



## City of Phoenix

**Date:** January 9, 2018

**To:** Mayor and Council members

**From:** Mario Paniagua  
Deputy City Manager

A handwritten signature in blue ink that reads "Mario Paniagua".

**Subject:** REVISION TO FORMAL ITEM #96 – ORDINANCE TO ESTABLISH THE SMALL WIRELESS FACILITIES LICENSE BY CREATING NEW CHAPTER 5C OF THE PHOENIX CITY CODE AND TO ESTABLISH AN EFFECTIVE DATE (ORDINANCE G-6407)

This memo transmits revisions to the proposed small wireless facilities ordinance - item #96 on the January 10, 2018 Council Formal meeting. On January 5, 2018, City staff continued discussion on the proposed ordinance with representatives of various wireless carriers. As a result of the discussions and further staff review, revisions to the ordinance are proposed and included in the attached ordinance.

Attached is a brief summary of the proposed ordinance. Additionally, two versions of the revised ordinance proposal are provided: one version provides a “clean” copy of the revised draft ordinance; the second version displays the “redline” changes to help track the changes from the draft provided in the original Council agenda packet.

The Transportation and Infrastructure Subcommittee heard this item at its January 9, 2018 meeting and unanimously recommended approval.

Staff recommends Council adoption of the revised ordinance dated January 5, 2018 and transmitted along with this memo.

Attachments

## **Small Wireless Facilities**

### **Recommended City Code Changes – HB2365 Compliance**

**Formal Council Action Requested: January 10, 2018, Item #96**

**Purpose:** Compliance with House Bill 2365 passed in 2017 State Legislative Session

**Summary:** Establishes process, requirements, approvals, and fees for wireless providers to locate small wireless facilities on pole structures in City right-of-way on city light poles, traffic signal poles, or new poles.

**Effective Date:** February 9, 2018

#### **Key Provisions of Ordinance:**

- **Right of Way Protection and Safety of the Public**
  - Installations must demonstrate that they meet ADA-requirements and maintain minimum safe distances from right-of-way structures, businesses, and residences.
  - Bonds, Insurance, Letters of Credit, and Indemnification required of all wireless providers.
  - Wireless providers can only utilize right-of-way for authorized uses.
  - City retains prior rights and wireless providers will relocate at their own costs.
  - Wireless providers subject to sanctions for non-compliance with ordinance.
- **Installation Safety Reviews**
  - Requires construction and installation inspections to ensure safety and compliance.
  - Enables recovery of costs up to maximum time limit to perform installation safety reviews.
- **Aesthetics**
  - Establishes aesthetic requirements, including size, color, and concealment design standards to ensure equipment blends with surroundings, and which must be approved by the City.
  - Ground-mounted equipment must be screened and blend in with natural environment, as approved by the City.
  - Historic preservation requirements and approvals must be satisfied.
  - No new poles within 100' of existing City (light or traffic signal) poles.
  - New poles may incorporate shading features and/or art.
- **Fee Structure**
  - Fees and rates for site applications and right of way use are consistent with state law.
- **Notification**
  - Wireless providers provide notification to property owners within 300 feet prior to installation.
- **Process**
  - Master license agreements with each wireless provider to be approved by City Council.
  - Wireless providers must apply to the City for each site (pole) they propose to use.
  - City will review and permit each installation location.
- **Existing Agreements**
  - Maintains terms and conditions of existing agreements, but allows City to modify existing agreements to new ordinance with a 3-year or 5-year transition.

#### **Other Information:**

- Documents to be finalized - Master and site license agreements, standard terms and conditions, and detailed design standards
- Ordinance changes exclude monopoles and poles greater than 50' tall (not necessary at this time). Additional ordinance changes to be considered if the City receives interest in these pole types.

ORDINANCE G-6407

AN ORDINANCE ESTABLISHING THE SMALL WIRELESS FACILITIES LICENSE BY CREATING NEW CHAPTER 5C OF THE PHOENIX CITY CODE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The Phoenix City Code is amended to create a new Chapter 5C Small Wireless Facilities as follows:

**ARTICLE I. PURPOSE AND POLICY; AUTHORITY AND ADMINISTRATION; DEFINITIONS.**

**SEC. 5C-1. PURPOSE AND POLICY.**

- A. THIS CHAPTER ALONG WITH FEDERAL, STATE, AND OTHER LOCAL LAW ESTABLISHES POLICY FOR USE OF CITY-OWNED INFRASTRUCTURE, PERMITTED INFRASTRUCTURE OWNED BY OTHERS, AND CITY MANAGED RIGHT OF WAY FOR SMALL WIRELESS FACILITIES THIS POLICY ENABLES THE CITY TO:
1. ISSUE LICENSES TO WIRELESS PROVIDERS FOR USE OF RIGHT OF WAY ON A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS, EXCEPT IN CASES WHERE STATE LAW FORBIDS ESTABLISHMENT OF A LICENSE OR FRANCHISE REQUIREMENT;
  2. MANAGE RIGHT OF WAY TO MINIMIZE THE IMPACT AND COST TO PHOENIX RESIDENTS CAUSED BY SMALL WIRELESS FACILITIES LOCATED WITHIN RIGHT OF WAY;
  3. MANAGE RIGHT OF WAY TO MAXIMIZE EFFICIENT, EFFECTIVE, AND OPTIMAL USE OF PUBLIC RESOURCES AND SUPPORT ECONOMIC DEVELOPMENT TO THE EXTENT PERMITTED BY LAW;
  4. COMPLY WITH APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS AS APPLIED TO CITY MANAGED RIGHT OF WAY; AND
  5. MANAGE RIGHT OF WAY TO PROMOTE AND PROTECT PUBLIC HEALTH, SAFETY,

AND WELFARE.

B. THEREFORE, THE CITY COUNCIL ADOPTS THIS CHAPTER 5C TO:

1. MANAGE RIGHT OF WAY CONSISTENT WITH THE CITY'S FIDUCIARY OBLIGATIONS;
2. PROMOTE AND PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE MEASURES FOR RIGHT OF WAY;
3. ENCOURAGE PUBLIC-PRIVATE PARTNERSHIPS TO PROVIDE WIRELESS FACILITIES FOR THE COST-EFFECTIVE DELIVERY OF PUBLIC SERVICES SUCH AS SCHOOLS, LIBRARIES, POLICE AND FIRE PROTECTION, AND DELIVER PRIVATE SERVICES TO PHOENIX RESIDENTS;
4. CONSERVE THE LIMITED PHYSICAL CAPACITY OF THE RIGHT OF WAY MANAGED BY THE CITY; AND
5. ASSURE THE CITY'S CURRENT AND ONGOING COSTS TO GRANT AND REGULATE PRIVATE ACCESS TO AND USE OF RIGHT OF WAY ARE FULLY RECOVERED AND PAID BY THE PERSONS WHO SEEK SUCH ACCESS AND CAUSE SUCH COSTS.

**SEC. 5C-2. AUTHORITY AND ADMINISTRATION.**

THE CITY MANAGER IS AUTHORIZED AS PROVIDED IN THIS CHAPTER TO ISSUE AND ADMINISTER MASTER LICENSE AGREEMENTS AND ASSOCIATED SITE LICENSE AGREEMENTS TO PERSONS TO INSTALL, OPERATE, AND MAINTAIN SMALL WIRELESS FACILITIES.

**SEC. 5C-3. DEFINITIONS.**

FOR THE PURPOSES OF THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS, PHRASES, WORDS, AND THEIR DERIVATIVES SHALL HAVE THE MEANINGS GIVEN HEREIN.

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

"APPLICANT" MEANS A WIRELESS PROVIDER, ITS CONTRACTORS, AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, PARENT ORGANIZATION, SUCCESSOR-IN-INTEREST, PREDECESSOR-IN-INTEREST, OR JOINT VENTURES WHO APPLY FOR A LICENSE UNDER THIS CHAPTER.

"A.R.S." MEANS ARIZONA REVISED STATUTES.

“CODE” MEANS PHOENIX CITY CODE.

“COMMUNICATIONS EQUIPMENT” MEANS ANY AND ALL ELECTRONIC EQUIPMENT AT THE SMALL WIRELESS FACILITY LOCATION THAT PROCESSES AND TRANSPORTS INFORMATION FROM THE ANTENNAS TO THE WIRELESS PROVIDER’S NETWORK.

“EXISTING SMALL WIRELESS FACILITIES LICENSES” MEANS AN EXISTING SMALL WIRELESS FACILITY WITH A SITE LICENSE AGREEMENT EXECUTED PRIOR TO FEBRUARY 9, 2018.

“GROUND MOUNTED EQUIPMENT” MEANS ANY COMMUNICATIONS EQUIPMENT THAT IS MOUNTED TO A SEPARATE POST OR TO A FOUNDATION ON THE GROUND.

“PERSON” MEANS A PERSON OR BUSINESS ASSOCIATION ORGANIZED AS PROVIDED BY LAW.

“RIGHT OF WAY” FOR PURPOSES OF THIS CHAPTER ONLY, MEANS THE AREA ON, BELOW, OR ABOVE A PUBLIC ROADWAY, HIGHWAY, STREET, SIDEWALK, OR ALLEY LOCATED WITHIN PHOENIX CORPORATE BOUNDARIES. RIGHT OF WAY DOES NOT MEAN THE AREA ON, BELOW, OR ABOVE A FEDERAL INTERSTATE HIGHWAY, A STATE HIGHWAY, A STATE ROUTE UNDER THE JURISDICTION OF THE ARIZONA 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 A WIRELESS PROVIDER.

“SIGHT VISIBILITY TRIANGLES” MEANS THE TRAFFIC ENGINEERING AND SAFETY CONCEPT THAT REQUIRES CLEAR VIEW BY THE DRIVER OF A VEHICLE AND PEDESTRIANS TO CROSSING TRAFFIC AT A DRIVEWAY OR INTERSECTION. THE TERM “SIGHT VISIBILITY TRIANGLES” APPLIES TO ALL SUCH AREAS SHOWN ON FINAL APPROVED SITE PLANS, AND AS REQUIRED BY CODE SECTION 31-13.

“SMALL WIRELESS FACILITY” MEANS A WIRELESS FACILITY THAT SATISFIES 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, WHICH 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 28 CUBIC FEET IN VOLUME OR 50 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:

1. AN ELECTRIC METER.
2. CONCEALMENT ELEMENTS.
3. A TELECOMMUNICATIONS DEMARCATION BOX.
4. GROUNDING EQUIPMENT.
5. A POWER TRANSFER SWITCH.
6. A CUTOFF SWITCH.
7. VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER SERVICES.

“WIRELESS PROVIDER” MEANS A CABLE OPERATOR, WIRELESS INFRASTRUCTURE PROVIDER OR WIRELESS SERVICES PROVIDER AS DEFINED IN A.R.S. §9-591(24).

## **ARTICLE II. LICENSES TO OCCUPY RIGHT OF WAY.**

### **SEC. 5C-4. LICENSES REQUIRED; UNAUTHORIZED USE PROHIBITED.**

- A. NO WIRELESS PROVIDER MAY INSTALL, MAINTAIN, CONSTRUCT, OR OPERATE WIRELESS FACILITIES IN RIGHT OF WAY, OR PROVIDE SERVICES BY MEANS OF SUCH WIRELESS FACILITIES, UNLESS A WIRELESS PROVIDER FIRST OBTAINS AND MAINTAINS IN GOOD STANDING AT ALL APPLICABLE TIMES ALL OF THE FOLLOWING:
1. A LICENSE FOR CABLE SERVICES AS PROVIDED BY A.R.S. TITLE 9, CHAPTER 4 AND CODE CHAPTER 5, OR A LICENSE FOR TELECOMMUNICATIONS SERVICES AS PROVIDED BY A.R.S., TITLE 9, CHAPTER 7, AND CODE CHAPTER 5B, FOR FACILITIES LOCATED IN RIGHT OF WAY THAT CONNECT THE PROVIDER'S SMALL WIRELESS FACILITIES TO PROVIDER'S INTERSTATE NETWORK; AND
  2. A MASTER LICENSE AGREEMENT FOR SMALL WIRELESS FACILITIES AS PROVIDED BY A.R.S., TITLE 9, CHAPTER 8, AND THIS CHAPTER 5C FOR USE OF THE RIGHT OF WAY WITHIN THE BOUNDARIES DESCRIBED AND ATTACHED TO SUCH MASTER LICENSE, AND SUBJECT TO PROVIDER'S TIMELY PAYMENT OF AN APPLICATION FEE AND ANNUAL RIGHT OF WAY USE RATE CONSISTENT WITH STATE LAW AND AS DETERMINED BY THE CITY MANAGER. THE MASTER LICENSE AGREEMENT FOR EACH PROVIDER MUST BE APPROVED BY COUNCIL ORDINANCE UNDER THE TERMS AND CONDITIONS GENERALLY SET FORTH IN THIS CHAPTER 5C; AND
  3. ONE OF THE FOLLOWING SITE LICENSE AGREEMENTS ASSOCIATED WITH PROVIDER'S MASTER LICENSE AGREEMENT FOR EACH OF PROVIDER'S INSTALLATION OF SMALL WIRELESS FACILITIES LOCATED IN RIGHT OF WAY: (i)

SITE LICENSE AGREEMENT TO ATTACH WIRELESS FACILITIES TO CITY-OWNED INFRASTRUCTURE; OR (ii) SITE LICENSE AGREEMENT TO ATTACH FACILITIES TO INFRASTRUCTURE OWNED BY THIRD PARTIES; OR (iii) SITE LICENSE AGREEMENT TO ATTACH FACILITIES TO INFRASTRUCTURE OWNED BY THE PROVIDER. EACH SITE LICENSE AGREEMENT MUST BE APPROVED AND ISSUED BY THE CITY MANAGER, OR CITY MANAGER'S DESIGNEE, DESCRIBE THE SPECIFIC LOCATION OF THE FACILITIES, INCORPORATE BY REFERENCE THE MASTER LICENSE TERMS AND CONDITIONS, DESCRIBE AND SET FORTH ANY SPECIAL CONDITIONS APPLICABLE TO THE PARTICULAR SITE INSTALLATION, AND IS SUBJECT TO WIRELESS PROVIDER'S TIMELY PAYMENT OF APPLICATION FEES AND RIGHT OF WAY USE RATES CONSISTENT WITH STATE LAW AND AS DETERMINED BY THE CITY MANAGER.

- B. THIS CHAPTER DOES NOT APPLY TO AND DOES NOT AFFECT ANY RIGHTS, INTERESTS, OR PRIVILEGES HELD BY WIRELESS PROVIDERS AND THE CITY UNDER EXISTING SMALL WIRELESS FACILITIES LICENSES AND ALL EXISTING SMALL WIRELESS FACILITIES LICENSES REMAIN FULLY ENFORCEABLE IN ACCORDANCE WITH THEIR TERMS AND CONDITIONS. THE CITY MANAGER, OR DESIGNEE, WITH CONSENT OF A WIRELESS PROVIDER, MAY MODIFY EXISTING SMALL WIRELESS FACILITIES LICENSES. ALTERNATELY, THE EXISTING SMALL WIRELESS FACILITIES LICENSES MAY CONTINUE UNDER EXISTING TERMS AND CONDITIONS, OR BE TERMINATED PER THE LICENSE TERMINATION PROVISIONS.
- C. IF THE CITY AND A WIRELESS PROVIDER AGREE TO MODIFY EXISTING SMALL WIRELESS FACILITIES LICENSES, THE FOLLOWING OPTIONS WILL BE AVAILABLE:
  - 1. FOR EXISTING SMALL WIRELESS FACILITIES INSTALLATIONS WITH SITE LICENSE AGREEMENTS EXECUTED BY THE CITY AFTER AUGUST 9, 2017 BUT PRIOR TO FEBRUARY 9, 2018, THE TERMS AND CONDITIONS WILL REMAIN IN EFFECT FOR THREE (3) YEARS FROM THE EFFECTIVE DATE OF THIS CHAPTER. AFTER WHICH, THE CITY WILL MODIFY THE EXISTING SMALL WIRELESS FACILITIES LICENSES TO INCORPORATE THE TERMS (INCLUDING RATES AND FEES) OF THIS CHAPTER.
  - 2. FOR EXISTING SMALL WIRELESS FACILITIES INSTALLATIONS WITH SITE LICENSE AGREEMENTS EXECUTED BY THE CITY PRIOR TO AUGUST 9, 2017, THE TERMS AND CONDITIONS WILL REMAIN IN EFFECT FOR FIVE (5) YEARS FROM THE EFFECTIVE DATE OF THIS CHAPTER. AFTER WHICH, THE CITY WILL MODIFY THE EXISTING SMALL WIRELESS FACILITIES LICENSES TO INCORPORATE THE TERMS (INCLUDING RATES AND FEES) OF THIS CHAPTER.
- D. A LICENSE ISSUED TO ANY WIRELESS PROVIDER UNDER THIS CHAPTER DOES NOT AUTHORIZE THE USE OF RIGHT OF WAY BY ANY OTHER PERSON, OR AUTHORIZE THE PROVIDER TO FURNISH ANY OTHER SERVICE. A LICENSE ISSUED TO ANY WIRELESS PROVIDER UNDER THIS CHAPTER DOES NOT INVALIDATE ANY FRANCHISE, LICENSE, OR PERMIT ISSUED TO THE PROVIDER THAT AUTHORIZES THE USE OF THE RIGHT OF WAY FOR SUCH OTHER SERVICES; NOR SHALL THE

FACT THAT A WIRELESS PROVIDER HOLDS ANOTHER FRANCHISE, LICENSE, OR PERMIT FOR OTHER USE OF THE PUBLIC RIGHT OF WAY OR TO PROVIDE ANY OTHER SERVICE, AUTHORIZE THE INSTALLATION, MAINTENANCE, CONSTRUCTION, OR OPERATION OF SMALL WIRELESS FACILITIES IN ANY RIGHT OF WAY, OR AUTHORIZE SUCH WIRELESS PROVIDER TO FURNISH WIRELESS SERVICES BY OTHER MEANS WITHOUT FIRST OBTAINING A LICENSE(S) AS PROVIDED IN THIS CHAPTER.

E. ANY LICENSE ISSUED UNDER THIS CHAPTER MUST NOT BE EXCLUSIVE.

F. UNAUTHORIZED USE OR FACILITIES PROHIBITED.

1. NO PERSON SHALL KNOWINGLY AFFIX, INSTALL, PLACE, ATTACH, MAINTAIN, OR FAIL TO REMOVE UNAUTHORIZED SMALL WIRELESS FACILITIES OR OTHER FACILITY TO CITY-OWNED INFRASTRUCTURE OR CITY MANAGED RIGHT OF WAY OR OTHER PROPERTY OF THE CITY ON DEMAND BY THE CITY OR ANY AUTHORIZED REPRESENTATIVE.
2. NO PERSON SHALL USE A SMALL WIRELESS FACILITY OR OTHER FACILITY ON CITY-OWNED INFRASTRUCTURE OR CITY MANAGED RIGHT OF WAY OR OTHER PROPERTY OF THE CITY TO PROVIDE A SERVICE NOT AUTHORIZED BY A CITY FRANCHISE, PERMIT, LICENSE, OR OTHER AUTHORITY.
3. EACH UNAUTHORIZED FACILITY OR USE IS A SEPARATE OFFENSE. EACH DAY A VIOLATION OF THIS CHAPTER CONTINUES IS A SEPARATE OFFENSE AND MAY BE ENFORCED AS PROVIDED IN SECTION 5C-20.

**SEC. 5C-5. MASTER LICENSE AND SITE LICENSE APPLICATIONS.**

- A. ANY WIRELESS PROVIDER THAT DESIRES A MASTER LICENSE OR SITE LICENSE AGREEMENTS UNDER THIS CHAPTER MUST FILE THE APPROPRIATE APPLICATION(S) WITH THE CITY MANAGER, OR DESIGNEE, IN THE FORM(S) PRESCRIBED BY THE CITY MANAGER, AND MUST PAY AN APPLICATION FEE(S) DETERMINED BY THE CITY MANAGER AS PROVIDED IN SECTION 5C-8. THE AMOUNT OF THE APPLICATION FEE MUST BE REASONABLY RELATED TO DIRECT COSTS INCURRED BY THE CITY TO GRANT AND ADMINISTER SUCH LICENSE(S) AND CONSISTENT WITH STATE LAW.
- B. RECEIPT OF A COMPLETE LICENSE APPLICATION THAT SATISFIES ALL REQUIREMENTS, THE CITY MANAGER WILL, CONSISTENT WITH STATE LAW, PROMPTLY REVIEW THE APPLICATION AND MAY INQUIRE INTO MATTERS RELEVANT TO THE LICENSE APPLICATION. THE CITY MANAGER MAY REJECT ANY APPLICATION FOR THE WIRELESS PROVIDER'S UNDUE DELAY TO RESPOND OR PROVIDER'S FAILURE TO FURNISH ACCURATE OR COMPLETE INFORMATION TO THE CITY MANAGER'S REQUEST OR INQUIRY RELATED TO AN APPLICATION. FURTHER, THE CITY MANAGER MAY REJECT ANY LICENSE APPLICATION IF THE APPLICANT HAS PREVIOUSLY HAD ANY LICENSE ISSUED UNDER CODE CHAPTERS



5B OR 5C REVOKED OR TERMINATED FOR CAUSE, IN MATERIAL BREACH UNDER ANY EXISTING LICENSE(S) ISSUED UNDER CODE CHAPTERS 5B OR 5C, OR HAS NOT TIMELY CURED AN EVENT(S) OF DEFAULT OR NOTICE(S) OF VIOLATION UNDER EXISTING LICENSES ISSUED UNDER CODE CHAPTERS 5B OR 5C, OR FOR ANY OTHER REASON PERMITTED UNDER LAW.

