modified utility poles **not** subject to zoning review (3)	$ None	$ 400	Each
• New, replacement, or modified monopoles, utility poles, collocations, or wireless facilities subject to zoning review (4)	$ None	$ 400	Each

(1) ARS statute maximum of $50 (Direct and actual cost to manage ROW)
(2) ARS statute maximum of $100 (1 to 5) and $50 (6 to 25)
(3) ARS statute maximum of $1,000
(4) ARS statute maximum of $1,500

Financial Justification

All fees are recommended to be at the cost to provide the fee or the maximum allowable amount per Arizona Revised Statutes Sections 9-581 through 9-599, whichever is less.

Proposed Fee $50
Annual Right-Of-Way Use Fee

Cost Breakdown

Step	Hours	Average Hourly Rate	Total Cost
Administrative Processing	1.5	$40.33	$60.50
Planner Annual Inspection	1.5	$47.14	$70.71
		Total Processing Cost	$131.21

Proposed Fee $50
Annual Right-Of-Way Use Fee for Monopoles and associated wireless facilities

Cost Breakdown

Step	Hours	Average Hourly Rate	Total Cost
Administrative Processing	1.5	$40.33	$60.50
Planner Annual Inspection	1.5	$47.14	$70.71
		Total Processing Cost	$131.21

Proposed Fee $100
Application for 1 through 5 Each collocated Small Wireless Facilities

Cost Breakdown

Step	Hours	Average Hourly Rate	Total Cost
Administrative Processing	1.5	$40.33	$60.50
Planner Review	2.0	$47.17	$94.28
Engineering Review	2.0	$50.32	$100.64
Engineering Inspection	1.0	$40.29	$40.29
Building Safety Review	1.0	$45.34	$45.34
Building Safety Inspection	1.0	$43.41	$43.41
Vehicle Gas and Supplies			$15.54

Total Processing Cost $400.00

Proposed Fee $50
Application for 6 through 25 each collocated Small Wireless Facilities

Cost Breakdown

Step	Hours	Average Hourly Rate	Total Cost
Administrative Processing	1.5	$40.33	$60.50
Planner Review	2.0	$47.17	$94.28
Engineering Review	2.0	$50.32	$100.64
Engineering Inspection	1.0	$40.29	$40.29
Building Safety Review	1.0	$45.34	$45.34
Building Safety Inspection	1.0	$43.41	$43.41
Vehicle Gas and Supplies			$15.54

Total Processing Cost $400.00

Proposed Fee $400
New, replacement, or modified utility poles not subject to zoning review

Cost Breakdown

Step	Hours	Average Hourly Rate	Total Cost
Administrative Processing	1.5	$40.33	$60.50
Planner Review	2.0	$47.17	$94.28
Engineering Review	2.0	$50.32	$100.64
Engineering Inspection	1.0	$40.29	$40.29
Building Safety Review	1.0	$45.34	$45.34
Building Safety Inspection	1.0	$43.41	$43.41
Vehicle Gas and Supplies			$15.54

Total Processing Cost $400.00

Proposed Fee $400

New, replacement, or modified monopoles, utility poles, collocations, or wireless facilities subject to zoning review

Cost Breakdown

Step	Hours	Average Hourly Rate	Total Cost
Administrative Processing	1.5	$40.33	$60.50
Planner Review	2.0	$47.17	$94.28
Engineering Review	2.0	$50.32	$100.64
Engineering Inspection	1.0	$40.29	$40.29
Building Safety Review	1.0	$45.34	$45.34
Building Safety Inspections	1.0	$43.41	$43.41
Vehicle Gas and Supplies			$15.54
		Total Processing Cost	$400.00

Additional information may be obtained by contacting Lloyd Abrams, Community Development Assistant Director at 623-222-3021.