C. AS A CONDITION OF ISSUING OR RENEWING A LICENSE UNDER THIS CHAPTER, THE APPLICANT AGREES:

1. TO COMPLY WITH RIGHT OF WAY USE REQUIREMENTS AS REQUIRED IN CODE CHAPTERS 31 AND 36;
2. TO PROVIDE AND MAINTAIN ACCURATE MAPS SHOWING THE LOCATION OF ALL ITS FACILITIES AND THE FACILITIES IT WILL USE IN THE RIGHT OF WAY AND TO COMPLY WITH SUCH OTHER MAPPING REQUIREMENTS AS THE CITY MANAGER MAY ESTABLISH FROM TIME TO TIME. AN APPLICANT MUST PROVIDE THE CITY WITH ELECTRONIC MAPPING INFORMATION IN A FORMAT COMPATIBLE WITH THE CURRENT CITY ELECTRONIC MAPPING FORMAT;
3. TO OBTAIN THE INSURANCE, AND CAUSE ITS CONTRACTORS, AGENT, AND EMPLOYEES TO PROVIDE PROOF OF INSURANCE AS REQUIRED BY THE CITY; TO POST THE PERFORMANCE BONDS AND SECURITY FUND REQUIRED BY THE CITY; AND FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, AND CAUSE ITS OFFICERS, AGENTS, CONTRACTORS, AND EMPLOYEES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, BOARDS AND COMMISSIONS, IN A FORM SATISFACTORY TO THE CITY; AND TO AGREE THAT IT SHALL HAVE NO RECOURSE WHATSOEVER AGAINST THE CITY OR ITS OFFICIALS, BOARDS, COMMISSIONS, AGENTS OR EMPLOYEES FOR ANY LOSS, COSTS, EXPENSE, OR DAMAGES ARISING OUT OF ANY PROVISION OR REQUIREMENT OF THE CITY BECAUSE OF THE ENFORCEMENT OF THE LICENSE; AND
4. THE APPLICANT MUST AGREE TO COMPLY WITH AND BE BOUND BY THE ADMINISTRATIVE AND ENFORCEMENT PROVISIONS AS MAY BE PRESCRIBED BY THE CITY.

D. AN APPLICANT THAT RECEIVES A LICENSE PURSUANT TO THIS CHAPTER MAY RENEW ITS LICENSE IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER AND CONSISTENT WITH STATE LAW.

E. THE ISSUANCE OF A LICENSE, PERMIT, OR OTHER AUTHORIZATION BY THE CITY MANAGER IS NOT A REPRESENTATION OR WARRANTY THAT SUCH LICENSE, PERMIT, OR AUTHORIZATION IS LEGALLY SUFFICIENT, AND IS NOT A REPRESENTATION OR WARRANTY THAT ADDITIONAL AUTHORIZATION IS NOT REQUIRED.

**SEC. 5C-6. MASTER LICENSE TERMS AND CONDITIONS.**

- A. CONSISTENT WITH THIS CHAPTER AND STATE LAW, THE CITY MANAGER, OR DESIGNEE, WILL PREPARE A MASTER LICENSE AGREEMENT THAT INCLUDES THE FOLLOWING, BUT NOT EXCLUSIVE, MATERIAL PROVISIONS AND EXHIBITS:
1. MASTER LICENSE AGREEMENT--TERM AND PROVIDER INFORMATION;
  2. EXHIBIT 1—STANDARD TERMS AND CONDITIONS;
  3. EXHIBIT 2— NETWORK BOUNDARY DIAGRAM;
  4. EXHIBIT 3—FEES AND USE RATES;
  5. EXHIBIT 4—DESIGN AND CONCEALMENT GUIDELINES;
  6. EXHIBIT 5—INSURANCE AND INDEMNITY REQUIREMENTS;
  7. EXHIBIT 6—SPECIAL TERMS AND CONDITIONS;
  8. EXHIBIT 7—STANDBY IRREVOCABLE LETTER OF CREDIT FORM AND AGREEMENT; AND
  9. EXHIBIT 8—SITE LICENSE FORMS.
- B. LENGTH OF LICENSE. THE TERM OF A MASTER LICENSE AGREEMENT GRANTED UNDER THIS CHAPTER WILL BEGIN ON THE DATE THE AGREEMENT IS SIGNED BY THE CITY CLERK AND WILL EXPIRE AFTER A PERIOD OF TEN (10) YEARS UNLESS AUTOMATICALLY RENEWED AS PROVIDED BY STATE LAW. THE TERM OF A SITE LICENSE ASSOCIATED WITH A MASTER LICENSE WILL BEGIN ON THE DATE THE SITE LICENSE IS SIGNED BY THE CITY MANAGER'S DESIGNEE AND WILL EXPIRE ON THE SAME DATE AS THE MASTER LICENSE AGREEMENT UNLESS RENEWED AS PROVIDED BY LAW.
- C. EVERY LICENSE AGREEMENT WILL BE SUBJECT TO THE FOLLOWING ADMINISTRATIVE AND ENFORCEMENT PROVISIONS:
1. A LICENSE IS PERSONAL TO THE PROVIDER AND EXCEPT AS PROVIDED IN THE LICENSE, NO TRANSFER OF A LICENSE OR PROVIDER, OR CHANGE OF CONTROL OVER THE SAME (INCLUDING, BUT NOT LIMITED TO, TRANSFER BY FORCED OR VOLUNTARY SALE, MERGER, CONSOLIDATION, RECEIVERSHIP, OR ANY OTHER MEANS) MAY OCCUR WITHOUT THE CITY'S PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD OR DELAYED. TO DETERMINE WHETHER TO CONSENT TO A TRANSFER, THE CITY MAY CONSIDER THE SAME INFORMATION AND QUALIFICATIONS REQUIRED OF AN ORIGINAL PROVIDER; IF THE PROVIDER IS IN COMPLIANCE WITH ITS LICENSE AND THIS CHAPTER AND, IF NOT, THE PROPOSED TRANSFEREE'S COMMITMENT TO CURE SUCH NONCOMPLIANCE; IF THE TRANSFER MAY RESULT IN AN EVASION OF OTHER APPLICABLE PROVISIONS OF LAW, OR IMPAIR LAWFUL CONTRACTS; AND THE EFFECT OF THE TRANSFER ON THE CITY'S INTERESTS. NO APPLICATION FOR A TRANSFER OF A LICENSE WILL BE GRANTED UNLESS THE PROPOSED TRANSFEREE AGREES IN WRITING THAT IT WILL ABIDE BY AND ACCEPT ALL TERMS OF THIS CHAPTER, THE LICENSE, AND THAT THE TRANSFEREE WILL ASSUME ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITY FOR ALL ACTS AND OMISSIONS, KNOWN AND UNKNOWN, OF THE PREVIOUS LICENSEE UNDER THIS CHAPTER AND THE LICENSE FOR ALL PURPOSES, INCLUDING RENEWAL.

THE CITY'S APPROVAL OF A TRANSFER OF A LICENSE DOES NOT CONSTITUTE A WAIVER OR RELEASE OF ANY OF THE RIGHTS OF THE CITY UNDER THIS CHAPTER OR LICENSE, WHETHER ARISING BEFORE OR AFTER THE TRANSFER DATE.

2. EACH LICENSE IS SUBJECT TO THE CITY'S POLICE, REGULATORY, AND OTHER POWERS THE CITY NOW POSSESSES OR MAY LATER OBTAIN, AND A LICENSE MAY NOT WAIVE THE APPLICATION OF THE SAME.
3. EACH LICENSE MAY BE REVOKED IF THE PROVIDER FAILS TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THE LICENSE, OR APPLICABLE FEDERAL, STATE OR LOCAL LAW. PROVIDED, HOWEVER, THAT A LICENSE MAY NOT BE REVOKED UNLESS THE PROVIDER IS GIVEN WRITTEN NOTICE OF THE DEFAULT, AND FAILS TO CURE THE PERFORMANCE WITHIN 60 DAYS OF THE NOTICE. A LICENSE MAY BE REVOKED WITHOUT PRIOR NOTICE OF DEFAULT FOR PROVIDER'S INTENTIONAL MISCONDUCT, VIOLATION OF CRIMINAL LAW, OR IS PART OF A PATTERN OF VIOLATIONS WHERE THE PROVIDER HAS NOTICE AND OPPORTUNITY TO CURE. PROVIDER MAY REQUEST A HEARING BEFORE THE CITY MANAGER, OR DESIGNEE, PRIOR TO THE REVOCATION OF THE LICENSE.
4. ANY REMEDIES AVAILABLE TO THE CITY ARE CUMULATIVE, AND ARE NOT LIMITED BY THE RECOVERY OF ANY AMOUNTS PURSUANT TO THE INSURANCE PROVISIONS OF THE LICENSE, OR PURSUANT TO AN INDEMNITY CLAUSE, OR PURSUANT TO ANY FINES AND PENALTIES PER THE EXECUTED LICENSE AGREEMENTS. IF THE PROVIDER FAILS TO PAY AMOUNTS OWED TO THE CITY BY THE TIME PRESCRIBED FOR PAYMENT, PROVIDER MUST PAY INTEREST ON THE AMOUNTS OWED, AT THE RATE OF ONE PERCENT PER MONTH.
5. PROVIDER MUST PRODUCE BOOKS AND RECORDS FOR THE CITY'S INSPECTION AND COPYING, PREPARE REPORTS, RESPOND TO QUESTIONS AND PERMIT ACCESS TO ITS FACILITIES AS THE CITY REQUESTS.
6. PROVIDER CANNOT INSTALL SIGNAGE WITHIN RIGHT OF WAY EXCEPT AS MAY BE REQUIRED FOR THE SAFE USE OF THE RIGHT OF WAY BY THE CITY, PROVIDER, AND OTHERS. ANY SAFETY SIGNS MUST BE IN A FORM APPROVED BY THE CITY AND MAINTAINED BY PROVIDER. PROVIDER'S FACILITIES LOCATED WITHIN THE RIGHT OF WAY MUST INCLUDE AN IDENTIFICATION BADGE IN A SIZE AND SHAPE REQUIRED BY THE CITY MANAGER AND THAT INCLUDES LICENSEE'S NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, EMERGENCY CONTACT INFORMATION, IDENTIFIES THE LOCATION BY GENERAL STREET ADDRESS, GLOBAL POSITIONING SYSTEM COORDINATES, AND SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE CITY MANAGER. HOWEVER, IN NO EVENT WILL SUCH SIGNS OR PROVIDER'S FACILITIES CONTAIN ANY COMMERCIAL MESSAGE OR SPEECH.
7. PROVIDER MUST AT ALL TIMES RETAIN ON CALL AND AVAILABLE TO THE CITY

BY TELEPHONE AN ACTIVE, QUALIFIED, COMPETENT, AND EXPERIENCED PERSON TO SUPERVISE ALL PROVIDER'S ACTIVITIES WITHIN THE RIGHT OF WAY AND OPERATION OF PROVIDER'S FACILITIES, AND WHO MUST BE AUTHORIZED TO REPRESENT AND ACT FOR PROVIDER IN ALL EMERGENCIES AND PROVIDER'S DAY-TO-DAY OPERATION WITHIN THE RIGHT OF WAY.

8. EACH LICENSE ISSUED UNDER THIS CHAPTER MUST INCLUDE INDEMNITY AND INSURANCE PROVISIONS AND REQUIREMENTS AS ESTABLISHED BY THE CITY MANAGER.
9. EACH LICENSE ISSUED UNDER THIS CHAPTER MUST REQUIRE A PROVIDER TO FURNISH A STANDBY IRREVOCABLE LETTER OF CREDIT UNDER THE TERMS AND CONDITIONS ESTABLISHED BY THE CITY MANAGER TO SECURE PROVIDER'S OBLIGATIONS UNDER THE LICENSE AND THIS CHAPTER.

**ARTICLE III. SMALL WIRELESS FACILITIES, FEES, AND  
LOCATION WITHIN RIGHT OF WAY.**

**SEC. 5C-7. SMALL WIRELESS FACILITIES AND POLE STRUCTURES.**

- A. THE FOLLOWING SIX WIRELESS POLE STRUCTURE-TYPES WILL BE PERMITTED IN RIGHT OF WAY:
  1. POLE-TYPE STRUCTURE #1 – EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT). AN EXISTING UTILITY POLE NOT OWNED BY THE CITY OF PHOENIX BUT LOCATED IN RIGHT OF WAY. NO MODIFICATION OR REPLACEMENT OF THE POLE IS NECESSARY TO INSTALL SMALL WIRELESS FACILITIES.
  2. POLE-TYPE STRUCTURE #2 – EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT). AN EXISTING UTILITY POLE OWNED BY THE CITY OF PHOENIX AND LOCATED IN RIGHT OF WAY, AND IS TYPICALLY A STREET LIGHT OR TRAFFIC SIGNAL POLE. NO MODIFICATION TO OR REPLACEMENT OF THE POLE IS NECESSARY TO INSTALL SMALL WIRELESS FACILITIES.
  3. POLE-TYPE STRUCTURE #3 – EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED). AN EXISTING UTILITY POLE NOT OWNED BY THE CITY OF PHOENIX BUT LOCATED IN RIGHT OF WAY. MODIFICATION OR REPLACEMENT OF THE POLE IS NECESSARY TO INSTALL SMALL WIRELESS FACILITIES.
  4. POLE-TYPE STRUCTURE #4 – EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED). AN EXISTING UTILITY POLE OWNED BY THE CITY OF PHOENIX AND LOCATED IN RIGHT OF WAY, AND IS TYPICALLY A STREET LIGHT OR TRAFFIC SIGNAL POLE. MODIFICATION OR REPLACEMENT OF THE POLE IS NECESSARY TO INSTALL SMALL WIRELESS FACILITIES.
  5. POLE-TYPE STRUCTURE #5 – NEW CITY POLE (<50' TALL). A NEW CITY-OWNED UTILITY POLE LOCATED IN RIGHT OF WAY FOR THE INSTALLATION OF A NEW

SMALL WIRELESS FACILITY, THAT WILL ALSO FUNCTION AS A STREET LIGHT OR TRAFFIC SIGNAL POLE.

6. POLE-TYPE STRUCTURE #6 – NEW NON-CITY POLE (<50' TALL). A NEW UTILITY POLE OWNED BY OTHERS LOCATED IN RIGHT OF WAY FOR THE SOLE FUNCTION OF SMALL WIRELESS FACILITIES.
  - B. THE CITY MANAGER, OR DESIGNEE, WILL FORMULATE AND ADOPT DESIGN STANDARDS, CONCEPTS AND REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY. THE CITY MANAGER MAY UPDATE THE DESIGN STANDARDS AND GUIDELINES PERIODICALLY TO KEEP CURRENT WITH TECHNOLOGY, EQUIPMENT, AND INDUSTRY BEST PRACTICES. DESIGN GUIDELINES, ALONG WITH THE STANDARD DESIGN SPECIFICATIONS, CONSTITUTE THE CITY'S OBJECTIVE DESIGN STANDARDS AND STEALTH AND CONCEALMENT REGULATIONS. ANY DEVIATION FROM THESE DESIGN GUIDELINES MAY BE A BASIS FOR THE CITY TO DENY ANY APPLICATION SUBMITTED UNDER THIS CHAPTER. ALL SMALL WIRELESS FACILITIES INSTALLED, OPERATED, AND MAINTAINED UNDER THIS CHAPTER MUST BE DESIGNED AND INSTALLED IN A WAY THAT: (1) MINIMIZES THE VISUAL IMPACT OF THE FACILITIES TO THE PUBLIC; (2) MATCHES THE VISUAL CONTEXT AND CHARACTER OF THE RIGHT OF WAY AND THE SURROUNDING NEIGHBORHOOD AND DEVELOPMENT; AND (3) MEETS THE HIGHEST STANDARDS OF VISUAL AND FUNCTIONAL QUALITY. CITY RESERVES THE RIGHT TO DENY SMALL WIRELESS FACILITY INSTALLATIONS IF THE INSTALLATIONS DO NOT MEET THE CITY'S DESIGN STANDARDS FOR STEALTH AND CONCEALMENT.
  - C. CONCEALMENT OF POLE-MOUNTED SMALL WIRELESS FACILITIES EQUIPMENT. ALL POLE-MOUNTED EQUIPMENT, INCLUDING THE ANTENNA, MUST BE CONCEALED IN A MANNER THAT MINIMIZES THE VISUAL IMPACT OF THE POLE-MOUNTED EQUIPMENT. THE CONCEALMENT METHOD AND MATERIALS MUST RECEIVE PRIOR APPROVAL BY THE CITY. ANTENNA SIZE LIMITATIONS ARE EXCLUSIVE OF ANY CONCEALMENT MATERIALS OR FABRICATION. CONCEALMENT MATERIALS SHALL HAVE A COLOR AND FINISH CONSISTENT AND APPROPRIATE WITH THE POLE IT IS MOUNTED ON.
  - D. SCREENING OF GROUND MOUNTED EQUIPMENT. EQUIPMENT AND EQUIPMENT ENCLOSURES MUST BE SCREENED BY A SCREEN WALL, PAINTED, AND/OR LANDSCAPED.
    1. SCREENING AND EQUIPMENT ENCLOSURES SHALL BLEND WITH OR ENHANCE THE SURROUNDING CONTEXT IN TERMS OF SCALE, FORM, TEXTURE, MATERIALS, AND COLOR. EQUIPMENT SHALL BE CONCEALED AS MUCH AS POSSIBLE BY BLENDING INTO THE NATURAL AND/OR PHYSICAL ENVIRONMENT. ALL SCREENING SHALL BE AT THE DISCRETION OF THE CITY.
    2. WHEN TREES, BUSHES, ROCKS, AND OTHER FORMS OF LANDSCAPING ARE USED FOR SCREENING, SUCH LANDSCAPING MUST MATCH THE PREDOMINANT LANDSCAPING FORM AND SPECIES WITHIN ONE BLOCK OF THE FACILITIES, AND

MAY ONLY BE USED FOR SCREENING WHEN WATER FOR IRRIGATION OF LANDSCAPING IS PAID BY THE CITY OR WHEN THE ABUTTING PROPERTY OWNER AGREES IN WRITING TO ASSUME ALL IRRIGATION COSTS.

- E. ANY NEW, MODIFIED, OR REPLACEMENT POLES INSTALLED IN THE RIGHT OF WAY IN CONJUNCTION WITH THE INSTALLATION OF A SMALL WIRELESS FACILITY, INCLUDING ANY GROUND-MOUNTED EQUIPMENT, ELECTRICAL SERVICE METER, AND SCREENING MUST:
1. BE DESIGNED TO BLEND IN WITH THE SURROUNDING STREETScape WITH MINIMAL VISUAL IMPACT;
  2. SATISFY ALL REQUIRED AMERICANS WITH DISABILITIES ACT REQUIREMENTS.;
  3. AT THE TIME OF INSTALLATION, MAINTAIN A MINIMUM 20 FOOT DISTANCE FROM EXISTING FIRE HYDRANTS, EXISTING DRIVEWAYS, AND SIGHT VISIBILITY TRIANGLES FOR NEW POLES, REPLACEMENT POLES AND GROUND MOUNTED EQUIPMENT ONLY;
  4. EQUIPMENT SHALL BE INSTALLED TO NOT IMPAIR OR INTERFERE WITH THE SIGHT VISIBILITY TRIANGLE REQUIREMENTS AS DICTATED IN CODE SECTION 31-13;
  5. NOT IMPACT EXISTING RIGHT OF WAY AND REPLACE ANY LANDSCAPING OR IRRIGATION SYSTEM DAMAGED BY THE INSTALLATION LIKE-FOR-LIKE;
  6. FOR NEW POLES AND NEW GROUND MOUNTED EQUIPMENT ONLY, MAINTAIN A MINIMUM 25 FOOT DISTANCE FROM THE PRIMARY DOORWAY OF BUSINESSES OR RESIDENCES MEASURED FROM THE OUTER DOOR FRAME AND A MINIMUM TEN FOOT DISTANCE FROM THE PRIMARY ENTRANCE OF BUSINESSES OR RESIDENCES MEASURED AT THE EDGE OF RIGHT OF WAY;
  7. NOT BLOCK OR OBSTRUCT EXISTING ROADWAY, OR COMMERCIAL SIGNAGE;
  8. MATCH THE COLOR AND FINISH OF SIMILAR POLES WITHIN ONE BLOCK; AND
  9. CONTAIN INTERNAL WIRING TO THE POLE AND GROUND-MOUNTED EQUIPMENT.
  10. ALL BOTTOM-FED ANTENNAS SHALL HAVE A SHROUD TO CONCEAL THE CABLES FROM THE CABLE PORT OR HAND HOLE TO THE ANTENNA.
  11. ON A CASE-BY-CASE BASIS, CANISTER STYLE ANTENNAS SHALL HAVE A TRANSITION SHROUD TO CONCEAL THE MOUNTING SECTION FROM THE TOP OF THE POLE TO THE BASE OF THE CANISTER.
- E. FOR ALL SMALL WIRELESS HISTORIC DISTRICTS, THE WIRELESS PROVIDER MUST

OBTAIN ALL REQUIRED HISTORIC-PRESERVATION FACILITY INSTALLATIONS PROPOSED IN RELATED APPROVALS BEFORE ANY SITE APPLICATION MAY BE SUBMITTED TO LOCATE SMALL WIRELESS FACILITIES WITHIN THE HISTORIC DISTRICT.