SURPRISE
ARIZONA

WIRELESS FACILITIES IN RIGHTS-OF-WAY

COMMUNITY DEVELOPMENT – DECEMBER 5, 2017

BACKGROUND

2004 – City Adopts First Wireless Ordinance

2015 – Revision to Accommodate Spectrum Act

2017 – House Bill 2365 Adopted

HB 2365

- Allows Wireless Providers to Install and Operate Wireless Facilities in City Rights-Of-Way (ROW)
- Sets Maximum Fees for Wireless Facilities in ROW
- Provides Application Process for Said Facilities
- Requires Establishment of Terms and Conditions for Wireless Providers

WIRELESS FACILITIES IN ROW

WIRELESS FACILITIES IN ROW

ROW use fee[24]	$50/year x number of SWFs
ROW use fee for monopoles and associated wireless facilities[25]	Limited to not more than the direct and actual cost of managing the ROW
Authority utility pole attachment[26]	$50/year

Application for collocating SWFs[27]:

SWF collocation	$100 per SWF up to five
	$50 per additional SWF

Batched applications up to 25 SWFs[28]:

First five SWFs @ $100	$500
Additional 20 sites @ $50	$1,000
Total for batch of 25	$1,500

Utility pole and monopole applications:

New, replacement or modified utility poles **NOT** subject to zoning review[29]	$750
New, replacement or modified monopoles and utility poles and collocation of wireless facilities subject to zoning review[30]	$1,000

- Annual Use Fee
- Generally will be $50 Per Year

WIRELESS FACILITIES IN ROW

ROW use fee[24]	$50/year x number of SWFs
ROW use fee for monopoles and associated wireless facilities[25]	Limited to not more than the direct and actual cost of managing the ROW
Authority utility pole attachment[26]	$50/year

Application for collocating SWFs[27]:	
SWF collocation	$100 per SWF up to five
	$50 per additional SWF
Batched applications up to 25 SWFs[28]:	
First five SWFs @ $100	$500
Additional 20 sites @ $50	$1,000
Total for batch of 25	$1,500

Utility pole and monopole applications:

New, replacement or modified utility poles **NOT** subject to zoning review[29]	$750
New, replacement or modified monopoles and utility poles and collocation of wireless facilities subject to zoning review[30]	$1,000

- SWF Application Fee
- Utilizing Existing Support Structure
- Can be Batched

WIRELESS FACILITIES IN ROW

ROW use fee[24]	$50/year x number of SWFs
ROW use fee for monopoles and associated wireless facilities[25]	Limited to not more than the direct and actual cost of managing the ROW
Authority utility pole attachment[26]	$50/year

Application for collocating SWFs[27]:

SWF collocation	$100 per SWF up to five
	$50 per additional SWF

Batched applications up to 25 SWFs[28]:

First five SWFs @ $100	$500
Additional 20 sites @ $50	$1,000
Total for batch of 25	$1,500

Utility pole and monopole applications:

New, replacement or modified utility poles **NOT** subject to zoning review[29]	$750
New, replacement or modified monopoles and utility poles and collocation of wireless facilities subject to zoning review[30]	$1,000

- Utility and Monopole Application Fee
- New Support Structure

WIRELESS FACILITIES IN ROW

ROW use fee[24]	$50/year x number of SWFs
ROW use fee for monopoles and associated wireless facilities[25]	Limited to not more than the direct and actual cost of managing the ROW
Authority utility pole attachment[26]	$50/year

Application for collocating SWFs[27]:

SWF collocation	$100 per SWF up to five
	$50 per additional SWF

Batched applications up to 25 SWFs[28]:

First five SWFs @ $100	$500
Additional 20 sites @ $50	$1,000
Total for batch of 25	$1,500

Utility pole and monopole applications:

New, replacement or modified utility poles **NOT** subject to zoning review[29]	$400
New, replacement or modified monopoles and utility poles and collocation of wireless facilities subject to zoning review[30]	$400

- Utility and Monopole Application Fee
- New Support Structure

APPLICATION PROCESS

- Most Applications are Exempt From Zoning Review
- Provides Time Frames for Completeness and Action on Applications
- Allows City to Require **Reasonable** Appearance and Concealment Requirements

TERMS AND CONDITIONS

The City is Required to Establish and Make Terms and Conditions for the Following Activities Conducted in the ROW:

- Construction, Installation, Mounting, Maintenance, Operation or Replacement of Utility Poles and Monopoles;
- Collocation of SWFs;
- Collocation of Wireless Facilities on or Within a Monopole
- Collocation of SWFs on Authority Utility Poles.

The standard terms and conditions **MAY NOT**:

- Be unreasonable or discriminatory
- Require the placement of SWFs on any specific utility pole or category of poles
- Require multiple antenna systems on a single utility pole
- Require minimum separation distances for SWFs.