- F. NO NEW WIRELESS POLE STRUCTURES WILL BE PERMITTED IN RIGHT OF WAY IF THERE IS AN EXISTING CITY POLE IN THE RIGHT OF WAY WITHIN 100 FEET OF THE PROPOSED LOCATION THAT MAY BE USED TO INSTALL A SMALL WIRELESS FACILITY. TO THE EXTENT POSSIBLE, ALL NEW WIRELESS POLE STRUCTURES IN THE RIGHT OF WAY MUST SERVE A DUAL PURPOSE AS A STREET LIGHT OR TRAFFIC SIGNAL POLE, UNLESS OTHERWISE APPROVED BY THE CITY.
- G. ANY NEW WIRELESS POLE STRUCTURE THAT WILL SERVE SOLELY AS A WIRELESS FACILITY SUPPORT STRUCTURE MAY BE REQUIRED TO INCORPORATE SHADE FOR ADJACENT PEDESTRIAN PATHWAYS OR SIDEWALKS, AND MAY BE REQUIRED TO INCORPORATE ART INTO ANY STRUCTURED SHADE ELEMENT, AS APPROVED BY THE CITY.
- H. AVAILABILITY AND USE OF EXISTING CITY POLES FOR SMALL WIRELESS FACILITIES INSTALLATIONS ARE ON A FIRST-COME, FIRST-SERVED BASIS. REQUESTS TO INSTALL NEW SMALL WIRELESS FACILITIES ON A CITY POLE WITH A PREVIOUSLY INSTALLED SMALL WIRELESS FACILITY MUST BE REVIEWED BY AND COORDINATED WITH BOTH THE CITY AND THE WIRELESS PROVIDER WITH THE EXISTING SMALL WIRELESS FACILITY INSTALLATION ON THE POLE.
- I. ALL SMALL WIRELESS FACILITIES MUST BE MAINTAINED IN A GOOD AND SAFE CONDITION, INCLUDING KEPT FREE OF GRAFFITI. CONSISTENT WITH THE CITY OF PHOENIX GRAFFITI BUSTERS PROGRAM, ALL GRAFFITI MUST BE REMOVED IN ITS ENTIRETY FROM ALL SMALL WIRELESS FACILITIES WITHIN FIVE (5) BUSINESS DAYS AFTER NOTICE FROM THE CITY AT THE WIRELESS PROVIDER'S SOLE EXPENSE AND COST. IF WIRELESS PROVIDER FAILS TO CURE AFTER NOTICE, THE CITY MAY REMOVE ANY GRAFFITI USING CITY STANDARD TECHNIQUES AND ASSESS WIRELESS PROVIDER THE CITY'S COSTS TO REMOVE SUCH GRAFFITI. WIRELESS PROVIDERS ACKNOWLEDGE AND AGREE THAT THE CITY'S STANDARD TECHNIQUES FOR GRAFFITI REMOVAL INCLUDE POWER WASHING AND WIRELESS PROVIDERS AGREE AND ACCEPT THAT THE CITY IS NOT LIABLE FOR ANY DAMAGE TO SMALL WIRELESS FACILITIES CAUSED BY THE CITY AS PART OF GRAFFITI REMOVAL.
- J. ALL SMALL WIRELESS FACILITIES DESIGNS, INCLUDING POLES, ANTENNAS, AND ASSOCIATED EQUIPMENT PLACED IN RIGHT OF WAY MUST BE SEALED BY A REGISTERED ARIZONA STRUCTURAL ENGINEER.

**SEC. 5C-8. RIGHT OF WAY USE RATE AND FEES.**

A. RATES AND FEES. THE FOLLOWING FEES APPLY TO PERSONS WHO SUBMIT AN APPLICATION TO INSTALL, OPERATE, AND MAINTAIN SMALL WIRELESS FACILITIES IN CITY RIGHT OF WAY. THE FEES AND RATES ARE LISTED BY POLE TYPE.

RATE / FEE TYPE	RATE / FEE DESCRIPTION	RATE / FEE AMOUNT
<b>APPLICATION FEE</b>		
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE (1 – 5 SITES)	\$ 100
	PER SITE (6 – 25 SITES)	\$ 50
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE (1 – 5 SITES)	\$ 100
	PER SITE (6 – 25 SITES)	\$ 50
POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 750
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 750
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE	\$ 750
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE	\$ 750
<b>RIGHT OF WAY USE RATE</b>		
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE PER YEAR	\$ 50
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE PER YEAR	\$ 100



POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE PER YEAR	\$ 50
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE PER YEAR	\$ 100
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE PER YEAR	\$ 100
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE PER YEAR	\$ 50

B. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE OBLIGATION OF ANY PERSON TO PAY AMOUNTS OWED UNDER ANY EXISTING SMALL WIRELESS FACILITIES FRANCHISE OR LICENSE AGREEMENT ISSUED PRIOR TO FEBRUARY 9, 2018 OR IF THIS ORDINANCE IS AMENDED, THE EFFECTIVE DATE OF THE ADOPTION OF SUCH AMENDMENT TO THIS ORDINANCE.

**SEC. 5C-9. RIGHT OF WAY PERMIT.**

THE CITY WILL NOT ISSUE A PERMIT FOR CONSTRUCTION IN THE RIGHT OF WAY OR OTHER AUTHORIZATION FOR A WIRELESS PROVIDER TO CONSTRUCT OR INSTALL WIRELESS FACILITIES IN THE RIGHT OF WAY UNDER CHAPTER 31 OF THE CODE, OR ANY OTHER CHAPTER OF THE CODE, UNLESS THE WIRELESS PROVIDER HAS FIRST OBTAINED THE LICENSE REQUIRED TO OCCUPY THE RIGHT OF WAY UNDER THIS CHAPTER.

**SEC. 5C-10. LOCATION AND RELOCATION OF FACILITIES IN RIGHT OF WAY.**

- A. A WIRELESS PROVIDER MUST INSTALL, CONSTRUCT, AND MAINTAIN ITS FACILITIES IN STRICT ACCORDANCE WITH THE CODE AND THE CITY'S DESIGN STANDARDS, CONCEPTS, AND REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY. IF A FACILITY HAS MORE THAN ONE WIRELESS PROVIDER, EACH WIRELESS PROVIDER IS JOINTLY AND SEVERALLY RESPONSIBLE TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER. FACILITIES MUST BE INSTALLED, CONSTRUCTED AND MAINTAINED SO THAT NO ADDITIONAL COSTS ARE IMPOSED UPON THE CITY, AND SO THAT THE FACILITY DOES NOT INTERFERE WITH OTHER USES OR USERS OF THE RIGHT OF WAY AND DOES NOT LIMIT THE REQUIREMENTS OF ANY OTHER PROVISION OF THE CODE, OR THE PROVISIONS OF ANY LICENSE, PERMIT, OR AGREEMENT ISSUED BY THE CITY.
- B. THE FACILITIES MUST BE CONSTRUCTED, INSTALLED, OPERATED, AND MAINTAINED BY THE PROVIDER AT A LOCATION THAT INTERFERES AS LITTLE AS POSSIBLE WITH TRAFFIC OR OTHER AUTHORIZED USES OVER, UNDER, OR THROUGH THE RIGHT OF WAY. THOSE PHASES OF CONSTRUCTION RELATING TO TRAFFIC CONTROL, BACKFILLING, COMPACTION, AND PAVING, AS WELL AS THE

LOCATION OR RELOCATION OF SAID FACILITIES WILL BE SUBJECT TO REGULATION BY THE CITY MANAGER, OR HIS DESIGNEE. THE PROVIDER MUST KEEP ACCURATE INSTALLATION RECORDS OF THE LOCATION OF ALL SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY AND FURNISH THEM TO THE CITY UPON REQUEST OR AT SUCH PERIODIC INTERVALS AS THE CITY MAY REQUIRE. UPON COMPLETION OF NEW OR RELOCATION CONSTRUCTION OF UNDERGROUND FACILITIES IN THE RIGHT OF WAY, THE WIRELESS PROVIDER MUST PROVIDE THE CITY, IF REQUESTED OR AS REQUIRED, WITH INSTALLATION RECORDS IN A FORMAT COMPATIBLE WITH THE THEN-CURRENT CITY MAPPING FORMAT THAT SHOWS THE LOCATION OF THE UNDERGROUND AND ABOVE GROUND FACILITIES.

- C. WHENEVER THE WIRELESS PROVIDER MAY CAUSE ANY WORK OR ALTERATION TO BE MADE FOR ANY PURPOSE IN THE RIGHT OF WAY, THE WORK MUST BE COMPLETED WITHIN THE TIME SPECIFIED IN THE LICENSE, PERMIT, OR AGREEMENT, OR IF NO TIME IS SPECIFIED WITHIN A REASONABLE TIME. IN ADDITION, THE PROVIDER MUST, WITHOUT EXPENSE TO THE CITY AND UPON THE COMPLETION OF SUCH WORK, RESTORE THE PROPERTY DISTURBED IN A MANNER CONSISTENT WITH THE CITY'S DULY ADOPTED STANDARDS, AND AS REQUIRED BY ANY PERMITS, LICENSES, OR AGREEMENTS.
- D. THE INSTALLATION, USE, AND MAINTENANCE OF THE PROVIDER'S FACILITIES WITHIN THE RIGHT OF WAY AUTHORIZED IN THIS CHAPTER MUST BE IN SUCH A MANNER AS NOT TO INTERFERE WITH THE CITY'S PLACEMENT, CONSTRUCTION, USE, AND MAINTENANCE OF ITS RIGHTS OF WAY, STREET LIGHTING, WATER PIPES, DRAINS, SEWERS, TRAFFIC SIGNAL SYSTEMS, OR OTHER CITY SYSTEMS THAT HAVE BEEN, OR MAY BE, INSTALLED, MAINTAINED, USED OR AUTHORIZED BY THE CITY. UPON THE CITY'S REQUEST, PROVIDER'S FACILITIES MUST BE RELOCATED AT WIRELESS PROVIDER'S EXPENSE, UNLESS STATE LAW EXPRESSLY REQUIRES OTHERWISE. UPON THE CITY'S REQUEST, BY A TIME SPECIFIED BY THE CITY, IF THE PROVIDER FAILS TO MOVE ITS FACILITIES, THE CITY MAY DO SO AND THE WIRELESS PROVIDER MUST PAY THE CITY'S COSTS WITHIN THIRTY (30) DAYS FROM THE DATE OF INVOICE PROVIDED BY THE CITY. FURTHER, THE PROVIDER MUST REIMBURSE THE CITY FOR ANY ADDITIONAL COST THE CITY INCURS DUE TO THE LOCATION OR RELOCATION OF THE PROVIDER'S FACILITIES, INCLUDING ALL DESIGN AND CONSTRUCTION COSTS.
- E. THE PROVIDER MUST NOT INSTALL, MAINTAIN, OR USE ANY OF ITS FACILITIES IN SUCH A MANNER AS TO DAMAGE OR INTERFERE WITH FACILITIES OF ANOTHER WIRELESS PROVIDER LOCATED WITHIN THE RIGHT OF WAY.
- F. ALL SMALL WIRELESS FACILITIES MUST BE INSTALLED PER PLANS SUBMITTED BY WIRELESS PROVIDER IN ITS APPLICATION SUBMITTED AND APPROVED BY THE CITY. PROVIDER MAY INSTALL SMALL WIRELESS FACILITIES ON EXISTING POLES OR IN EXISTING CONDUIT WHERE PERMISSION IS GRANTED BY OWNER OF THE POLE OR CONDUIT, EXCEPT WHERE THOSE SAME POLES ARE SCHEDULED TO BE REPLACED WITH BURIED FACILITIES. THE CITY MAY REQUIRE THE PROVIDER TO

PROVE THAT IT HAS SUCH PERMISSION FROM THE OWNER TO USE THE OWNER'S FACILITIES. IF WIRELESS PROVIDER INSTALLS SMALL WIRELESS FACILITIES ON EXISTING POLES AS PROVIDED HEREIN, THE WIRELESS PROVIDER MUST BURY ITS FACILITIES WHEN SUCH POLES ARE REMOVED AND NOT REPLACED IN KIND FOR ANY REASON. IF THE WIRELESS PROVIDER MAKES USE OF EXISTING CONDUIT OF ANOTHER WIRELESS PROVIDER, THE WIRELESS PROVIDER WILL BE SUBJECT TO THE PROVISIONS OF THIS CHAPTER IN THE USE OF SUCH CONDUIT IN THE RIGHT OF WAY.

- G. EACH WIRELESS PROVIDER MUST OBTAIN AND MAINTAIN SUCH INSURANCE, BONDING, AND SECURITY FUND REQUIREMENTS AS SPECIFIED BY THE CITY, OR IF NO SPECIFIC REQUIREMENTS ARE DESIGNATED, AS ARE REQUIRED BY THE CITY FOR SIMILAR FACILITIES.
- H. NO WORK MAY COMMENCE UNLESS THESE REQUIREMENTS HAVE BEEN SATISFIED, AND THE CITY MAY REQUIRE THE PROVIDER TO REMOVE OR STOP WORK ON FACILITIES, OR REQUIRE A WIRELESS PROVIDER TO CEASE USING THE FACILITY, WHEN ANY INSURANCE, BONDING, OR SECURITY FUND REQUIREMENTS ARE NOT SATISFIED.
- I. A PERMIT MUST BE OBTAINED FROM THE CITY PRIOR TO A PROVIDER REMOVING, ABANDONING, RELOCATING, OR RECONSTRUCTING, IF NECESSARY, ANY PORTION OF A PROVIDER'S FACILITIES IN THE RIGHT OF WAY. NOTWITHSTANDING THE FOREGOING, WHEN EMERGENCY REPAIRS ARE REQUIRED BY FEDERAL OR STATE LAW OR ACTS OF GOD, THE PROVIDER WILL NOTIFY THE CITY PRIOR TO SUCH REPAIRS, IF PRACTICABLE, AND WILL OBTAIN THE NECESSARY PERMITS WITHIN 24 HOURS AFTER THE WORK BEGAN.

**SEC. 5C-11. CONFLICT WITH CITY PROJECTS.**

- A. IF, DURING THE DESIGN PROCESS FOR PUBLIC WORKS IMPROVEMENTS, THE CITY DISCOVERS A POTENTIAL CONFLICT BETWEEN THE WIRELESS PROVIDER'S SMALL WIRELESS FACILITIES AND THE PROPOSED PUBLIC WORKS CONSTRUCTION, THE WIRELESS PROVIDER MUST:
  - 1. LOCATE AND, IF NECESSARY, EXPOSE ITS FACILITIES IN CONFLICT; OR
  - 2. USE A LOCATION SERVICE UNDER CONTRACT WITH THE CITY TO LOCATE AND, IF NECESSARY, EXPOSE ITS FACILITIES. THE WIRELESS PROVIDER MUST REIMBURSE THE CITY FOR THE COST RESULTING FROM THE USE OF SUCH LOCATION SERVICE.

THE CITY WILL MAKE REASONABLE EFFORTS TO DESIGN AND CONSTRUCT PUBLIC WORKS PROJECTS TO AVOID RELOCATION EXPENSE TO THE WIRELESS PROVIDER. PROVIDER MUST FURNISH LOCATION INFORMATION TO THE CITY IN A TIMELY MANNER, BUT IN NO CASE LONGER THAN TEN CALENDAR DAYS FROM THE DATE OF A REQUEST FROM THE CITY.

- B. THE CITY RESERVES THE PRIOR AND SUPERIOR RIGHT TO LAY, CONSTRUCT, ERECT, INSTALL, USE, OPERATE, REPAIR, REPLACE, REMOVE, RELOCATE, REGRADE, WIDEN, REALIGN, OR MAINTAIN ANY RIGHT OF WAY, AERIAL, SURFACE, OR SUBSURFACE IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, WATER MAINS, TRAFFIC CONTROL CONDUITS, CABLE AND DEVICES, SANITARY OR STORM SEWERS, SUBWAYS, TUNNELS, BRIDGES, VIADUCTS, OR ANY OTHER PUBLIC WORKS CONSTRUCTION WITHIN THE RIGHT OF WAY.
- C. WHEN THE CITY INVOKES ITS PRIOR SUPERIOR RIGHT TO THE RIGHT OF WAY, THE WIRELESS PROVIDER MUST MOVE ITS FACILITIES LOCATED IN CONFLICT IN THE RIGHT OF WAY, AT ITS OWN COST, TO SUCH A LOCATION AS THE CITY DIRECTS.
- D. IF, DURING A PUBLIC WORKS CONSTRUCTION PROJECT, THE CITY DETERMINES WIRELESS PROVIDER'S FACILITIES ARE IN CONFLICT, THE FOLLOWING SHALL APPLY:
  - 1. UNLESS OTHERWISE AGREED BY THE PARTIES, THE PROVIDER MUST REMOVE OR RELOCATE THE CONFLICTING FACILITY WITHIN ONE MONTH. THIS TIME PERIOD WILL RUN FROM PROVIDER'S RECEIPT OF WRITTEN NOTICE.
  - 2. THE CITY AND THE WIRELESS PROVIDER WILL COORDINATE AS NECESSARY TO REMOVE OR RELOCATE THE FACILITY. REMOVAL OR RELOCATION WORK BY PROVIDER MUST BEGIN NO LATER THAN 72 HOURS, IF PRACTICABLE, AFTER WRITTEN NOTICE FROM THE CITY.
- E. IF THE WIRELESS PROVIDER'S RELOCATION OF FACILITIES DELAYS CONSTRUCTION OF A PUBLIC PROJECT CAUSING THE CITY TO BE LIABLE FOR DELAY DAMAGES, THE WIRELESS PROVIDER MUST REIMBURSE THE CITY FOR ANY DAMAGES ATTRIBUTABLE TO PROVIDER'S DELAY.

**SEC. 5C-12. DAMAGE TO RIGHT OF WAY AND FACILITIES.**

- A. THE WIRELESS PROVIDER SHALL NOT DAMAGE ANY RIGHT OF WAY, OR INFRASTRUCTURE IN RIGHT OF WAY, OR FACILITIES IN RIGHT OF WAY. ANY SUCH DAMAGE CAUSED BY THE INSTALLATION, USE, MAINTENANCE, OR REMOVAL OF ITS SMALL WIRELESS FACILITIES WILL BE RESTORED OR REPAIRED TO THE SATISFACTION OF THE CITY OR THE OWNER OF THE INFRASTRUCTURE.
- B. IF, IN THE INSTALLATION, USE, MAINTENANCE, OR REMOVAL OF ITS FACILITIES, THE WIRELESS PROVIDER DAMAGES OR DISTURBS THE SURFACE OR SUBSURFACE OF ANY RIGHT OF WAY OR ADJOINING PUBLIC PROPERTY, OR THE PUBLIC IMPROVEMENT LOCATED ON, IN, OR UNDER, THE PROVIDER MUST PROMPTLY, AT ITS OWN EXPENSE, AND IN A MANNER ACCEPTABLE TO THE CITY, RESTORE THE SURFACE OR SUBSURFACE OF THE RIGHT OF WAY OR PUBLIC PROPERTY, OR REPAIR OR REPLACE THE PUBLIC IMPROVEMENT ON, IN, OR UNDER, IN AS GOOD A CONDITION AS BEFORE SUCH DAMAGE OR DISTURBANCE.

- C. IF SUCH RESTORATION, REPAIR, OR REPLACEMENT OF THE SURFACE, SUBSURFACE, OR ANY IMPROVEMENT IS NOT COMPLETED WITHIN A REASONABLE TIME, OR SUCH REPAIR OR REPLACEMENT DOES NOT MEET DULY ADOPTED STANDARDS, THE CITY RESERVES THE RIGHT TO PERFORM THE NECESSARY RESTORATION, REPAIR, OR REPLACEMENT, EITHER THROUGH ITS OWN FORCES, OR THROUGH A HIRED CONTRACTOR. THE PROVIDER MUST PAY THE CITY FOR ITS COSTS WITHIN 30 DAYS AFTER PROVIDER'S RECEIPT OF THE CITY'S INVOICE.

**SEC. 5C-13. RELOCATION OF FACILITIES AND DISPUTE RESOLUTION.**

- A. THE CITY WILL NOT BEAR ANY COST TO RELOCATE EXISTING INFRASTRUCTURE OR FACILITIES, IRRESPECTIVE OF THE FUNCTION SERVED, WHERE EXISTING CITY INFRASTRUCTURE OR FACILITIES OR OTHER EXISTING INFRASTRUCTURE OR FACILITIES OCCUPY THE RIGHT OF WAY UNDER AUTHORITY OF A CITY PERMIT, LICENSE, OR FRANCHISE AND CONFLICT WITH A PROVIDER'S FACILITIES.
- B. IF A PROVIDER SHOULD DISPUTE THE AMOUNT OF DAMAGES, FEES, USE RATES, OR OTHER CHARGES PAYABLE BY PROVIDER PURSUANT TO THIS CHAPTER, PROVIDER MAY FILE A CLAIM WITH THE DISPUTE RESOLUTION BOARD. THE DISPUTE RESOLUTION BOARD CONSISTS OF ONE MEMBER SELECTED BY THE CITY, ONE MEMBER SELECTED BY THE WIRELESS PROVIDER, AND A THIRD PERSON AGREED UPON BY BOTH PARTIES. THE PERSON AGREED UPON BY BOTH PARTIES WILL SERVE AS CHAIRPERSON. DISPUTE RESOLUTION BOARD COSTS WILL BE SHARED EQUALLY BY THE CITY AND THE WIRELESS PROVIDER. THE BOARD WILL HEAR THE DISPUTE PROMPTLY, AND RENDER AN OPINION AS SOON AS POSSIBLE, BUT IN NO CASE LATER THAN 60 DAYS AFTER THE CLAIM IS FILED. ALL DECISIONS OF THE DISPUTE RESOLUTION BOARD ARE NON-BINDING; HOWEVER, THE FINDINGS OF THE DISPUTE RESOLUTION BOARD SHALL BE ADMISSIBLE IN ANY LEGAL ACTION. THE CITY AND THE WIRELESS PROVIDER SHALL ACCEPT OR REJECT FINDINGS OF THE DISPUTE RESOLUTION BOARD WITHIN 30 DAYS AFTER RECEIPT OF THE FINDINGS. IF DAMAGES ARE ASSESSED BY THE DISPUTE RESOLUTION BOARD, THE WIRELESS PROVIDER SHALL PAY THE CITY WITHIN 30 DAYS OF RECEIPT OF AN INVOICE. LATE CHARGES OF FIVE PERCENT AND INTEREST CHARGES OF ONE AND ONE-HALF PERCENT PER MONTH WILL BE ADDED FOR LATE PAYMENT.
- C. EXCEPT AS OTHERWISE PROVIDED IN A LICENSE, PERMIT, OR LAW, THE CITY WILL BEAR RELOCATION COSTS IF THE WIRELESS PROVIDER IS REQUIRED BY THE CITY TO RELOCATE FACILITIES THAT ARE LOCATED IN PRIVATE EASEMENTS OBTAINED BY THE WIRELESS PROVIDER PRIOR TO THE DEDICATION OF THE PUBLIC STREET OR EASEMENT FROM WHICH THE FACILITIES MUST BE RELOCATED. PROVIDER'S PRIOR RIGHTS REMAIN UNAFFECTED BY ANY SUBSEQUENT RELOCATION. A PRIOR RIGHT AS USED IN THIS SUBSECTION, MEANS PRIVATE EASEMENT RIGHTS OBTAINED BY THE WIRELESS PROVIDER PRIOR TO THE DEDICATION OF THE STREETS OR PUBLIC WAYS FROM WHICH THE FACILITIES ARE REQUESTED BY THE CITY TO BE RELOCATED. IN THE CASE OF A FACILITY THAT SERVES MULTIPLE

PURPOSES, THE PRIOR RIGHTS MUST EXTEND TO ALL USES FOR THIS EXCEPTION TO APPLY.

**SEC. 5C-14. REMOVAL OF SMALL WIRELESS FACILITIES.**

A PROVIDER MUST REMOVE ALL SMALL WIRELESS FACILITIES AND RESTORE THE USE AREAS INCLUDING POLE, MAST ARMS, LUMINAIRES, OR WIRELESS SUPPORT STRUCTURE TO ITS PRIOR CONDITION, OR TO A CONDITION THAT MATCHES THE SURROUNDING LAND AND IMPROVEMENTS, AS DIRECTED BY CITY, AT WIRELESS PROVIDER'S EXPENSE PRIOR TO NORMAL EXPIRATION OF THE TERM OF A MASTER LICENSE AGREEMENT OR SITE LICENSE AGREEMENT OR WITHIN 90 DAYS AFTER TERMINATION OF A MASTER LICENSE AGREEMENT OR SITE LICENSE AGREEMENT. WITHOUT LIMITATION, SUCH REMOVAL MUST INCLUDE REVEGETATION AND APPROPRIATE IRRIGATION SYSTEMS FOR REVEGETATED AREAS. NOTWITHSTANDING THE ABOVE, THE CITY MAY ELECT TO REQUIRE WIRELESS PROVIDER TO LEAVE ANY OR ALL CONSTRUCTION OR OTHER ITEMS (EXCEPT THE COMMUNICATIONS EQUIPMENT) IN PLACE, AND ALL SUCH ITEMS WILL BE OWNED BY CITY. UNLESS CITY DIRECTS OTHERWISE, ALL WIRING, PIPES AND CONDUITS MUST BE LEFT IN GOOD AND SAFE CONDITION, IN WORKING ORDER, WITH EACH END PROPERLY LABELED AND ENCLOSED IN PROPER JUNCTION BOXES. A WIRELESS PROVIDER THAT FAILS TO REMOVE THE SMALL WIRELESS FACILITIES AS PROVIDED IN THIS SECTION WILL BE LIABLE TO THE CITY FOR ALL OF THE CITY'S COSTS OF REMOVAL, AND WILL HAVE BEEN DEEMED TO WAIVE ANY PROPERTY RIGHTS AND INTERESTS IN THE FACILITIES. PROVIDED, HOWEVER, THE PROVIDER WILL REMAIN LIABLE FOR ANY OF ITS OBLIGATIONS AND DUTIES UNDER THE MASTER LICENSE AND SITE LICENSE AGREEMENTS.

**ARTICLE IV. PUBLIC HEALTH, SAFETY, AND WELFARE  
REVIEW, NOTIFICATION, TRAINING, AND ENFORCEMENT.**

**SEC. 5C-15. INSTALLATION SAFETY REVIEW.**

A. FOR THE PERIOD BEGINNING ON THE DATE AN INSTALLATION PERMIT IS ISSUED AND ENDING ON THE DATE THE PERMITTED WORK IS ACCEPTED, CITY MAY PERFORM A SAFETY REVIEW OF CONSTRUCTION, RECONSTRUCTION OR INSTALLATION OF ALL SMALL WIRELESS FACILITIES AS IT DEEMS NECESSARY TO ENSURE COMPLIANCE WITH THIS CHAPTER 5C, THE CODE, OR OTHER TELECOMMUNICATIONS LAWS. ALL CITY PLANS, REVIEWS, INSPECTIONS, STANDARDS, AND OTHER RIGHTS AND ACTIONS RELATED TO PROVIDER'S IMPROVEMENTS ARE FOR CITY'S SOLE AND EXCLUSIVE BENEFIT AND NEITHER PROVIDER NOR ANY OTHER PERSON MAY RELY ON THE CITY'S SAFETY REVIEWS OR HAVE ANY RIGHTS RELATED TO THE REVIEWS. THE PRECEDING SENTENCE DOES NOT PREVENT PROVIDER FROM RELYING ON CONSENTS, PERMITS, OR APPROVALS THE CITY MAY GRANT BASED ON CITY'S PLANS, REVIEWS, AND INSPECTIONS. AS A CONDITION OF OBTAINING THE LICENSES AUTHORIZED BY THIS CHAPTER, THE WIRELESS PROVIDER GRANTS THE CITY THE RIGHT TO ACCESS THE WIRELESS PROVIDER'S SMALL WIRELESS FACILITIES. EXCEPT FOR

EMERGENCIES, THIS RIGHT OF ACCESS IS LIMITED TO DATES AND TIMES AGREED TO BY THE PARTIES AND TO CITY INSPECTORS, OTHER EMPLOYEES, CONTRACTORS, OR OFFICERS ACTING WITHIN THEIR LEGAL AUTHORITY.

B. CONSISTENT WITH STATE LAW, THE CITY MAY RECOVER THE CITY'S COSTS INCURRED TO PERFORM SUCH INSTALLATION SAFETY REVIEWS AS THE CITY DEEMS NECESSARY AT THE HOURLY RATE OF \$150 PER HOUR PER PERSON. HOWEVER, IN NO EVENT WILL THE SAFETY REVIEW EXCEED THE TOTAL NUMBER OF HOURS LISTED IN THE TABLE BELOW FOR EACH SITE INSTALLATION. THE CITY WILL SUBMIT AN INVOICE TO THE WIRELESS PROVIDER FOR EACH SITE INSTALLATION SAFETY REVIEW THAT SHOWS THE NUMBER OF HOURS BILLED IN INCREMENTS OF A QUARTER HOUR (15 MINUTES) FOR THE TIME SPENT PER PERSON ON-SITE FOR EACH REVIEW; EXCEPT THAT A FLAT RATE OF ONE QUARTER HOUR (15 MINUTES) WILL BE CHARGED FOR TRAVEL TO AND FROM EACH SITE FOR EACH REVIEW, AND A FLAT RATE OF ONE HOUR WILL BE CHARGED FOR A WIRELESS PROVIDER'S FAILURE TO PERMIT ACCESS TO THE FACILITIES AT THE AGREED TIME AND DATE (A NO-SHOW). THE WIRELESS PROVIDER MUST PAY ANY SUCH INVOICE WITHIN 30 CALENDAR DAYS OF THE INVOICE DATE.

<b>INSTALLATION SAFETY REVIEW</b>		<b>NOT TO EXCEED TOTAL NUMBER OF HOURS</b>
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER PERMIT	10
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER PERMIT	10
POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER PERMIT	20
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER PERMIT	20
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER PERMIT	20
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER PERMIT	20

C. CONSISTENT WITH STATE LAW AND TO FULLY RECOVER ITS COSTS, THE CITY MAY INCREASE THE HOURLY RATE CHARGED EVERY TWO YEARS BY THE SAME PERCENTAGE REFLECTED BY THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX FOR THE PRECEDING TWO YEARS.

**SEC. 5C-16. CONSTRUCTION NOTIFICATION.**

- A. FOR ANY NEW SMALL WIRELESS FACILITIES INSTALLATIONS AND NEW OR MODIFIED POLES, THE PROVIDER MUST PROVIDE ADVANCED PRE-CONSTRUCTION NOTIFICATION NO LATER THAN TEN (10) CALENDAR DAYS PRIOR TO THE START OF CONSTRUCTION ACTIVITIES TO POTENTIALLY IMPACTED PROPERTY OWNERS WITHIN THREE HUNDRED (300) FEET OF THE INSTALLATION. THE PROVIDER MAY ACCOMPLISH SUCH PRE-CONSTRUCTION NOTIFICATION BY MAILING A LETTER TO THE ADDRESS OF EACH IMPACTED PROPERTY OWNER OR BY PLACING A DOOR HANGER AT THE PROPERTY OWNER'S ADDRESS. THE LANGUAGE OF THE NOTIFICATION WILL BE IN A FORM PROVIDED BY THE CITY TO THE PROVIDER AND MUST INCLUDE TELEPHONE AND CONTACT INFORMATION FOR THE PROVIDER.
- B. EACH PROVIDER MUST REGISTER WITH AND COMPLY WITH THE LOCAL BLUE STAKE PROGRAM AS ESTABLISHED BY A.R.S. TITLE 40, CHAPTER 2, ARTICLE 6.3, SECTIONS 40-360.21 THROUGH 40-360.32.

**SEC. 5C-17. DE-ENERGIZING SMALL WIRELESS FACILITIES FOR POLE MAINTENANCE.**

ALL SMALL WIRELESS FACILITIES MOUNTED ON A CITY POLE OR ANY WIRELESS SUPPORT STRUCTURE WITH A SMALL WIRELESS FACILITY LOCATED WITHIN TWENTY-FIVE (25) FEET OF A CITY POLE MUST INSTALL A DEACTIVATION SWITCH, CONSISTENT WITH CITY DESIGN STANDARDS, FOR BOTH PRIMARY AND BACKUP POWER ACCESSIBLE TO CITY STAFF TO DE-ENERGIZE THE FACILITY FOR REPAIR, MAINTENANCE, AND SAFETY PURPOSES.

ALL EXISTING SMALL WIRELESS FACILITIES CONSTRUCTED WITHOUT A DEACTIVATION SWITCH MUST BE RETROFITTED TO INCLUDE A DEACTIVATION SWITCH, CONSISTENT WITH CITY DESIGN STANDARDS, FOR BOTH PRIMARY AND BACK UP POWER ACCESSIBLE TO CITY STAFF TO DE-ENERGIZE THE FACILITY FOR REPAIR, MAINTENANCE, AND SAFETY PURPOSES. BY FEBRUARY 9, 2019.

**SEC. 5C-18. NOISE LEVEL STANDARD.**

THE AVERAGE NOISE LEVEL OF SMALL WIRELESS FACILITIES LOCATED IN RIGHT OF WAY, INCLUDING ANTENNA AND GROUND-MOUNTED EQUIPMENT AND ELECTRIC METER, MEASURED AT ANY PROPERTY LINE THAT IS ZONED OR USED FOR RESIDENTIAL PURPOSES MUST NOT EXCEED THE LOWEST LEVEL OF EITHER:

- 1. CONSISTENT WITH EXISTING CODE PROVISIONS FIFTY-FIVE (55) DECIBELS (DB) WHEN MEASURED ON AN "A WEIGHTED" SOUND LEVEL METER AND PER THE PROCEDURES OF THE ENVIRONMENTAL PROTECTION AGENCY; OR
- 2. SUCH NOISE LEVEL STANDARD AS MAY BE ESTABLISHED BY FEDERAL OR STATE LAW FOR SMALL WIRELESS FACILITIES.



**SEC. 5C-19. RADIO FREQUENCY SPACING FROM OCCUPIED STRUCTURES.**

ANTENNA EQUIPMENT MUST COMPLY WITH THE FCC ESTIMATED “WORST CASE” HORIZONTAL DISTANCES AT THE SAME ELEVATION FROM WINDOWS, BALCONIES AND PUBLIC SPACES.

**SEC. 5C-20. ENFORCEMENT OF PUBLIC SAFETY VIOLATIONS; CIVIL SANCTIONS.**

A. AUTHORITY AND ADMINISTRATION. THE CITY MANAGER IS AUTHORIZED TO ISSUE NOTICES OF VIOLATION OF THIS CHAPTER AND MAY TAKE THOSE MEASURES NECESSARY TO PROMOTE, PRESERVE, AND PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE WITHIN THE RIGHT OF WAY. THE CITY MANAGER WILL ISSUE A WARNING FOR THE FIRST VIOLATION BY A PROVIDER UNDER THIS SECTION. EXCEPT FOR FACILITIES THAT HAVE NOT BEEN MAINTAINED AS REQUIRED BY THIS CHAPTER, THE CITY MANAGER MAY NOT ISSUE A NOTICE OF VIOLATION UNDER SECTIONS 5C-20(B)(3) OR (B)(4) FOR SMALL WIRELESS FACILITIES THAT HAVE BEEN SUBJECT TO AN INSTALLATION SAFETY REVIEW. THE CITY MANAGER WILL ISSUE NOTICE TO THE PROVIDER’S EMERGENCY CONTACT LISTED IN THE MASTER LICENSE AGREEMENT.

B. CIVIL SANCTIONS. THE FOLLOWING VIOLATIONS MAY RESULT IN A CIVIL SANCTION. THE AMOUNT OF THE CIVIL SANCTION LISTED IS THE AMOUNT PER DAY FOR A VIOLATION PRIOR TO COMMENCEMENT OF AN ACTION AS PROVIDED IN THIS SECTION.

SANCTION PER DAY	VIOLATION DESCRIPTION
\$1,000	1. FAILURE TO TAKE NECESSARY STEPS TO PROTECT, PROMOTE PUBLIC SAFETY WITHIN 24 HOURS AFTER NOTICE OR FAILURE TO CURE WITHIN FIVE BUSINESS DAYS AFTER NOTICE OF AN ACT, ERROR, OR OMISSION BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS THAT CAUSES AN IMMINENT RISK OF DEATH, HARM, OR INJURY TO PERSONS OR PROPERTY.
\$1,000	2. UNAUTHORIZED USE OR FACILITIES AS PROVIDED IN SECTION 5C-4(E).
\$1,000	3. FAILURE TO REMOVE FACILITIES FROM THE SIGHT VISIBILITY TRIANGLE AS PROVIDED IN CODE SECTION 31-13 WITHIN FIVE BUSINESS DAYS AFTER NOTICE.

\$800	4. FAILURE TO CURE WITHIN FIVE BUSINESS DAYS AFTER NOTICE SMALL WIRELESS FACILITIES THAT EXCEED AUTHORIZED NOISE OR RADIO FREQUENCY LEVELS.
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C. SUSPENSION OF LICENSE.

1. IN ADDITION TO OR IN PLACE OF THESE CIVIL SANCTIONS, THE CITY MANAGER MAY SUSPEND FOR FIVE BUSINESS DAYS THE SUBJECT MASTER LICENSE AND SITE LICENSE AGREEMENTS.
2. IN ADDITION, THE CITY MANAGER MAY SUSPEND FOR FIVE BUSINESS DAYS THE SUBJECT MASTER LICENSE AND SITE LICENSE AGREEMENTS FOR A PROVIDER'S FAILURE TO CURE WITHIN FIVE BUSINESS DAYS AFTER NOTICE OF FALSE, INCOMPLETE, MISTAKEN, MISLEADING OR INACCURATE INFORMATION OR CERTIFICATION USED BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS TO OBTAIN A LICENSE, PERMIT, OR AGREEMENT UNDER THIS CHAPTER.

D. FOR CONTINUING VIOLATIONS WITHIN A TWENTY-FOUR-HOUR PERIOD, EACH CALENDAR DAY SHALL BE CONSIDERED A SEPARATE PERIOD FOR PURPOSES OF RECOVERY OF CIVIL SANCTIONS.

E. CIVIL ACTION FOR VIOLATIONS.

1. THESE REMEDIES ARE CUMULATIVE AND THE CITY MAY PROCEED UNDER ONE OR MORE REMEDIES.
2. ANY PARTY WHO CAUSES, PERMITS, FACILITATES, OR AIDS OR ABETS ANY VIOLATION OF ANY PROVISION OF THIS SECTION OR WHO FAILS TO PERFORM ANY ACT OR DUTY REQUIRED BY THIS SECTION IS SUBJECT TO A CIVIL SANCTION OF NOT LESS THAN EIGHT HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS. THE EIGHT HUNDRED DOLLAR MINIMUM SANCTION MAY NOT BE WAIVED.
3. EACH DAY ANY VIOLATION OF ANY PROVISION OF THIS SECTION OR THE FAILURE TO PERFORM ANY ACT OR DUTY REQUIRED BY THIS SECTION EXISTS SHALL CONSTITUTE A SEPARATE VIOLATION OR OFFENSE.
4. ANY CIVIL ACTION TO ENFORCE A CIVIL SANCTION IMPOSED PURSUANT TO THIS SECTION WILL BE COMMENCED AND SUMMONS SHALL BE ISSUED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THE A.R.S., CITY ORDINANCE OR AS PROVIDED IN THE LOCAL RULES OF PRACTICE AND PROCEDURE, CITY COURT, CITY OF PHOENIX.

5. ANY PARTY MAY APPEAL THE JUDGMENT OF THE CITY COURT TO THE SUPERIOR COURT. APPEALS FROM CIVIL PROCEEDINGS SHALL BE IN ACCORDANCE WITH THE SUPERIOR COURT RULES OF APPELLATE PROCEDURE, CIVIL. EXECUTION OF ANY JUDGMENT SHALL BE STAYED PENDING APPEAL WHEN THE DEFENDANT POSTS AN APPEAL BOND IN ACCORDANCE WITH THE ORDER OF THE TRIAL COURT, OR WHEN NO BOND IS FIXED AND A NOTICE OF APPEAL HAS BEEN FILED.

6. A CIVIL CITATION OR COMPLAINT BROUGHT PURSUANT TO THIS SECTION SHALL BE SERVED WITHIN ONE YEAR OF THE OFFENSE.

F. JURISDICTION OF COURT.

1. JURISDICTION OF ALL PROCEEDINGS TO ENFORCE THE PROVISIONS OF THIS SECTION RELATING TO CIVIL SANCTIONS SHALL BE IN THE MUNICIPAL COURT OF THE CITY OF PHOENIX.

2. CIVIL ACTIONS TO ENFORCE THIS SECTION MAY BE ADJUDICATED BY A JUDGE OR A COURT HEARING OFFICER.

G. ADMISSION OR DENIAL OF ALLEGATION; HEARING; FINDINGS OF COURT; CIVIL SANCTION.

1. A PARTY SERVED WITH A CIVIL CITATION OR COMPLAINT SHALL APPEAR AT THE TIME AND PLACE STATED IN THE CITATION OR SUMMONS, OR MAY APPEAR PRIOR TO THE TIME AND ADMIT OR DENY THE ALLEGATIONS OF THE COMPLAINT. ALLEGATIONS NOT DENIED AT THE TIME OF APPEARANCE ARE DEEMED ADMITTED.