NEXT STEPS

December 7, 2017: Presentation with public hearing to the Planning and Zoning Commission regarding the Zoning Text Amendment for Wireless Facilities followed by written recommendation to the City Council

December 19, 2017: Discussion with Mayor and City Council during workshop on HB 2365

January 2, 2018: Discussion and action on Zoning Text Amendment, Master License Agreement, and Terms and Conditions for SWFs

February 6, 2018: Discussion and action on the fee schedule for wireless facilities in the ROW to be enacted as an emergency measure due to the statutory deadline imposed by HB 2365

February 9, 2018: The new law becomes effective

SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You

CITY OF SURPRISE
Regular City Council Work Session

December 5, 2017 @ 4:00:00 PM

Back Print

Council Meeting Date:	December 5, 2017	Contact Person:	Council Members Remley and Hall
Submitting Department:	Mayor's Office	District:	Citywide
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion

Agenda Wording:

Presentation and discussion pertaining to Council Meeting invocations.

Motion:

N/A

Background:

During the November 7, 2017 Council Meeting Council Member Remley requested this item be placed on a future agenda for discussion.

Objective Analysis:

The United States Supreme Court has on several occasions upheld as legal, i.e. not violating the First Amendment's establishment clause, legislative body invocations. However, the adoption of an invocation policy is not without legal implications or restriction. These legal implications and requirement will be addressed during the presentation.

Policy Compliant:

Financial Impact:

N/A

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:

Click to download

- Sample Policy-Lancaster CA
- invocation Presentation

POLICY REGARDING INVOCATIONS
AT MEETINGS OF THE CITY COUNCIL OF THE CITY OF LANCASTER

WHEREAS, the City Council is an elected legislative and deliberative public body, serving the citizens of the City of Lancaster; and

WHEREAS, legislative bodies in America have long maintained a tradition of solemnizing proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the City Council; and

WHEREAS, since the incorporation of the City, the City Council has followed a practice of selecting a member of local clergy to provide invocations at City Council meetings; and

WHEREAS, the City Council now desires to adopt this formal, written policy to clarify and codify its invocation practices; and

WHEREAS, such prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court; and

WHEREAS, in *Marsh v. Chambers,* 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature's practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom." *Id.,* at 786; and

WHEREAS, the Supreme Court further held, "To invoke divine guidance on a public body. . . is not, in these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Id.,* at 792; and

WHEREAS, the Supreme Court affirmed in *Lynch v. Donnelly,* 465 U.S. 668 (1984), "Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." *Id.,* at 675; and

WHEREAS, the Supreme Court further stated, "Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs." *Id.,* at 693 (O'Connor, J., concurring); and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson,* 343 U.S. 306, (1952), "We are a religious people whose institutions presuppose a Supreme Being." *Id.*, at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a "custom of opening sessions of all deliberative bodies and most conventions with prayer ...," *Id.*, at 471; and

WHEREAS, the Supreme Court has determined, "The content of [such] prayer is not of concern to judges where … there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Marsh,* 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it should not be the job of the courts or deliberative public bodies "to embark on a sensitive evaluation or to parse the content of a particular prayer" offered before a deliberative public body. *Id.*; and

WHEREAS, the Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor, prescribe and/or proscribe the specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 588-589 (1992); and

WHEREAS, the City Council intends, and has intended in past practice, to adopt a policy that upholds an individuals "free exercise" rights under the First Amendment; and

WHEREAS, the Supreme Court has repeatedly clarified that "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990); and

WHEREAS, the City Council intends, and has intended in past practice, to adopt a policy that does not proselytize or advance any faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, the City Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lancaster, California that the City Council does hereby adopt the following written policy regarding opening invocations before meetings of the City Council, to wit:

1. In order to solemnize proceedings of the City Council, it is the policy of the City Council to allow for an invocation or prayer to be offered at its meetings for the benefit of the City Council and the community.

[2. The prayer shall not be listed or recognized as an agenda item for the meeting so that it may be clear the prayer is not considered a part of the public business.]

3. No member of the City Council or City employee or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.

4. The prayer shall be voluntarily delivered by an eligible member of the clergy/religious leader in the City of Lancaster. To ensure that such person (the "invocational speaker") is selected from among a wide pool of the (jurisdiction)'s clergy/religious leaders, on a rotating basis, the invocational speaker shall be selected according to the following procedure:

a. The City Clerk shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in Lancaster.

b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual Yellow Pages phone book(s) published for the City of Lancaster, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Lancaster are eligible to be included in the Congregations List, and any such congregation can confirm its inclusion by specific written request to the Clerk.

c. The Congregations List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of the City of Lancaster or any nearby military facilities.

d. The Congregations List shall be updated, by reasonable efforts of the City Clerk, in November of each calendar year.

e. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the City Clerk shall mail an invitation addressed to the "religious leader" of each congregation listed on the Congregations List, as well as to the individual chaplains included on the Congregations List.

f. The invitation shall be dated at the top of the page, signed by the City Clerk at the bottom of the page, and read as follows:

Dear religious leader,

> *The City Council makes it a policy to invite members of the clergy in the City of Lancaster to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the City Council. As the leader of one of the religious congregations with an established presence in the local community of the City of Lancaster, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies of the City of Lancaster, you are eligible to offer this important service at an upcoming meeting of the City Council.*
>
> *If you are willing to assist the City Council in this regard, please send a written reply at your earliest convenience to the City Clerk at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve or other random basis. The dates of the City Council's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.*
>
> *This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the City Council requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invocational speaker, nor to disparage any faith or belief different than that of the invocational speaker.*
>
> *On behalf of the City Council, I thank you in advance for considering this invitation.*

Sincerely,
City Clerk

g. Consistent with paragraph 6 hereof and, as the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve or other random basis to deliver the prayers.

h. If the selected invocational speaker does not appear at the scheduled meeting, the Mayor may ask for a volunteer from among the Council or the audience to deliver the invocation.

5. No invocational speaker shall receive compensation for his or her service.

6. The City Clerk shall make every reasonable effort to ensure that a variety of eligible invocational speakers are scheduled for the City Council meetings. In any event, no invocational speaker shall be scheduled to offer a prayer at consecutive meetings of the City Council, or at more than three (3) City Council meetings in any calendar year.

7. Neither the City Council nor the City Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invocational speaker.

[8. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor shall introduce the invocational speaker and the person selected to recite the Pledge of Allegiance following the prayer, and invite only those who wish to do so to stand for those observances with the City Council.]

9. This policy shall be intended for all Boards and Commissions for the City of Lancaster, California.

10. This policy in not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Lancaster.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon approval by the City Council of the City of Lancaster, California.

ATTEST:

_____
GERI K. BRYAN, CMC
City Clerk
City of Lancaster

APPROVED:

_____
R. REX PARRIS
Mayor
City of Lancaster

INVOCATIONS AND THEIR IMPLICATIONS

City Attorney's Office

The First Amendment to the United State Constitution

- The Establishment Clause
- Free Exercise of Religion
- Freedom of Speech Clause

The First Amendment to the United States Constitution, applicable to states by virtue of the Fourteenth Amendment to the United States Constitution, provides, in pertinent part, that "Congress shall make no law respecting an establishment of religion…" (the Establishment Clause).

MURANTE
CARLSON
LAUTENBAUGH
DISTRICT 1
PRICE
DISTRICT 3

- More than three decades ago, the United States Supreme Court held in ***Marsh v. Chambers***, 463 U.S. 783, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983) that the opening of sessions of state legislatures with prayer is deeply embedded in the history and tradition of this country and does not violate the Establishment Clause.

CHURCH ST
STATE AVE

- The *Marsh* decision made clear that an invocation may not be, "…exploited to proselytize or advance any one, or to disparage any other faith or belief."
- But caused confusion and a conflict amongst the circuit courts regarding the scope of the holding and to what extent sectarian prayers were constitutional.