2. IF THE ALLEGATIONS ARE ADMITTED, THE COURT SHALL ENTER JUDGMENT FOR THE CITY AND IMPOSE A CIVIL SANCTION.

3. IF THE PARTY DENIES THE ALLEGATIONS, THE COURT SHALL SET THE MATTER FOR HEARING. CIVIL HEARINGS ARE INFORMAL AND HELD WITHOUT A JURY, AND THE CITY IS REQUIRED TO PROVE THE VIOLATION CHARGED BY A PREPONDERANCE OF THE EVIDENCE. TECHNICAL RULES OF EVIDENCE DO NOT APPLY, EXCEPT FOR STATUTORY PROVISIONS RELATING TO PRIVILEGED COMMUNICATIONS. IF THE PERSON ELECTS TO BE REPRESENTED BY COUNSEL, THE PERSON SHALL SO NOTIFY THE COURT AT LEAST TEN DAYS PRIOR TO THE HEARING DATE. HEARINGS MAY BE RECORDED. IF THE COURT FINDS IN FAVOR OF THE PARTY, THE COURT SHALL ENTER AN ORDER DISMISSING THE CITATION OR COMPLAINT. IF THE COURT FINDS IN FAVOR OF THE CITY, THE COURT SHALL ENTER JUDGMENT FOR THE CITY AND IMPOSE A CIVIL SANCTION.

4. IF THE PARTY SERVED WITH A CIVIL CITATION OR COMPLAINT FAILS TO APPEAR ON OR BEFORE THE TIME DIRECTED TO APPEAR OR AT THE TIME SET FOR HEARING BY THE COURT, THE ALLEGATIONS SHALL BE DEEMED ADMITTED AND THE COURT SHALL ENTER JUDGMENT FOR THE CITY AND IMPOSE A CIVIL SANCTION.

5. FAILURE OF A PARTY TO PAY A CIVIL SANCTION UPON FINAL ADJUDICATION OF THE CIVIL ACTION AS PROVIDED BY LAW SHALL RESULT IN THE AUTOMATIC TERMINATION OF THE LICENSE AND ANY SUCH PARTY WILL BE PROHIBITED FROM OBTAINING ADDITIONAL LICENSES OR PERMITS UNTIL ALL OUTSTANDING CIVIL SANCTIONS HAVE BEEN DISMISSED OR PAID IN FULL.

## **ARTICLE V. GENERAL PROVISIONS.**

### **SEC. 5C-21. RIGHTS RESERVED TO CITY.**

WITHOUT LIMITING THE RIGHTS THAT THE CITY MIGHT OTHERWISE HAVE, THE CITY DOES HEREBY EXPRESSLY RESERVE THE FOLLOWING RIGHTS, POWERS, AND AUTHORITIES:

- A. TO EXERCISE ITS GOVERNMENTAL POWERS NOW OR HEREAFTER TO THE FULL EXTENT THAT SUCH POWERS MAY BE VESTED IN OR GRANTED TO THE CITY.
- B. TO DETERMINE ANY QUESTION OF FACT RELATING TO THE MEANING, TERMS, OBLIGATIONS, OR OTHER ASPECTS OF THIS CHAPTER AND THE INSTRUMENTS ISSUED UNDER THIS CHAPTER.
- C. TO GRANT MULTIPLE, NONEXCLUSIVE LICENSES, FRANCHISES, LICENSES, OR PERMITS WITHIN THE CITY TO OTHER PERSONS.

### **SEC. 5C-22. CITY POLICE POWER; CONTINUING JURISDICTION.**

- A. THE WIRELESS PROVIDER IS SUBJECT TO ALL LAWFUL EXERCISE OF THE POLICE POWER BY THE CITY, INCLUDING ANY AND ALL CHAPTERS, RULES, OR REGULATIONS WHICH THE CITY HAS ADOPTED OR MAY ADOPT, AND ALL LAWS, RULES, REGULATIONS, ORDERS, AND POLICIES OF THE STATE AND THE UNITED STATES GOVERNMENT. IN THE EVENT OF A CONFLICT BETWEEN THIS CHAPTER AND OTHER PROVISIONS OF THE CITY CODE, THE STRICTER REQUIREMENT WILL APPLY.
- B. THE CITY POSSESSES CONTINUING JURISDICTION AND SUPERVISION OVER ANY FACILITIES LOCATED WITHIN OR ON CITY RIGHTS OF WAY. HOWEVER, IT IS RECOGNIZED THAT THE DAILY ADMINISTRATIVE, SUPERVISORY, AND ENFORCEMENT RESPONSIBILITIES OF THE PROVISIONS OF THIS CHAPTER MAY BE DELEGATED AND ENTRUSTED TO THE CITY MANAGER OR DESIGNEE TO INTERPRET, ADMINISTER, AND ENFORCE THE PROVISIONS OF THIS CHAPTER, AND TO PROMULGATE STANDARDS REGARDING THE CONSTRUCTION,

RECONSTRUCTION, RELOCATION, MAINTENANCE, DISMANTLING, ABANDONMENT,  
OR USE OF THE FACILITIES WITHIN THE CITY RIGHTS OF WAY.

SECTION 2. The provisions of this Ordinance shall be effective February 9, 2018.

PASSED by the Council of the City of Phoenix this \_\_\_\_ day of \_\_\_\_, 2018.

MAYOR

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

DRAFT

~~Version 2 Dated 1/4/18~~

ORDINANCE ~~NO. G-6407~~

AN ORDINANCE ESTABLISHING THE SMALL WIRELESS FACILITIES LICENSE BY CREATING NEW CHAPTER 5C OF THE PHOENIX CITY CODE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The Phoenix City Code is amended to create a new Chapter 5C Small Wireless Facilities as follows:

**ARTICLE I. PURPOSE AND POLICY; AUTHORITY AND ADMINISTRATION; DEFINITIONS.**  
**DEFINITIONS.**

**SEC. 5C-1. PURPOSE AND POLICY.**

~~A. A.~~ THIS CHAPTER ALONG WITH FEDERAL, STATE, AND OTHER LOCAL LAW ESTABLISHES POLICY FOR USE OF CITY-OWNED INFRASTRUCTURE, PERMITTED INFRASTRUCTURE OWNED BY OTHERS, AND CITY MANAGED ~~LOCAL PUBLIC~~ RIGHT OF WAY FOR SMALL WIRELESS FACILITIES ~~TO ENABLE~~ THIS POLICY ENABLES THE CITY TO:

1. ISSUE LICENSES TO WIRELESS PROVIDERS FOR USE OF ~~THE LOCAL PUBLIC~~ RIGHT OF WAY ON A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS, EXCEPT IN CASES WHERE STATE LAW FORBIDS ESTABLISHMENT OF A LICENSE OR FRANCHISE REQUIREMENT;
2. MANAGE ~~THE LOCAL PUBLIC~~ RIGHT OF WAY TO MINIMIZE THE IMPACT AND COST TO PHOENIX RESIDENTS CAUSED BY SMALL WIRELESS FACILITIES LOCATED WITHIN ~~LOCAL PUBLIC~~ RIGHT OF WAY;
3. MANAGE ~~THE LOCAL PUBLIC~~ RIGHT OF WAY TO MAXIMIZE EFFICIENT, EFFECTIVE, AND OPTIMAL USE OF PUBLIC RESOURCES AND SUPPORT ECONOMIC DEVELOPMENT TO THE EXTENT PERMITTED BY LAW;
4. COMPLY WITH APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS AS

APPLIED TO CITY MANAGED ~~LOCAL PUBLIC~~ RIGHT OF WAY; AND

5. MANAGE ~~THE LOCAL PUBLIC~~ RIGHT OF WAY TO PROMOTE AND PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE.

~~B. B.~~ THEREFORE, THE CITY COUNCIL ADOPTS THIS CHAPTER 5C TO:

1. MANAGE ~~LOCAL PUBLIC~~ RIGHT OF WAY CONSISTENT WITH THE CITY'S FIDUCIARY OBLIGATIONS;
2. PROMOTE AND PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE MEASURES FOR ~~LOCAL PUBLIC~~ RIGHT OF WAY;
3. ENCOURAGE PUBLIC-PRIVATE PARTNERSHIPS TO PROVIDE WIRELESS FACILITIES FOR THE COST-EFFECTIVE DELIVERY OF PUBLIC SERVICES SUCH AS SCHOOLS, LIBRARIES, POLICE AND FIRE PROTECTION, AND DELIVER PRIVATE SERVICES TO PHOENIX RESIDENTS;
4. CONSERVE THE LIMITED PHYSICAL CAPACITY OF THE ~~LOCAL PUBLIC~~ RIGHT OF WAY MANAGED BY THE CITY; AND
5. ASSURE THE CITY'S CURRENT AND ONGOING COSTS TO GRANT AND REGULATE PRIVATE ACCESS TO AND USE OF ~~LOCAL PUBLIC~~ RIGHT OF WAY ARE FULLY RECOVERED AND PAID BY THE PERSONS WHO SEEK SUCH ACCESS AND CAUSE SUCH COSTS.

**SEC. 5C-2. AUTHORITY AND ADMINISTRATION.**

THE CITY MANAGER IS AUTHORIZED AS PROVIDED IN THIS CHAPTER TO ISSUE AND ADMINISTER MASTER LICENSE AGREEMENTS AND ASSOCIATED SITE LICENSE AGREEMENTS TO PERSONS, ~~ASSOCIATIONS, OR CORPORATIONS~~ TO INSTALL, OPERATE, AND MAINTAIN SMALL WIRELESS FACILITIES.

**SEC. 5C-3. DEFINITIONS.**

FOR THE PURPOSES OF THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS, PHRASES, WORDS, AND THEIR DERIVATIVES SHALL HAVE THE MEANINGS GIVEN HEREIN.

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

"APPLICANT" MEANS A WIRELESS PROVIDER, ITS CONTRACTORS, AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, PARENT ORGANIZATION, SUCCESSOR-IN-INTEREST, PREDECESSOR-IN-INTEREST, OR JOINT VENTURES WHO

APPLY FOR A LICENSE UNDER THIS CHAPTER.

“A.R.S.” MEANS ARIZONA REVISED STATUTES.

“CODE” MEANS PHOENIX CITY CODE.

“COMMUNICATIONS EQUIPMENT” MEANS ANY AND ALL ELECTRONIC EQUIPMENT AT THE SMALL WIRELESS FACILITY LOCATION THAT PROCESSES AND TRANSPORTS INFORMATION FROM THE ANTENNAS TO THE WIRELESS PROVIDER’S NETWORK.

“EXISTING SMALL WIRELESS FACILITIES LICENSES” MEANS ~~LICENSES, PERMITS, OR OTHER AGREEMENTS FOR AN EXISTING SMALL WIRELESS FACILITIES LOCATED IN LOCAL PUBLIC RIGHT OF WAY ISSUED BY PHOENIX TO WIRELESS PROVIDERS FACILITY WITH A SITE LICENSE AGREEMENT EXECUTED~~ PRIOR TO FEBRUARY 9, 2018, ~~UNDER EXISTING ORDINANCES S 35981 (DATED APRIL 1, 2009) AND S 39043 (DATED JUNE 20, 2012).~~

“GROUND MOUNTED EQUIPMENT” MEANS ANY COMMUNICATIONS EQUIPMENT THAT IS MOUNTED TO A SEPARATE POST OR TO A FOUNDATION ON THE GROUND.

“PERSON” MEANS A PERSON OR BUSINESS ASSOCIATION ORGANIZED AS PROVIDED BY LAW.

~~“RIGHT OF WAY” OR “LOCAL PUBLIC~~ “RIGHT OF WAY” FOR PURPOSES OF THIS CHAPTER ONLY, MEANS THE AREA ON, BELOW, OR ABOVE A PUBLIC ROADWAY, HIGHWAY, STREET, SIDEWALK, OR ALLEY LOCATED WITHIN PHOENIX CORPORATE BOUNDARIES. ~~RIGHT-OF-WAY~~ DOES NOT MEAN THE AREA ON, BELOW, OR ABOVE A FEDERAL INTERSTATE HIGHWAY, A STATE HIGHWAY, A STATE ROUTE UNDER THE JURISDICTION OF THE ARIZONA 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 A WIRELESS PROVIDER.

“SIGHT VISIBILITY TRIANGLES” MEANS THE TRAFFIC ENGINEERING AND SAFETY CONCEPT THAT REQUIRES CLEAR VIEW BY THE DRIVER OF A VEHICLE AND PEDESTRIANS TO CROSSING TRAFFIC AT A ~~STOP SIGN~~, DRIVEWAY OR INTERSECTION. ~~TO ACHIEVE CLEAR VISIBILITY OF THE CROSS TRAFFIC, THE LAND AREAS IN THE TERM “SIGHT VISIBILITY TRIANGLE HAS SPECIFIC MAXIMUM HEIGHTS TRIANGLES” APPLIES TO ALL SUCH AREAS SHOWN ON LANDSCAPING, CABINETS, AND OTHER POTENTIAL VIEW OBSTRUCTIONS FINAL APPROVED SITE PLANS, AND AS DESCRIBED IN REQUIRED BY~~ CODE SECTION 31-13.

“SMALL WIRELESS FACILITY” MEANS A WIRELESS FACILITY THAT SATISFIES BOTH OF THE FOLLOWING QUALIFICATIONS:

~~(A)~~ A. ALL ANTENNAS ARE LOCATED INSIDE AN ENCLOSURE OF NOT



~~\_\_\_\_\_~~ MORE THAN SIX ~~(6)~~ CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA, ~~THAT WHICH~~ HAS EXPOSED ELEMENTS, THE ANTENNA AND ALL OF THE ANTENNA'S EXPOSED ELEMENTS COULD FIT WITHIN AN IMAGINARY ENCLOSURE OF NOT MORE THAN SIX ~~(6)~~ CUBIC FEET IN VOLUME.

~~(B)~~**B.** ALL OTHER WIRELESS EQUIPMENT ASSOCIATED WITH THE FACILITY IS CUMULATIVELY NOT MORE THAN ~~TWENTY-EIGHT (28)~~ CUBIC FEET IN VOLUME OR ~~FIFTY (50)~~ 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)~~**1.** \_\_\_\_\_ AN ELECTRIC METER.

~~(II)~~**2.** \_\_\_\_\_ CONCEALMENT ELEMENTS.

~~(III)~~**3.** \_\_\_\_\_ A TELECOMMUNICATIONS DEMARCATION BOX.

~~(IV)~~**4.** \_\_\_\_\_ GROUNDING EQUIPMENT.

~~(V)~~**5.** \_\_\_\_\_ A POWER TRANSFER SWITCH.

~~(VI)~~**6.** \_\_\_\_\_ A CUTOFF SWITCH.

~~(VII)~~**7.** \_\_\_\_\_ VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER SERVICES.

"WIRELESS ~~PROVIDER~~ OR "PROVIDER" MEANS A CABLE OPERATOR, WIRELESS INFRASTRUCTURE PROVIDER OR WIRELESS SERVICES PROVIDER AS DEFINED IN A.R.S. §9-591(24).

## ARTICLE II. LICENSES TO OCCUPY ~~LOCAL PUBLIC~~ RIGHT OF WAY.

### SEC. 5C-4. LICENSES REQUIRED; UNAUTHORIZED USE PROHIBITED.

A. NO WIRELESS PROVIDER MAY INSTALL, MAINTAIN, CONSTRUCT, OR OPERATE WIRELESS FACILITIES IN ~~LOCAL PUBLIC~~ RIGHT OF WAY, OR PROVIDE SERVICES BY MEANS OF SUCH WIRELESS FACILITIES, UNLESS A WIRELESS PROVIDER FIRST OBTAINS AND MAINTAINS IN GOOD STANDING AT ALL APPLICABLE TIMES ALL OF THE FOLLOWING:

1. A LICENSE FOR CABLE SERVICES AS PROVIDED BY A.R.S. TITLE 9, CHAPTER 4 AND CODE CHAPTER 5, OR A LICENSE FOR TELECOMMUNICATIONS SERVICES AS PROVIDED BY A.R.S., TITLE 9, CHAPTER 7, AND CODE CHAPTER 5B, FOR FACILITIES LOCATED IN ~~LOCAL PUBLIC~~ RIGHT OF WAY THAT CONNECT THE PROVIDER'S SMALL WIRELESS FACILITIES TO PROVIDER'S INTERSTATE NETWORK; AND

2. A MASTER LICENSE AGREEMENT FOR SMALL WIRELESS FACILITIES AS PROVIDED BY A.R.S., TITLE 9, CHAPTER 8, AND THIS CHAPTER 5C FOR USE OF THE ~~LOCAL PUBLIC~~ RIGHT OF WAY WITHIN THE BOUNDARIES DESCRIBED AND ATTACHED TO SUCH MASTER LICENSE, AND SUBJECT TO PROVIDER'S TIMELY PAYMENT OF AN APPLICATION FEE AND ANNUAL RIGHT OF WAY USE RATE CONSISTENT WITH STATE LAW AND AS DETERMINED BY THE CITY MANAGER. THE MASTER LICENSE AGREEMENT FOR EACH PROVIDER MUST BE APPROVED BY COUNCIL ORDINANCE UNDER THE TERMS AND CONDITIONS GENERALLY SET FORTH IN THIS CHAPTER 5C; AND
  3. ONE OF THE FOLLOWING SITE LICENSE AGREEMENTS ASSOCIATED WITH PROVIDER'S MASTER LICENSE AGREEMENT FOR EACH OF PROVIDER'S INSTALLATION OF SMALL WIRELESS FACILITIES LOCATED IN ~~LOCAL PUBLIC~~ RIGHT OF WAY: (i) SITE LICENSE AGREEMENT TO ATTACH WIRELESS FACILITIES TO CITY-OWNED INFRASTRUCTURE; OR (ii) SITE LICENSE AGREEMENT TO ATTACH FACILITIES TO ~~INFRASTRUCTURE~~ INFRASTRUCTURE OWNED BY THIRD PARTIES; OR (iii) SITE LICENSE AGREEMENT TO ATTACH FACILITIES TO INFRASTRUCTURE OWNED BY THE PROVIDER. EACH SITE LICENSE AGREEMENT MUST BE APPROVED AND ISSUED BY THE CITY MANAGER, OR CITY MANAGER'S DESIGNEE, DESCRIBE THE SPECIFIC LOCATION OF THE FACILITIES, INCORPORATE BY REFERENCE THE MASTER LICENSE TERMS AND CONDITIONS, DESCRIBE AND SET FORTH ANY SPECIAL CONDITIONS APPLICABLE TO THE PARTICULAR SITE INSTALLATION, AND IS SUBJECT TO WIRELESS PROVIDER'S TIMELY PAYMENT OF APPLICATION FEES AND ~~ANNUAL~~ RIGHT OF WAY USE RATES CONSISTENT WITH STATE LAW AND AS DETERMINED BY THE CITY MANAGER.
- B. THIS CHAPTER DOES NOT APPLY TO AND DOES NOT AFFECT ANY RIGHTS, INTERESTS, OR PRIVILEGES HELD BY WIRELESS PROVIDERS AND THE CITY UNDER EXISTING SMALL WIRELESS FACILITIES LICENSES AND ALL EXISTING SMALL WIRELESS FACILITIES LICENSES REMAIN FULLY ENFORCEABLE IN ACCORDANCE WITH THEIR TERMS AND CONDITIONS. THE CITY MANAGER, OR DESIGNEE, ~~MAY ENTER AGREEMENTS WITH~~ CONSENT OF A WIRELESS ~~PROVIDERS~~ TO PROVIDER, MAY MODIFY ~~OR TERMINATE~~ EXISTING SMALL WIRELESS FACILITIES LICENSES. ALTERNATELY, THE EXISTING SMALL WIRELESS FACILITIES LICENSES MAY CONTINUE UNDER EXISTING TERMS AND CONDITIONS, OR BE TERMINATED PER THE LICENSE TERMINATION PROVISIONS.
- C. IF THE CITY AND A WIRELESS PROVIDER AGREE TO MODIFY EXISTING SMALL WIRELESS FACILITIES LICENSES, THE FOLLOWING OPTIONS WILL BE AVAILABLE:
1. FOR EXISTING SMALL WIRELESS FACILITIES INSTALLATIONS WITH SITE LICENSE AGREEMENTS EXECUTED BY THE CITY AFTER AUGUST 9, 2017 BUT PRIOR TO FEBRUARY 9, 2018, THE TERMS AND CONDITIONS WILL REMAIN IN EFFECT FOR THREE (3) YEARS FROM THE EFFECTIVE DATE OF THIS CHAPTER. AFTER WHICH, THE CITY WILL MODIFY THE EXISTING SMALL WIRELESS

FACILITIES LICENSES TO INCORPORATE THE TERMS (INCLUDING RATES AND FEES) OF THIS CHAPTER.

2. FOR EXISTING SMALL WIRELESS FACILITIES INSTALLATIONS WITH SITE LICENSE AGREEMENTS EXECUTED BY THE CITY PRIOR TO AUGUST 9, 2017, THE TERMS AND CONDITIONS WILL REMAIN IN EFFECT FOR FIVE (5) YEARS FROM THE EFFECTIVE DATE OF THIS CHAPTER. AFTER WHICH, THE CITY WILL MODIFY THE EXISTING SMALL WIRELESS FACILITIES LICENSES TO INCORPORATE THE TERMS (INCLUDING RATES AND FEES) OF THIS CHAPTER.