9th Circuit's Approach

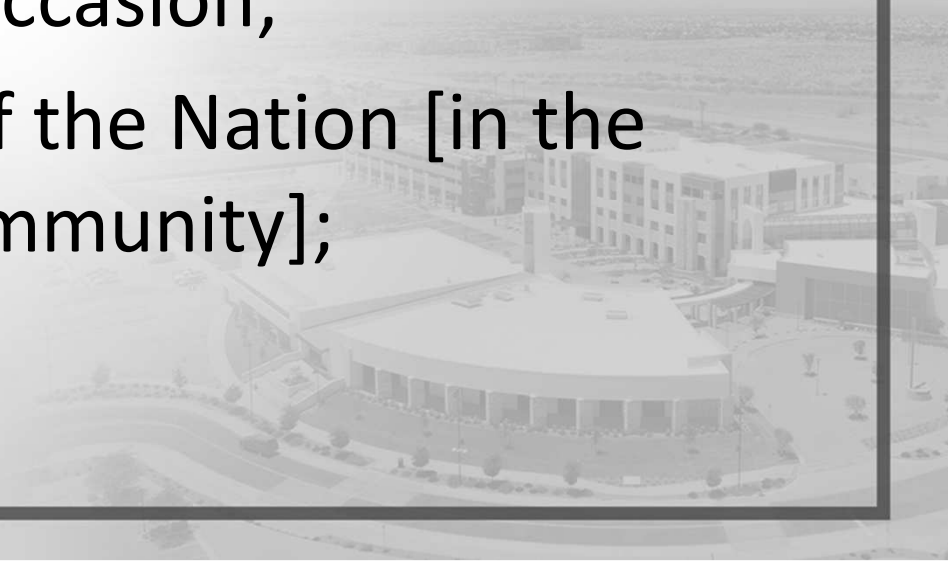
- ***Rubin v City of Lancaster***, 710 F.3d 1087 (9th Cir. 2013)
- Upheld sectarian prayers where city exercised no control over the content of prayers and no person who offered to pray was ever denied.

Town of Greece v Galloway, 134 S. Ct. 1811 (2014)

- Disposed of the notion that an invocation must be nonsectarian, "[*Marsh*] nowhere suggested that the constitutionality of legislative prayer turns on the neutrality of its content."

Guidance on critical elements of constitutional invocation policy:

- Given at session opening;
- To lend gravity to the occasion;
- Reflecting the values of the Nation [in the City's case the local Community];



- Given in a solemn and respectful tone;
- Inviting lawmakers to reflect on shared ideals and common ends; and
- No discrimination among faiths or beliefs.

The plurality also provided guidance as to what pattern of activity will render a policy unconstitutional:

- Denigration/disparagement of any religion;
- Threatened damnation;
- Preaching conversion;

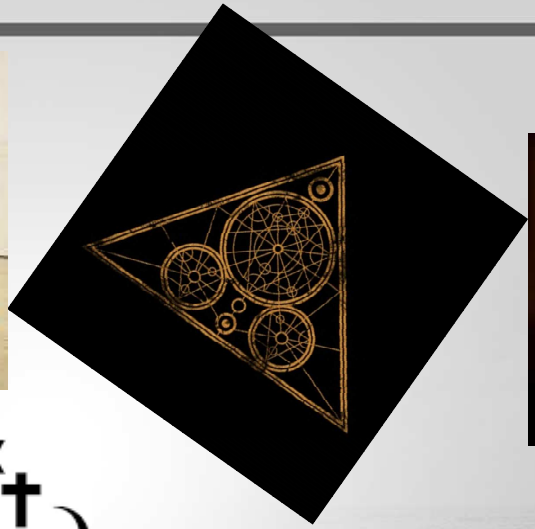
- Proselytizing or advancing any faith or belief;
- Directing participation (e.g. stand, bow head, etc.);
- Single out dissidents for opprobrium;
- Indicate decisions might be influenced by acquiescence in prayer opportunity;

- Classify citizens based on religious views;
- Attempt “lengthy debate on religious dogma”;
- Refuse any request to offer a prayer; or
- Schedule prayer in temporal proximity to administrative or quasi-judicial activities.

If Council is pro-invocation…

- Adopt a written policy;
- Neutral policy and practice that makes no distinction regarding the particular faith of the speaker;
- Must request no proselytizing, advancing, or disparaging any other faiths or beliefs;
- City Officials/staff must be prohibited from taking any action to interfere with the neutral policy and practice;
- Must be inclusive of all beliefs and forms of prayer.

INVOCATION
ATLAS



Invocation

gettyimages

RASTA

Case in point...

February 17, 2016 Satanic Temple's request to give the City of Phoenix invocation resulted in a 5-4 vote to discontinue Phoenix's invocation.

<u>If a policy is adopted, there can be no prior restraints, no weighing of, or analysis of the legitimacy, of beliefs by the City.</u>

SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You