~~C.D.~~ A LICENSE ISSUED TO ANY WIRELESS PROVIDER UNDER THIS CHAPTER DOES NOT AUTHORIZE THE USE OF ~~LOCAL PUBLIC~~ RIGHT OF WAY BY ANY OTHER PERSON, OR AUTHORIZE THE PROVIDER TO FURNISH ANY OTHER SERVICE. A LICENSE ISSUED TO ANY WIRELESS PROVIDER UNDER THIS CHAPTER DOES NOT INVALIDATE ANY FRANCHISE, LICENSE, OR PERMIT ISSUED TO THE PROVIDER THAT AUTHORIZES THE USE OF THE ~~PUBLIC~~ RIGHT OF WAY FOR SUCH OTHER SERVICES; NOR SHALL THE FACT THAT A WIRELESS PROVIDER HOLDS ANOTHER FRANCHISE, LICENSE, OR PERMIT FOR OTHER USE OF THE PUBLIC RIGHT OF WAY OR TO PROVIDE ANY OTHER SERVICE, AUTHORIZE THE INSTALLATION, MAINTENANCE, CONSTRUCTION, OR OPERATION OF SMALL WIRELESS FACILITIES IN ANY ~~LOCAL PUBLIC~~ RIGHT OF WAY, OR AUTHORIZE SUCH WIRELESS PROVIDER TO ~~FURNISH~~FURNISH WIRELESS SERVICES BY OTHER MEANS WITHOUT FIRST OBTAINING A LICENSE(S) AS PROVIDED IN THIS CHAPTER.

~~D.E.~~ ANY LICENSE ISSUED UNDER THIS CHAPTER MUST NOT BE EXCLUSIVE.

~~E.F.~~ UNAUTHORIZED USE OR FACILITIES PROHIBITED.

1. NO PERSON SHALL KNOWINGLY AFFIX, INSTALL, PLACE, ATTACH, MAINTAIN, OR FAIL TO REMOVE UNAUTHORIZED SMALL WIRELESS FACILITIES OR OTHER FACILITY TO CITY-OWNED INFRASTRUCTURE OR CITY MANAGED ~~LOCAL PUBLIC~~ RIGHT OF WAY OR OTHER PROPERTY OF THE CITY ON DEMAND BY THE CITY OR ANY AUTHORIZED REPRESENTATIVE.
2. NO PERSON SHALL USE A SMALL WIRELESS FACILITY OR OTHER FACILITY ON CITY-OWNED INFRASTRUCTURE OR CITY MANAGED ~~LOCAL PUBLIC~~ RIGHT OF WAY OR OTHER PROPERTY OF THE CITY TO PROVIDE A SERVICE NOT AUTHORIZED BY A CITY FRANCHISE, PERMIT, LICENSE, OR OTHER AUTHORITY.
3. EACH UNAUTHORIZED FACILITY OR USE IS A SEPARATE OFFENSE. EACH DAY A VIOLATION OF THIS CHAPTER CONTINUES IS A SEPARATE OFFENSE AND MAY BE ENFORCED AS PROVIDED IN SECTION 5C-20.

**SEC. 5C-5. MASTER LICENSE AND SITE LICENSE APPLICATIONS.**

- A. ANY WIRELESS PROVIDER THAT DESIRES A MASTER LICENSE OR SITE LICENSE AGREEMENTS UNDER THIS CHAPTER MUST FILE THE APPROPRIATE

APPLICATION(S) WITH THE CITY MANAGER, OR DESIGNEE, IN THE FORM(S) PRESCRIBED BY THE CITY MANAGER, AND MUST PAY AN APPLICATION FEE(S) DETERMINED BY THE CITY MANAGER. ~~AS PROVIDED IN SECTION 5C-8.~~ THE AMOUNT OF THE APPLICATION FEE MUST BE REASONABLY RELATED TO DIRECT COSTS INCURRED BY THE CITY TO GRANT AND ADMINISTER SUCH LICENSE(S) AND CONSISTENT WITH STATE LAW ~~AS PROVIDED IN SECTION 5C-8.~~

- B. ~~ON~~ RECEIPT OF A COMPLETE LICENSE APPLICATION THAT SATISFIES ALL REQUIREMENTS, THE CITY MANAGER WILL, CONSISTENT WITH STATE LAW, PROMPTLY REVIEW THE APPLICATION AND MAY INQUIRE INTO MATTERS RELEVANT TO THE LICENSE APPLICATION. THE CITY MANAGER MAY REJECT ANY APPLICATION FOR THE WIRELESS PROVIDER'S UNDUE DELAY TO RESPOND OR PROVIDER'S FAILURE TO FURNISH ACCURATE OR COMPLETE INFORMATION TO THE CITY MANAGER'S REQUEST OR INQUIRY RELATED TO AN APPLICATION. FURTHER, THE CITY MANAGER MAY REJECT ANY LICENSE APPLICATION IF THE APPLICANT HAS PREVIOUSLY HAD ANY LICENSE ISSUED UNDER ~~PHOENIX CITY~~ CODE CHAPTERS 5B OR 5C REVOKED OR TERMINATED FOR CAUSE, IN MATERIAL BREACH UNDER ANY EXISTING LICENSE(S) ISSUED UNDER ~~PHOENIX CITY~~ CODE CHAPTERS 5B OR 5C, OR HAS NOT TIMELY CURED AN EVENT(S) OF DEFAULT OR NOTICE(S) OF VIOLATION UNDER EXISTING LICENSES ISSUED UNDER ~~PHOENIX CITY~~ CODE CHAPTERS 5B OR 5C, OR FOR ANY OTHER REASON PERMITTED UNDER LAW.
- C. AS A CONDITION OF ISSUING OR RENEWING A LICENSE UNDER THIS CHAPTER, THE APPLICANT AGREES:
1. TO COMPLY WITH RIGHT OF WAY USE REQUIREMENTS AS REQUIRED IN CODE CHAPTERS 31 AND 36;
  2. TO PROVIDE AND MAINTAIN ACCURATE MAPS SHOWING THE LOCATION OF ALL ITS FACILITIES AND THE FACILITIES IT WILL USE IN THE ~~LOCAL PUBLIC~~ RIGHT OF WAY AND TO COMPLY WITH SUCH OTHER MAPPING REQUIREMENTS AS THE CITY MANAGER MAY ESTABLISH FROM TIME TO TIME. AN APPLICANT SHALL MUST PROVIDE THE CITY WITH ELECTRONIC MAPPING INFORMATION IN A FORMAT COMPATIBLE WITH THE CURRENT CITY ELECTRONIC MAPPING FORMAT;
  3. TO OBTAIN THE INSURANCE, AND CAUSE ITS CONTRACTORS, ~~AGENTS, AGENT,~~ AND EMPLOYEES TO PROVIDE PROOF OF INSURANCE AS REQUIRED BY THE CITY; TO POST THE PERFORMANCE BONDS AND SECURITY FUND REQUIRED BY THE CITY; AND FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, AND CAUSE ITS OFFICERS, AGENTS, CONTRACTORS, AND EMPLOYEES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, BOARDS AND COMMISSIONS, IN A FORM SATISFACTORY TO THE CITY; AND TO AGREE THAT IT SHALL HAVE NO RECOURSE WHATSOEVER AGAINST THE CITY OR ITS OFFICIALS, BOARDS, COMMISSIONS, AGENTS OR EMPLOYEES FOR ANY LOSS, COSTS, EXPENSE, OR DAMAGES ARISING OUT OF ANY PROVISION OR

REQUIREMENT OF THE CITY BECAUSE OF THE ENFORCEMENT OF THE LICENSE; AND

4. THE APPLICANT ~~TO~~MUST AGREE TO COMPLY WITH AND BE BOUND BY THE ADMINISTRATIVE AND ENFORCEMENT PROVISIONS AS MAY BE PRESCRIBED BY THE CITY.

E.D. AN APPLICANT THAT RECEIVES A LICENSE PURSUANT TO THIS CHAPTER MAY ~~APPLY FOR A RENEWAL OF~~RENEW ITS LICENSE, ~~WHICH RENEWAL WILL BE REVIEWED~~ IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER AND CONSISTENT WITH STATE LAW.

F.E. THE ISSUANCE OF A LICENSE, PERMIT, OR OTHER AUTHORIZATION BY THE CITY MANAGER IS NOT A REPRESENTATION OR WARRANTY THAT SUCH LICENSE, PERMIT, OR AUTHORIZATION IS ~~A~~ LEGALLY SUFFICIENT, AND IS NOT A REPRESENTATION OR WARRANTY THAT ADDITIONAL AUTHORIZATION IS NOT REQUIRED.

#### **SEC. 5C-6. MASTER LICENSE TERMS AND CONDITIONS.**

- A. CONSISTENT WITH THIS CHAPTER AND STATE LAW, THE CITY MANAGER, OR DESIGNEE, WILL PREPARE A MASTER LICENSE AGREEMENT THAT INCLUDES THE FOLLOWING, BUT NOT EXCLUSIVE, MATERIAL PROVISIONS AND EXHIBITS:
  1. MASTER LICENSE AGREEMENT--TERM AND PROVIDER INFORMATION;
  2. EXHIBIT 1—STANDARD TERMS AND CONDITIONS;
  3. EXHIBIT 2—~~NETWORK~~ BOUNDARY ~~NETWORK~~ DIAGRAM;
  4. EXHIBIT 3—FEES AND USE RATES;
  5. EXHIBIT 4—DESIGN AND CONCEALMENT GUIDELINES;
  6. EXHIBIT 5—INSURANCE AND INDEMNITY REQUIREMENTS;
  7. EXHIBIT 6—SPECIAL TERMS AND CONDITIONS;
  8. EXHIBIT 7—STANDBY IRREVOCABLE LETTER OF CREDIT FORM AND AGREEMENT; AND
  9. EXHIBIT 8—SITE LICENSE FORMS.
- B. LENGTH OF LICENSE. THE TERM OF A MASTER LICENSE AGREEMENT GRANTED UNDER THIS CHAPTER WILL BEGIN ON THE DATE THE AGREEMENT IS SIGNED BY THE CITY CLERK AND WILL EXPIRE AFTER A PERIOD OF TEN (10) YEARS UNLESS AUTOMATICALLY RENEWED AS PROVIDED BY STATE LAW. THE TERM OF A SITE LICENSE ASSOCIATED WITH A MASTER LICENSE WILL BEGIN ON THE DATE THE SITE LICENSE IS SIGNED BY THE CITY MANAGER'S DESIGNEE AND WILL EXPIRE ON THE SAME DATE AS THE MASTER LICENSE AGREEMENT UNLESS RENEWED AS PROVIDED BY LAW.
- C. EVERY LICENSE AGREEMENT WILL BE SUBJECT TO THE FOLLOWING ADMINISTRATIVE AND ENFORCEMENT PROVISIONS:

1. ~~LICENSES WILL BE A~~ LICENSE IS PERSONAL TO THE LICENSEE PROVIDER AND EXCEPT AS PROVIDED IN THE LICENSE, NO TRANSFER OF A LICENSOR LICENSE OR LICENSEE PROVIDER, OR CHANGE OF CONTROL OVER THE SAME (INCLUDING, BUT NOT LIMITED TO, TRANSFER BY FORCED OR VOLUNTARY SALE, MERGER, CONSOLIDATION, RECEIVERSHIP, OR ANY OTHER MEANS) MAY OCCUR ~~UNLESS PRIOR APPLICATION IS MADE TO THE CITY AND WITHOUT~~ THE CITY'S PRIOR WRITTEN CONSENT ~~IS OBTAINED~~, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD OR DELAYED. ~~IN MAKING A DETERMINATION AS TO~~ TO DETERMINE WHETHER TO APPROVE CONSENT TO A TRANSFER, THE CITY MAY CONSIDER THE SAME INFORMATION AND QUALIFICATIONS REQUIRED OF AN ORIGINAL ~~APPLICATION FOR A LICENSE; WHETHER THE LICENSEE OR FRANCHISEE PROVIDER; IF THE PROVIDER~~ IS IN COMPLIANCE WITH ITS LICENSE AND THIS CHAPTER AND, IF NOT, THE PROPOSED TRANSFEREE'S COMMITMENT TO CURE SUCH NONCOMPLIANCE; ~~WHETHER IF~~ THE TRANSFER ~~WOULD MAY~~ RESULT IN AN EVASION OF OTHER APPLICABLE PROVISIONS OF LAW, OR IMPAIR LAWFUL CONTRACTS; AND THE EFFECT OF THE TRANSFER ON THE CITY'S INTERESTS. NO APPLICATION FOR A TRANSFER OF A LICENSE WILL BE GRANTED UNLESS THE PROPOSED TRANSFEREE AGREES IN WRITING THAT IT WILL ABIDE BY AND ACCEPT ALL TERMS OF THIS CHAPTER ~~AND~~, THE LICENSE, AND THAT ~~IF THE TRANSFEREE~~ WILL ASSUME ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITY FOR ALL ACTS AND OMISSIONS, KNOWN AND UNKNOWN, OF THE PREVIOUS LICENSEE UNDER THIS CHAPTER AND THE LICENSE FOR ALL PURPOSES, INCLUDING RENEWAL. ~~THE CITY'S~~ APPROVAL ~~BY THE CITY~~ OF A TRANSFER OF A LICENSE DOES NOT CONSTITUTE A WAIVER OR RELEASE OF ANY OF THE RIGHTS OF THE CITY UNDER THIS CHAPTER OR LICENSE, WHETHER ARISING BEFORE OR AFTER THE ~~DATE OF THE~~ TRANSFER DATE.
2. ~~EVERY LICENSEE MUST BE~~ EACH LICENSE IS SUBJECT TO THE CITY'S EXERCISE OF SUCH POLICE, REGULATORY, AND OTHER POWERS ~~AS IF THE CITY~~ NOW HAS POSSESSES OR MAY LATER OBTAIN, AND A LICENSE MAY NOT WAIVE THE APPLICATION OF THE SAME.
3. ~~EVERY EACH~~ LICENSE ~~WILL MAY~~ BE SUBJECT TO REVOCATION REVOKED IF THE LICENSEE PROVIDER FAILS TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THE LICENSE, OR APPLICABLE FEDERAL, STATE OR LOCAL LAW. PROVIDED, HOWEVER, THAT A LICENSE WILL MAY NOT BE REVOKED UNLESS THE LICENSEE PROVIDER IS GIVEN WRITTEN NOTICE OF THE DEFECT IN PERFORMANCE DEFAULT, AND FAILS TO CURE THE PERFORMANCE WITHIN SIXTY 60 DAYS OF THE NOTICE, ~~EXCEPT WHERE THE CITY FINDS THAT THE DEFECT IN PERFORMANCE IS DUE TO~~. A LICENSE MAY BE REVOKED WITHOUT PRIOR NOTICE OF DEFAULT FOR PROVIDER'S INTENTIONAL MISCONDUCT, ~~IS A~~ VIOLATION OF CRIMINAL LAW, OR IS PART OF A PATTERN OF VIOLATIONS WHERE THE LICENSEE PROVIDER HAS ~~ALREADY HAD~~ NOTICE AND OPPORTUNITY TO CURE. PROVIDER MAY REQUEST A HEARING ~~SHALL BE HELD BEFORE A LICENSE IS REVOKED IF THE CITY MANAGER, OR DESIGNEE, PRIOR TO THE REVOCATION OF~~ THE LICENSEE REQUESTS A HEARING LICENSE.

4. ~~DAMAGES TO PERSONS AND PROPERTY.~~ ANY REMEDIES AVAILABLE TO THE CITY ARE CUMULATIVE, AND ARE NOT LIMITED BY THE RECOVERY OF ANY AMOUNTS PURSUANT TO THE INSURANCE PROVISIONS OF THE LICENSE, OR PURSUANT TO ~~ANY LIQUIDATED DAMAGES PROVISIONS, OR PURSUANT TO AN INDEMNITY CLAUSE.~~ A REQUIREMENT THAT, OR PURSUANT TO ANY FINES AND PENALTIES PER THE EXECUTED LICENSE AGREEMENTS. IF THE LICENSEE PROVIDER FAILS TO PAY AMOUNTS OWED TO THE CITY BY THE TIME PRESCRIBED FOR PAYMENT, THE LICENSEE SHALL PROVIDER MUST PAY INTEREST ON THE AMOUNTS OWED, AT THE RATE OF ONE PERCENT PER MONTH.
5. ~~A REQUIREMENT THAT LICENSEE SHALL PROVIDER MUST~~ PRODUCE BOOKS AND RECORDS FOR THE CITY'S INSPECTION AND COPYING, PREPARE REPORTS, RESPOND TO QUESTIONS AND PERMIT ~~THE CITY TO HAVE ACCESS TO ITS FACILITIES AS THE CITY MAY REQUEST TO DETERMINE WHETHER LICENSEE HAS COMPLIED WITH ITS OBLIGATIONS UNDER THE LICENSE, OR OTHER APPLICABLE LAW REQUESTS.~~
6. LICENSEE PROVIDER CANNOT INSTALL SIGNAGE WITHIN ~~LOCAL PUBLIC~~ RIGHT OF WAY EXCEPT AS MAY BE REQUIRED FOR THE SAFE USE OF THE ~~LOCAL PUBLIC~~ RIGHT OF WAY BY THE CITY, LICENSEE PROVIDER, AND OTHERS. ANY ~~SUCH~~ SAFETY SIGNS MUST BE IN A FORM APPROVED BY THE CITY AND MAINTAINED BY LICENSEE PROVIDER. PROVIDER'S FACILITIES LOCATED WITHIN THE ~~LOCAL PUBLIC~~ RIGHT OF WAY MUST INCLUDE AN IDENTIFICATION BADGE IN A SIZE AND SHAPE REQUIRED BY THE CITY MANAGER AND THAT INCLUDES LICENSEE'S NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, EMERGENCY CONTACT INFORMATION, IDENTIFIES THE LOCATION BY GENERAL STREET ADDRESS, GLOBAL POSITIONING SYSTEM COORDINATES, AND SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE CITY MANAGER. HOWEVER, IN NO EVENT WILL SUCH SIGNS OR LICENSEE'S PROVIDER'S FACILITIES CONTAIN ANY COMMERCIAL MESSAGE OR SPEECH.
7. LICENSEE PROVIDER MUST AT ALL TIMES RETAIN ON CALL AND AVAILABLE TO THE CITY BY TELEPHONE AN ACTIVE, QUALIFIED, COMPETENT, AND EXPERIENCED PERSON TO SUPERVISE ALL LICENSEE'S PROVIDER'S ACTIVITIES WITHIN THE ~~LOCAL PUBLIC~~ RIGHT OF WAY AND OPERATION OF LICENSEE'S PROVIDER'S FACILITIES, AND WHO SHALL MUST BE AUTHORIZED TO REPRESENT AND ACT FOR LICENSEE PROVIDER IN ~~MATTERS PERTAINING TO~~ ALL EMERGENCIES AND PROVIDER'S DAY-TO-DAY OPERATION ~~OF WITHIN~~ THE ~~LOCAL~~ RIGHT OF WAY ~~AND ALL OTHER MATTERS AFFECTING LICENSEE.~~
8. EVERY EACH LICENSE ISSUED UNDER THIS CHAPTER MUST INCLUDE INDEMNITY AND INSURANCE PROVISIONS AND REQUIREMENTS AS REQUIRED ESTABLISHED BY THE CITY MANAGER.
9. EVERY EACH LICENSE ISSUED UNDER THIS CHAPTER MUST ~~INCLUDE THE~~

~~REQUIREMENT THAT REQUIRE~~ A LICENSEE ~~PROVIDE PROVIDER TO FURNISH~~ A STANDBY IRREVOCABLE LETTER OF CREDIT UNDER THE TERMS AND CONDITIONS ~~REQUIRED ESTABLISHED~~ BY THE CITY MANAGER TO SECURE ~~LICENSEE'S PROVIDER'S~~ OBLIGATIONS UNDER THE ~~LICENSES ISSUED UNDER LICENSE AND~~ THIS CHAPTER.

**ARTICLE III. SMALL WIRELESS FACILITIES, FEES, AND  
LOCATION WITHIN ~~LOCAL PUBLIC~~ RIGHT OF WAY.**

**SEC. 5C-7. SMALL WIRELESS FACILITIES AND POLE STRUCTURES.**

- A. ~~WIRELESS POLE STRUCTURE TYPES.~~ THE FOLLOWING ~~EIGHTSIX~~ WIRELESS POLE STRUCTURE-TYPES WILL BE PERMITTED IN ~~LOCAL PUBLIC~~ RIGHT OF WAY:
1. POLE-TYPE STRUCTURE #1 – EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT). AN EXISTING UTILITY POLE NOT OWNED BY THE CITY OF PHOENIX BUT LOCATED IN ~~CITY RIGHT- OF- WAY~~. NO MODIFICATION OR REPLACEMENT ~~OF THE POLE~~ IS NECESSARY TO ~~THE POLE FOR THE INSTALLATION OF INSTALL~~ SMALL WIRELESS FACILITIES ~~EQUIPMENT ON THE POLE~~.
  2. POLE-TYPE STRUCTURE #2 – EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT). AN EXISTING UTILITY POLE OWNED BY THE CITY OF PHOENIX AND LOCATED IN ~~CITY RIGHT- OF- WAY~~, AND IS TYPICALLY A STREET LIGHT OR TRAFFIC SIGNAL POLE. NO MODIFICATION TO OR REPLACEMENT OF THE POLE IS NECESSARY ~~FOR THE INSTALLATION OF TO INSTALL~~ SMALL WIRELESS FACILITIES ~~EQUIPMENT ON THE POLE~~.
  3. POLE-TYPE STRUCTURE #3 – EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED). AN EXISTING UTILITY POLE NOT OWNED BY THE CITY OF PHOENIX BUT LOCATED IN ~~CITY RIGHT- OF- WAY~~. MODIFICATION OR REPLACEMENT OF THE POLE IS NECESSARY ~~FOR THE INSTALLATION OF TO~~ ~~INSTALL~~ SMALL WIRELESS FACILITIES ~~EQUIPMENT ON THE POLE~~.
  4. POLE-TYPE STRUCTURE #4 – EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED). AN EXISTING UTILITY POLE OWNED BY THE CITY OF PHOENIX AND LOCATED IN ~~CITY RIGHT- OF- WAY~~, AND IS TYPICALLY A STREET LIGHT OR TRAFFIC SIGNAL POLE. MODIFICATION OR REPLACEMENT OF THE POLE IS NECESSARY ~~FOR THE INSTALLATION OF TO~~ ~~INSTALL~~ SMALL WIRELESS FACILITIES ~~EQUIPMENT ON THE POLE~~.
  5. POLE-TYPE STRUCTURE #5 – NEW CITY POLE (<50' TALL). A NEW ~~CITY-OWNED~~ UTILITY POLE ~~THAT IS TO BE INSTALLED LOCATED~~ IN ~~CITY RIGHT- OF- WAY AND WILL BE OWNED BY FOR~~ THE ~~CITY OF PHOENIX AS PART~~ ~~INSTALLATION~~ OF A NEW SMALL WIRELESS ~~FACILITIES INSTALLATION, AND FACILITY, THAT~~ WILL ALSO FUNCTION AS A STREET LIGHT OR TRAFFIC SIGNAL POLE.



6. POLE-TYPE STRUCTURE #6 – NEW NON-CITY POLE (<50' TALL). A NEW UTILITY POLE ~~THAT IS TO BE INSTALLED OWNED BY OTHERS LOCATED IN CITY RIGHT-OF-WAY AS PART FOR THE SOLE FUNCTION OF A NEW SMALL WIRELESS FACILITIES INSTALLATION AND WILL NOT BE OWNED BY THE CITY OF PHOENIX. THE POLE WILL FUNCTION SOLELY AS A WIRELESS SUPPORT STRUCTURE.~~
- B. THE CITY MANAGER, OR DESIGNEE, WILL FORMULATE AND ADOPT DESIGN STANDARDS, CONCEPTS ~~&AND~~ REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY. THE CITY MANAGER MAY UPDATE THE DESIGN STANDARDS AND GUIDELINES PERIODICALLY TO KEEP CURRENT WITH TECHNOLOGY, EQUIPMENT, AND INDUSTRY BEST PRACTICES ~~WITHIN THE INDUSTRY~~. DESIGN GUIDELINES, ALONG WITH THE STANDARD DESIGN SPECIFICATIONS, CONSTITUTE THE CITY'S OBJECTIVE DESIGN STANDARDS AND STEALTH AND CONCEALMENT REGULATIONS. ~~AS SUCH,~~ ANY DEVIATION FROM THESE DESIGN GUIDELINES MAY BE A BASIS FOR THE CITY TO DENY ANY APPLICATION SUBMITTED UNDER THIS CHAPTER. ALL SMALL WIRELESS FACILITIES ~~SUBJECT TO~~ INSTALLED, OPERATED, AND MAINTAINED UNDER THIS CHAPTER MUST BE DESIGNED AND INSTALLED IN A WAY THAT: (1) MINIMIZES THE VISUAL IMPACT OF THE FACILITIES TO THE PUBLIC; (2) MATCHES THE VISUAL CONTEXT AND CHARACTER OF THE RIGHT OF WAY AND THE SURROUNDING NEIGHBORHOOD AND DEVELOPMENT; AND (3) MEETS THE HIGHEST STANDARDS OF VISUAL AND FUNCTIONAL QUALITY. ~~GENERAL DESIGN REQUIREMENTS AS MAY BE ADOPTED BY THE CITY MANAGER'S DESIGNEE INCLUDE, BUT ARE NOT EXCLUSIVELY: CITY RESERVES THE RIGHT TO DENY SMALL WIRELESS FACILITY INSTALLATIONS IF THE INSTALLATIONS DO NOT MEET THE CITY'S DESIGN STANDARDS FOR STEALTH AND CONCEALMENT.~~
- C. CONCEALMENT OF POLE-MOUNTED SMALL WIRELESS FACILITIES EQUIPMENT. ALL POLE-MOUNTED EQUIPMENT, INCLUDING THE ANTENNA, MUST BE CONCEALED IN A MANNER THAT MINIMIZES THE VISUAL IMPACT OF THE POLE-MOUNTED EQUIPMENT. THE CONCEALMENT METHOD AND MATERIALS MUST RECEIVE PRIOR APPROVAL BY THE CITY. ANTENNA SIZE LIMITATIONS ARE EXCLUSIVE OF ANY CONCEALMENT MATERIALS OR FABRICATION. CONCEALMENT MATERIALS SHALL HAVE A COLOR AND FINISH CONSISTENT AND APPROPRIATE WITH THE POLE IT IS MOUNTED ON.
- ~~1. ALL SMALL WIRELESS FACILITIES ANTENNAS, CABLE SHROUDS, MOUNTING HARDWARE, AND CABLING MUST BE PAINTED TO MATCH THE COLOR AND TEXTURE OF THE VERTICALITY ON WHICH IT IS MOUNTED.~~
  - ~~2. THE BOTTOM OF THE HAND-HOLE MUST NOT EXCEED SIX INCHES BELOW THE BOTTOM OF THE ANTENNA.~~
  - ~~3. DECORATIVE AND SPECIAL DESIGNED VERTICALITY WILL BE REVIEWED ON A CASE BY CASE BASIS. CITY RESERVES THE RIGHT TO DENY SMALL WIRELESS FACILITY ATTACHMENTS IF THE ATTACHMENTS DO NOT MEET CITY'S DESIGN STANDARDS FOR STEALTH AND CONCEALMENT.~~

- ~~4. ANTENNAS MUST BE 50 FEET MINIMUM HORIZONTAL CLEARANCE FROM PUBLIC SPACES IF ANTENNA IS AT THE SAME ELEVATION AS THE PUBLIC SPACE AND MUST COMPLY WITH THE FEDERAL COMMUNICATIONS COMMISSION ESTIMATED "WORST CASE" HORIZONTAL DISTANCES.~~
  - ~~5. INSTALL POLE NUMBERS ON EACH REPLACEMENT POLE TO MATCH THE NUMBER ON THE EXISTING STREETLIGHT POLE THAT IS REPLACED. ALL BOTTOM FED ANTENNAS SHALL HAVE A SHROUD TO CONCEAL THE CABLES FROM THE CABLE PORT OR HAND HOLE TO THE ANTENNA. ON A CASE-BY-CASE BASIS, CANISTER STYLE ANTENNAS SHALL HAVE A "TRANSITION SHROUD" TO CONCEAL SECTION FROM THE TOP OF THE POLE TO THE BASE OF THE CANISTER.~~
  - ~~6. ALL CABLES FOR THE WIRELESS EQUIPMENT AND ANTENNAS—EXCEPT WHERE SUCH CABLES OR WIRES ATTACH TO THE PORTS IN THE ANTENNA—MUST BE LOCATED INSIDE A CONDUIT INSIDE THE CAISSON AND POLE. THERE SHALL NOT BE ANY EXTERNALLY VISIBLE CONDUIT OR ENTRY POINT OF THE CABLES.~~
  - ~~7. ALL ELECTRICAL WIRES FOR THE STREETLIGHT LUMINAIRE, TRAFFIC SIGNAL HEADS, AND ANY CITY DEVICE MUST BE NEW AND CONNECTED TO THE EXISTING POWER SOURCE FOR THESE FACILITIES.~~
  - ~~8. THE DESIGN FOR THE ANTENNAS AND ASSOCIATED EQUIPMENT PLACED IN LOCAL PUBLIC RIGHT OF WAY MUST BE SEALED BY A REGISTERED ARIZONA STRUCTURAL ENGINEER.~~
- D. SCREENING OF GROUND-MOUNTED EQUIPMENT. EQUIPMENT AND EQUIPMENT ENCLOSURES ~~ARE REQUIRED TO~~MUST BE SCREENED BY A SCREEN WALL, PAINTED, AND/OR LANDSCAPED.
- C.1. SCREENING AND EQUIPMENT ENCLOSURES SHALL BLEND WITH OR ENHANCE THE SURROUNDING CONTEXT IN TERMS OF SCALE, FORM, TEXTURE, MATERIALS, AND COLOR. EQUIPMENT SHALL BE CONCEALED AS MUCH AS POSSIBLE BY BLENDING INTO THE NATURAL AND/OR PHYSICAL ENVIRONMENT. ALL SCREENING SHALL BE AT THE DISCRETION OF THE CITY.
- ~~1. SCREENING MUST CONSIST OF BUILDING MATERIALS, COLOR, ACCENTS, AND TEXTURES AS THE PRIMARY BUILDING OR BUILDINGS ADJACENT TO THE SITE. IF NO BUILDINGS EXIST ON SITE, ENSURE THAT THE PROPOSED STRUCTURE IS DESIGNED TO BLEND INTO THE ENVIRONMENT. ARCHITECTURAL INTEGRATION IS REQUIRED FOR EQUIPMENT ENCLOSURES AND SCREENING WALLS.~~
  - ~~2. EQUIPMENT OTHER THAN ANTENNA SHALL BE LOW PROFILE AND PAD-MOUNTED, UNLESS OTHERWISE APPROVED BY THE CITY.~~
  - ~~3. EQUIPMENT LOCATION SHALL BE UNOBTRUSIVE. ALTERNATIVE PLACEMENT IS REQUIRED FOR EQUIPMENT PROPOSED IN FRONT OF WINDOWS, DOORS, ETC.~~

~~EQUIPMENT SHALL BE PLACED AS CLOSE AS POSSIBLE TO EXISTING STRUCTURES AND PROPERTY LINES.~~

- ~~4. EQUIPMENT SHALL BE INSTALLED IN A LOCATION THAT DOES NOT IMPAIR OR INTERFERE WITH THE SIGHT VISIBILITY TRIANGLE REQUIREMENTS AS DICTATED IN CODE SECTION 31-13 AND SHOW SIGHT TRIANGLE ON PLANS, INCLUDING CALCULATIONS.~~
- ~~5. EQUIPMENT SHALL BE 50 FEET MINIMUM CLEARANCE FROM EXISTING RIGHT-OF-WAY STRUCTURES, (I.E. BUSINESS AND MONUMENT SIGNS) TO PREVENT VIEW OBSTRUCTIONS.~~
- ~~6. UNLESS OTHERWISE SPECIFIED BY CITY, A WIRELESS EQUIPMENT CABINET WITH AIR CONDITIONING (NOT A FAN ONLY) SHALL BE ENCLOSED BY SCREENING AND SETBACK A MINIMUM OF FIFTEEN (15) FEET FROM LIVABLE SPACE AND RESIDENTIAL PROPERTY LINES. A VARIANCE MAY BE GIVEN IF THE EQUIPMENT DOES NOT PRODUCE SOUND. A NOISE ANALYSIS MAY BE REQUIRED TO DEMONSTRATE THAT THE EQUIPMENT WILL NOT PRODUCE SOUND. THE APPLICANT MAY CONSIDER UNDERGROUND VAULTS DEPENDING ON SITE CONDITIONS.~~
- ~~7. DESIGN TECHNIQUES SHOULD BE USED TO REDUCE THE OPPORTUNITIES FOR GRAFFITI.~~
- ~~8. ELECTRIC COMPANY METERS SHALL BE SCREENED OR CONTAINED WITHIN A "MYERS TYPE" OR "MILBANK TYPE" PEDESTAL CABINET THAT IS PAINTED TO MATCH THE GROUND EQUIPMENT, IN CONFORMANCE WITH ELECTRIC COMPANY STANDARDS.~~

~~9.2. \_\_\_\_\_ WHEN TREES, BUSHES, ROCKS, AND OTHER FORMS OF LANDSCAPING ARE USED FOR SCREENING, SUCH LANDSCAPING MUST MATCH THE PREDOMINANT LANDSCAPING FORM AND SPECIES WITHIN ONE BLOCK OF THE FACILITIES, AND MAY ONLY BE USED FOR SCREENING WHEN WATER FOR IRRIGATION OF LANDSCAPING IS PAID BY THE CITY OR WHEN THE ABUTTING PROPERTY OWNER AGREES IN WRITING TO ASSUME ALL IRRIGATION COSTS.~~

~~D.A. \_\_\_\_\_ CONCEALMENT OF POLE MOUNTED SMALL WIRELESS FACILITIES EQUIPMENT. ALL POLE MOUNTED EQUIPMENT, INCLUDING THE ANTENNA, MUST BE CONCEALED IN A MANNER THAT MINIMIZES THE VISUAL IMPACT OF THE POLE MOUNTED EQUIPMENT. THE CONCEALMENT METHOD AND MATERIALS MUST RECEIVE PRIOR APPROVAL BY THE CITY. ANTENNA SIZE LIMITATIONS ARE EXCLUSIVE OF ANY CONCEALMENT MATERIALS OR FABRICATION. CONCEALMENT MATERIALS SHALL HAVE A COLOR AND FINISH CONSISTENT AND APPROPRIATE WITH THE POLE IT IS MOUNTED ON.~~

~~4.E. \_\_\_\_\_ ANY NEW, MODIFIED, OR REPLACEMENT POLES INSTALLED IN THE RIGHT-OF-WAY IN CONJUNCTION WITH THE INSTALLATION OF A SMALL WIRELESS FACILITY,~~

INCLUDING ANY GROUND-MOUNTED EQUIPMENT, ELECTRICAL SERVICE METER, AND SCREENING MUST:

- 2-1. \_\_\_\_\_ BE DESIGNED TO BLEND IN WITH THE SURROUNDING STREETScape WITH MINIMAL VISUAL IMPACT;
- 3-2. \_\_\_\_\_ ENSURE SATISFY ALL REQUIRED AMERICANS WITH DISABILITIES ACT (ADA) ROUTES ARE MAINTAINED AND SMOOTH FLOW OF PEDESTRIANS CAN OCCUR; REQUIREMENTS.;
- 4-3. \_\_\_\_\_ AT THE TIME OF INSTALLATION, MAINTAIN A MINIMUM 20 FOOT DISTANCE FROM EXISTING FIRE HYDRANTS, EXISTING DRIVEWAYS, AND SIGHT VISIBILITY TRIANGLES FOR NEW POLES, REPLACEMENT POLES AND GROUND MOUNTED EQUIPMENT ONLY;
4. HAVE NO EQUIPMENT SHALL BE INSTALLED TO NOT IMPAIR OR INTERFERE WITH THE SIGHT VISIBILITY TRIANGLE REQUIREMENTS AS DICTATED IN CODE SECTION 31-13;
5. NOT IMPACT TO EXISTING TREES IN THE RIGHT OF WAY AND PERFORM LIKE-FOR-LIKE REPLACEMENT OF ANY OTHER REPLACE ANY LANDSCAPING OR IRRIGATION SYSTEM DAMAGED BY THE INSTALLATION LIKE-FOR-LIKE;
6. NOT DAMAGE ANY INFRASTRUCTURE IN CITY RIGHT OF WAY. ANY SUCH DAMAGE CAUSED BY THE INSTALLATION, MAINTENANCE, OR REMOVAL OF SMALL WIRELESS FACILITIES (AND RELATED EQUIPMENT) WILL BE RESTORED AND/OR REPAIRED TO THE SATISFACTION OF THE CITY OR THE OWNER OF THE INFRASTRUCTURE;
- 7-6. \_\_\_\_\_ AT THE TIME OF INSTALLATION FOR NEW POLES AND NEW GROUND MOUNTED EQUIPMENT ONLY, MAINTAIN A MINIMUM 25 FOOT DISTANCE FROM THE PRIMARY DOORWAY OF BUSINESSES OR RESIDENCES MEASURED FROM THE OUTER DOOR FRAME AND A MINIMUM 10TEN FOOT DISTANCE FROM THE PRIMARY ENTRANCE OF BUSINESSES OR RESIDENCES MEASURED AT THE EDGE OF RIGHT OF WAY, FOR NEW POLES AND NEW GROUND-MOUNTED EQUIPMENT ONLY;
- 8-7. \_\_\_\_\_ CREATE NO BLOCKAGE NOT BLOCK OR OBSTRUCTION OF OBSTRUCT EXISTING ROADWAY, OR COMMERCIAL, OR RESIDENTIAL SIGNAGE;
- 9-8. \_\_\_\_\_ HAVE A MATCH THE COLOR AND FINISH CONSISTENT AND APPROPRIATE WITH OTHER OF SIMILAR POLES IN THE ADJACENT AREA WITHIN ONE BLOCK; AND
- 10-9. \_\_\_\_\_ HAVE ALL WIRES CONTAIN INTERNAL WIRING TO THE POLE OR AND GROUND-MOUNTED EQUIPMENT.

10. ALL BOTTOM-FED ANTENNAS SHALL HAVE A SHROUD TO CONCEAL THE CABLES FROM THE CABLE PORT OR HAND HOLE TO THE ANTENNA.

11. ON A CASE-BY-CASE BASIS, CANISTER STYLE ANTENNAS SHALL HAVE A TRANSITION SHROUD TO CONCEAL THE MOUNTING SECTION FROM THE TOP OF THE POLE TO THE BASE OF THE CANISTER.

~~F.E. FOR ALL SMALL WIRELESS FACILITY INSTALLATIONS PROPOSED IN SPECIAL OVERLAY OR HISTORIC DISTRICTS WILL BE SUBJECT TO ADDITIONAL REVIEW AND, THE WIRELESS PROVIDER MUST OBTAIN ALL REQUIRED HISTORIC-PRESERVATION FACILITY INSTALLATIONS PROPOSED IN RELATED APPROVALS BEFORE ANY SITE APPLICATION MAY BE SUBMITTED TO LOCATE SMALL WIRELESS FACILITIES WITHIN THE SPECIAL OVERLAY OR HISTORIC DISTRICT.~~

~~G.F. NO NEW WIRELESS POLE STRUCTURES WILL BE PERMITTED IN CITY RIGHT-OF-WAY IF THERE IS AN EXISTING CITY POLE IN THE RIGHT OF WAY WITHIN 100 FEET OF THE PROPOSED LOCATION THAT CAN MAY BE USED FORTO INSTALL A SMALL WIRELESS FACILITY INSTALLATION. TO THE EXTENT POSSIBLE, ALL NEW WIRELESS POLE STRUCTURES IN THE RIGHT-OF-WAY WILL BE REQUIRED TO HAVE MUST SERVE A DUAL PURPOSE AS A STREET LIGHT OR TRAFFIC SIGNAL POLE, UNLESS OTHERWISE APPROVED BY THE CITY.~~

~~H.G. -ANY NEW WIRELESS POLE STRUCTURE THAT WILL SERVE SOLELY AS A WIRELESS FACILITY SUPPORT STRUCTURE MAY BE REQUIRED TO INCORPORATE SHADE FOR ADJACENT PEDESTRIAN PATHWAYS/ OR SIDEWALKS, AND MAY BE REQUIRED TO INCORPORATE ART INTO ANY STRUCTURED SHADE ELEMENT, AS APPROVED BY THE CITY.~~

~~H.H. AVAILABILITY AND USE OF EXISTING CITY POLES FOR SMALL WIRELESS FACILITIES INSTALLATIONS ARE ON A FIRST-COME, FIRST-SERVED BASIS. REQUESTS TO INSTALL NEW SMALL WIRELESS FACILITIES ON A CITY POLE WITH AN EXISTING A PREVIOUSLY INSTALLED SMALL WIRELESS FACILITY MUST BE REVIEWED BY AND COORDINATED WITH BOTH THE CITY AND THE WIRELESS PROVIDER WITH THE EXISTING SMALL WIRELESS FACILITY INSTALLATION ON THE POLE.~~

~~J.I. ALL SMALL WIRELESS FACILITIES MUST BE MAINTAINED IN A GOOD AND SAFE CONDITION, INCLUDING KEPT FREE OF GRAFFITI. CONSISTENT WITH THE CITY OF PHOENIX GRAFFITI BUSTERS PROGRAM, ALL GRAFFITI MUST BE REMOVED IN ITS ENTIRETY FROM ALL SMALL WIRELESS FACILITIES WITHIN FIVE (5) BUSINESS DAYS AFTER NOTICE FROM THE CITY AT THE WIRELESS PROVIDER'S SOLE EXPENSE AND COST. IF WIRELESS PROVIDER FAILS TO CURE AFTER NOTICE, THE CITY MAY REMOVE ANY GRAFFITI USING CITY STANDARD TECHNIQUES AND ASSESS WIRELESS PROVIDER THE CITY'S COSTS TO REMOVE SUCH GRAFFITI. WIRELESS PROVIDERS ACKNOWLEDGE AND AGREE THAT THE CITY'S STANDARD TECHNIQUES FOR GRAFFITI REMOVAL INCLUDE POWER WASHING AND WIRELESS PROVIDERS AGREE AND ACCEPT THAT THE CITY IS NOT LIABLE FOR ANY DAMAGE~~

TO SMALL WIRELESS FACILITIES CAUSED BY THE CITY AS PART OF GRAFFITI REMOVAL.

J. ALL SMALL WIRELESS FACILITIES DESIGNS, INCLUDING POLES, ANTENNAS, AND ASSOCIATED EQUIPMENT PLACED IN RIGHT OF WAY MUST BE SEALED BY A REGISTERED ARIZONA STRUCTURAL ENGINEER.

**SEC. 5C-8. RIGHT OF WAY USE RATE AND FEES.**

~~A. FEE STRUCTURE, RATES AND FEES. THE FOLLOWING FEE STRUCTURE WILL BE ESTABLISHED FEES APPLY TO GOVERN THE PERSONS WHO SUBMIT AN APPLICATION, PERMITTING, INSPECTION TO INSTALL, OPERATE, AND ACCEPTANCE OF MAINTAIN SMALL WIRELESS FACILITIES AND WIRELESS MONOPOLES IN CITY RIGHT OF WAY; THE USE OF CITY RIGHTS OF WAY BY WIRELESS PROVIDERS FOR SMALL WIRELESS FACILITIES. THE FEES AND WIRELESS MONOPOLES; AND AGREEMENTS BETWEEN THE CITY AND WIRELESS COMPANIES FOR THE INSTALLATION OF SMALL WIRELESS FACILITIES AND WIRELESS MONOPOLES IN THE CITY RIGHT OF WAY. RATES ARE LISTED BY POLE TYPE.~~

RATE / FEE TYPE	RATE / FEE <u>DESCRIPTION</u>	RATE / FEE <u>AMOUNT</u>
	<u>DESCRIPTION</u>	
<b>APPLICATION FEE</b>		
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE (1 – 5 SITES)	\$ 100
	PER SITE (6 – 25 SITES)	\$ 50
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE (1 – 5 SITES)	\$ 100
	PER SITE (6 – 25 SITES)	\$ 50
POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 750

POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 750
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE	\$ 750
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE	\$ 750
<b>RIGHT OF WAY USE RATE</b>		
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE <u>PER YEAR</u>	\$ 50 <del>PER YEAR</del>
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE <u>PER YEAR</u>	\$ 100 <del>PER YEAR</del>
POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE <u>PER YEAR</u>	\$ 50 <del>PER YEAR</del>
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE <u>PER YEAR</u>	\$ 100 <del>PER YEAR</del>
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE <u>PER YEAR</u>	\$ 100 <del>PER YEAR</del>
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE <u>PER YEAR</u>	\$ 50 <del>PER YEAR</del>
<b>AGREEMENT RENEWAL FEE</b>		
<del>POLE TYPE STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)</del>	<del>PER SITE</del>	<del>\$ 800</del>
<del>POLE TYPE STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)</del>	<del>PER SITE</del>	<del>\$ 800</del>
<del>POLE TYPE STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)</del>	<del>PER SITE</del>	<del>\$ 1,600</del>
<del>POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)</del>	<del>PER SITE</del>	<del>\$ 1,600</del>
<del>POLE TYPE-STRUCTURE #5: NEW CITY POLE (&lt;50' TALL)</del>	<del>PER SITE</del>	<del>\$ 2,000</del>

<del>POLE TYPE STRUCTURE #6: NEW NON-CITY POLE (&lt;50' TALL)</del>	<del>PER SITE</del>	<del>\$ 2,000</del>
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~~B. B-~~NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE OBLIGATION OF ANY PERSON TO PAY AMOUNTS OWED UNDER ANY EXISTING SMALL WIRELESS FACILITIES FRANCHISE OR LICENSE AGREEMENT ISSUED PRIOR TO FEBRUARY 9, 2018 OR IF THIS ORDINANCE IS AMENDED, THE EFFECTIVE DATE OF THE ADOPTION OF SUCH AMENDMENT TO THIS ORDINANCE.

**SEC. 5C-9. RIGHT OF WAY PERMIT.**

THE CITY WILL NOT ISSUE A PERMIT FOR CONSTRUCTION IN THE RIGHT-OF-WAY OR OTHER AUTHORIZATION FOR A WIRELESS PROVIDER TO CONSTRUCT OR INSTALL WIRELESS FACILITIES IN THE LOCAL PUBLIC RIGHT OF WAY UNDER CHAPTER 31, ARTICLE III OF THE CODE, OR ANY OTHER CHAPTER OF THE PHOENIX CITY CODE, UNLESS THE WIRELESS PROVIDER HAS FIRST OBTAINED THE LICENSE REQUIRED TO OCCUPY THE LOCAL PUBLIC RIGHT OF WAY UNDER THIS CHAPTER.

**SEC. 5C-10. LOCATION AND RELOCATION OF FACILITIES IN RIGHT OF WAY.**

- A. A WIRELESS PROVIDER MUST INSTALL, CONSTRUCT, AND MAINTAIN ITS FACILITIES IN STRICT ACCORDANCE WITH THE CITY CODE AND THE CITY'S DESIGN STANDARDS, CONCEPTS, AND REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY. IF A FACILITY HAS MORE THAN ONE WIRELESS PROVIDER, EACH WIRELESS PROVIDER IS JOINTLY AND SEVERALLY RESPONSIBLE FOR ENSURING THAT ALL TO COMPLY WITH THE REQUIREMENTS ARE SATISFIED OF THIS CHAPTER. FACILITIES MUST BE INSTALLED, CONSTRUCTED AND MAINTAINED SO THAT NO ADDITIONAL COSTS ARE IMPOSED UPON THE CITY, AND SO THAT THE FACILITY DOES NOT INTERFERE WITH OTHER USES OR USERS OF THE PUBLIC RIGHTS RIGHT OF WAY AND DOES NOT LIMIT THE REQUIREMENTS OF ANY OTHER PROVISION OF THE CODE, OR THE PROVISIONS OF ANY LICENSE, PERMIT, OR AGREEMENT ISSUED BY THE CITY.
- B. THE FACILITIES MUST BE CONSTRUCTED, INSTALLED, OPERATED, AND MAINTAINED BY THE WIRELESS PROVIDER AT A LOCATION THAT INTERFERES AS LITTLE AS POSSIBLE WITH TRAFFIC OR OTHER AUTHORIZED USES OVER, UNDER, OR THROUGH THE PUBLIC RIGHTS RIGHT OF WAY. THOSE PHASES OF CONSTRUCTION RELATING TO TRAFFIC CONTROL, BACKFILLING, COMPACTION, AND PAVING, AS WELL AS THE LOCATION OR RELOCATION OF SAID FACILITIES WILL BE SUBJECT TO REGULATION BY THE CITY MANAGER, OR HIS DESIGNEE. THE WIRELESS PROVIDER MUST KEEP ACCURATE INSTALLATION RECORDS OF THE LOCATION OF ALL SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS RIGHT OF WAY AND FURNISH THEM TO THE CITY UPON REQUEST OR AT SUCH PERIODIC INTERVALS AS THE CITY MAY REQUIRE. UPON COMPLETION OF NEW OR RELOCATION CONSTRUCTION OF UNDERGROUND FACILITIES IN THE PUBLIC RIGHTS RIGHT OF WAY, THE WIRELESS PROVIDER MUST PROVIDE THE CITY, IF REQUESTED OR AS REQUIRED, WITH INSTALLATION RECORDS IN A FORMAT



COMPATIBLE WITH THE THEN-CURRENT CITY MAPPING FORMAT ~~SHOWING THAT~~ SHOWS THE LOCATION OF THE UNDERGROUND AND ABOVE GROUND FACILITIES.

- C. WHENEVER THE WIRELESS PROVIDER MAY CAUSE ANY ~~OPENING WORK~~ OR ALTERATION ~~WHATEVER~~ TO BE MADE FOR ANY PURPOSE IN ~~ANY LOCAL PUBLIC~~ THE RIGHT OF WAY, THE WORK MUST BE COMPLETED WITHIN THE TIME SPECIFIED IN THE LICENSE, PERMIT, OR AGREEMENT, OR IF NO TIME IS SPECIFIED WITHIN A REASONABLE TIME. IN ADDITION, THE ~~WIRELESS~~ PROVIDER MUST, WITHOUT EXPENSE TO THE CITY AND UPON THE COMPLETION OF SUCH WORK, RESTORE THE PROPERTY DISTURBED IN A MANNER CONSISTENT WITH THE CITY'S DULY ADOPTED STANDARDS, AND AS REQUIRED BY ANY PERMITS, LICENSES, OR AGREEMENTS.
- D. THE INSTALLATION, USE, AND MAINTENANCE OF THE ~~WIRELESS~~ PROVIDER'S FACILITIES WITHIN THE ~~LOCAL PUBLIC~~ RIGHT OF WAY AUTHORIZED IN THIS CHAPTER MUST BE IN SUCH A MANNER AS NOT TO INTERFERE WITH THE CITY'S PLACEMENT, CONSTRUCTION, USE, AND MAINTENANCE OF ITS RIGHTS OF WAY, STREET LIGHTING, WATER PIPES, DRAINS, SEWERS, TRAFFIC SIGNAL SYSTEMS, OR OTHER CITY SYSTEMS THAT HAVE BEEN, OR MAY BE, INSTALLED, MAINTAINED, USED OR AUTHORIZED BY THE CITY. UPON THE CITY'S REQUEST, ~~WIRELESS~~ PROVIDER'S FACILITIES MUST BE RELOCATED AT WIRELESS PROVIDER'S EXPENSE, UNLESS STATE LAW EXPRESSLY REQUIRES OTHERWISE. UPON THE CITY'S REQUEST, BY A TIME SPECIFIED BY THE CITY, IF THE ~~WIRELESS~~ PROVIDER FAILS TO MOVE ITS FACILITIES, THE CITY MAY DO SO AND THE WIRELESS PROVIDER MUST PAY THE CITY'S COSTS WITHIN THIRTY (30-CALENDAR) DAYS FROM THE DATE OF INVOICE DATE PROVIDED BY THE CITY. FURTHER, THE ~~WIRELESS~~ PROVIDER MUST REIMBURSE THE CITY FOR ANY ADDITIONAL COST THE CITY INCURS DUE TO THE LOCATION OR RELOCATION OF THE PROVIDER'S FACILITIES, INCLUDING ALL DESIGN AND CONSTRUCTION COSTS.
- E. THE ~~WIRELESS~~ PROVIDER MUST NOT INSTALL, MAINTAIN, OR USE ANY OF ITS FACILITIES IN SUCH A MANNER AS TO DAMAGE OR INTERFERE WITH FACILITIES OF ANOTHER WIRELESS PROVIDER LOCATED WITHIN THE PUBLIC RIGHTS ~~RIGHT~~ OF WAY ~~OF THE CITY~~.
- F. ALL SMALL WIRELESS FACILITIES MUST BE INSTALLED PER PLANS SUBMITTED BY WIRELESS PROVIDER IN ITS APPLICATION SUBMITTED AND APPROVED BY THE CITY. ~~WIRELESS~~ PROVIDER MAY INSTALL SMALL WIRELESS FACILITIES ON EXISTING POLE EXISTING POLES OR IN EXISTING CONDUIT WHERE PERMISSION IS GRANTED BY OWNER OF THE POLE OR CONDUIT, EXCEPT WHERE THOSE SAME POLES ARE SCHEDULED TO BE REPLACED WITH BURIED FACILITIES. THE CITY MAY REQUIRE THE ~~WIRELESS~~ PROVIDER TO PROVE THAT IT HAS SUCH PERMISSION FROM THE OWNER TO USE THE OWNER'S FACILITIES. ~~NO NEW POLES, OR LONGER POLES, WILL BE PERMITTED IN THE PUBLIC RIGHTS OF WAY FOR ANY NEW FACILITIES WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE CITY.~~ IF WIRELESS PROVIDER INSTALLS SMALL WIRELESS FACILITIES ON EXISTING POLES AS PROVIDED HEREIN, THE WIRELESS PROVIDER MUST BURY ITS

FACILITIES WHEN SUCH POLES ARE REMOVED AND NOT REPLACED IN KIND FOR ANY REASON. IF THE WIRELESS PROVIDER MAKES USE OF EXISTING CONDUIT OF ANOTHER WIRELESS PROVIDER, THE WIRELESS PROVIDER WILL BE SUBJECT TO THE PROVISIONS OF THIS CHAPTER IN THE USE OF SUCH CONDUIT IN THE PUBLIC RIGHTSRIGHT OF WAY.

G. EACH WIRELESS PROVIDER MUST OBTAIN AND MAINTAIN SUCH INSURANCE, BONDING, AND SECURITY FUND REQUIREMENTS AS SPECIFIED BY THE CITY, OR IF NO SPECIFIC REQUIREMENTS ARE DESIGNATED, AS ARE REQUIRED BY THE CITY FOR SIMILAR FACILITIES. NO WORK MAY

H. NO WORK MAY COMMENCE UNLESS THESE REQUIREMENTS HAVE BEEN SATISFIED, AND THE CITY MAY REQUIRE THE PROVIDER TO REMOVE OR STOP WORK ON FACILITIES, OR REQUIRE A WIRELESS PROVIDER TO CEASE USING THE FACILITY, WHEN ANY INSURANCE, BONDING, OR SECURITY FUND REQUIREMENTS ARE NOT SATISFIED.

~~H. A PERMIT MUST BE OBTAINED FROM THE CITY PRIOR TO A WIRELESS PROVIDER REMOVING, ABANDONING, RELOCATING, OR RECONSTRUCTING, IF NECESSARY, ANY PORTION OF A WIRELESS PROVIDER'S FACILITIES. IN THE RIGHT OF WAY. NOTWITHSTANDING THE FOREGOING, THE CITY UNDERSTANDS AND ACKNOWLEDGES THERE MAY BE INSTANCES WHEN A PROVIDER IS EMERGENCY REPAIRS ARE REQUIRED TO MAKE REPAIRS, IN COMPLIANCE WITH BY FEDERAL OR STATE LAWS, WHICH ARE DUE TO AN EMERGENCY LAW OR ACTS OF GOD, THE PROVIDER WILL NOTIFY THE CITY PRIOR TO SUCH REPAIRS, IF PRACTICABLE, AND WILL OBTAIN THE NECESSARY PERMITS WITHIN 5 BUSINESS DAYS OF NOTIFYING 24 HOURS AFTER THE CITY WORK BEGAN.~~

#### **SEC. 5C-11. CONFLICT WITH CITY PROJECTS.**

A. IF, DURING THE DESIGN PROCESS FOR PUBLIC WORKS IMPROVEMENTS, THE CITY DISCOVERS A POTENTIAL CONFLICT ~~WITH~~BETWEEN THE WIRELESS PROVIDER'S SMALL WIRELESS FACILITIES AND THE PROPOSED PUBLIC WORKS CONSTRUCTION, THE WIRELESS PROVIDER SHALL EITHER MUST:

1. LOCATE AND, IF NECESSARY, EXPOSE ITS FACILITIES IN CONFLICT; OR
2. USE A LOCATION SERVICE UNDER CONTRACT WITH THE CITY TO LOCATE ~~OR~~AND, IF NECESSARY, EXPOSE ITS FACILITIES. THE WIRELESS PROVIDER SHALL MUST REIMBURSE THE CITY FOR THE COST RESULTING FROM THE USE OF SUCH LOCATION SERVICE.

THE CITY WILL MAKE REASONABLE EFFORTS TO DESIGN AND CONSTRUCT PUBLIC WORKS PROJECTS ~~PURSUANT TO THIS SUBSECTION (A)~~ TO AVOID RELOCATION EXPENSE TO THE WIRELESS PROVIDER. PROVIDER SHALL MUST FURNISH LOCATION INFORMATION TO THE CITY IN A TIMELY MANNER, BUT IN NO CASE LONGER THAN TEN CALENDAR DAYS FROM THE DATE OF ~~THE CITY'S~~A REQUEST

FROM THE CITY.

- B. THE CITY RESERVES THE PRIOR AND SUPERIOR RIGHT TO LAY, CONSTRUCT, ERECT, INSTALL, USE, OPERATE, REPAIR, REPLACE, REMOVE, RELOCATE, REGRADE, WIDEN, REALIGN, OR MAINTAIN ANY ~~RIGHTS~~RIGHT OF WAY, AERIAL, SURFACE, OR SUBSURFACE IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, WATER MAINS, TRAFFIC CONTROL CONDUITS, CABLE AND DEVICES, SANITARY OR STORM SEWERS, SUBWAYS, TUNNELS, BRIDGES, VIADUCTS, OR ANY OTHER PUBLIC WORKS CONSTRUCTION WITHIN THE ~~RIGHTS~~RIGHT OF WAY ~~OF THE CITY.~~
- C. WHEN THE CITY INVOKES ITS PRIOR SUPERIOR RIGHT TO THE ~~RIGHTS~~RIGHT OF WAY, THE WIRELESS PROVIDER ~~SHALL~~MUST MOVE ITS FACILITIES LOCATED IN CONFLICT IN THE ~~RIGHTS~~RIGHT OF WAY, AT ITS OWN COST, TO SUCH A LOCATION AS THE CITY DIRECTS.
- D. IF, DURING A PUBLIC WORKS CONSTRUCTION PROJECT, THE CITY DETERMINES WIRELESS PROVIDER'S FACILITIES ARE IN CONFLICT, THE FOLLOWING SHALL APPLY:
- ~~1. PRIOR TO CITY NOTICE TO PROCEED TO CONTRACTOR: UNLESS OTHERWISE AGREED BY THE PARTIES, THE PROVIDER SHALL, WITHIN A REASONABLE TIME, BUT IN NO EVENT EXCEEDING ONE MONTH, MUST REMOVE OR RELOCATE THE CONFLICTING FACILITY. WITHIN ONE MONTH. THIS TIME PERIOD SHALL BEGIN RUNNING UPON WILL RUN FROM PROVIDER'S RECEIPT BY THE PROVIDER OF WRITTEN NOTICE FROM THE CITY. HOWEVER, IF BOTH.~~
  - ~~1. THE CITY AND THE PROVIDER AGREE, THE TIMEFRAME MAY BE EXTENDED BASED ON THE REQUIREMENTS OF THE PROJECT.~~
  2. ~~AFTER CITY NOTICE TO PROCEED TO CONTRACTOR: THE CITY AND THE PROVIDER WILL IMMEDIATELY BEGIN THE COORDINATION~~WIRELESS PROVIDER WILL COORDINATE AS NECESSARY TO REMOVE OR RELOCATE THE FACILITY. ~~ACTUAL CONSTRUCTION OF SUCH REMOVAL OR RELOCATION IS TO WORK BY PROVIDER MUST BEGIN NO LATER THAN SEVENTY-TWO~~72 HOURS, IF PRACTICABLE, AFTER WRITTEN ~~NOTIFICATION~~NOTICE FROM THE CITY ~~OF THE CONFLICT.~~
- E. IF THE WIRELESS PROVIDER'S RELOCATION OF FACILITIES DELAYS CONSTRUCTION OF A PUBLIC PROJECT CAUSING THE CITY TO BE LIABLE FOR DELAY DAMAGES, THE WIRELESS PROVIDER MUST REIMBURSE THE CITY FOR ANY DAMAGES ATTRIBUTABLE TO PROVIDER'S DELAY.

**SEC. 5C-12. DAMAGE TO ~~CITY RIGHTS~~RIGHT OF WAY AND FACILITIES.**

- A. THE WIRELESS PROVIDER SHALL NOT DAMAGE ANY RIGHT OF WAY, OR

INFRASTRUCTURE IN RIGHT OF WAY, OR FACILITIES IN RIGHT OF WAY. ANY SUCH DAMAGE CAUSED BY THE INSTALLATION, USE, MAINTENANCE, OR REMOVAL OF ITS SMALL WIRELESS FACILITIES WILL BE RESTORED OR REPAIRED TO THE SATISFACTION OF THE CITY OR THE OWNER OF THE INFRASTRUCTURE.

B. IF, IN THE INSTALLATION, USE, ~~OR MAINTENANCE, OR REMOVAL~~ OF ITS FACILITIES, THE WIRELESS PROVIDER DAMAGES OR DISTURBS THE SURFACE OR SUBSURFACE OF ANY RIGHTSRIGHT OF WAY OR ADJOINING PUBLIC PROPERTY, OR THE PUBLIC IMPROVEMENT LOCATED ~~THEREON, THEREIN, IN,~~ OR ~~THEREUNDERUNDER~~, THE PROVIDER SHALLMUST PROMPTLY, AT ITS OWN EXPENSE, AND IN A MANNER ACCEPTABLE TO THE CITY, RESTORE THE SURFACE OR SUBSURFACE OF THE RIGHTSRIGHT OF WAY OR PUBLIC PROPERTY, OR REPAIR OR REPLACE THE PUBLIC IMPROVEMENT ~~THEREON, THEREIN, IN,~~ OR ~~THEREUNDERUNDER~~, IN AS GOOD A CONDITION AS BEFORE SUCH DAMAGE OR DISTURBANCE.

C. IF SUCH RESTORATION, REPAIR, OR REPLACEMENT OF THE SURFACE, SUBSURFACE, OR ANY STRUCTURE LOCATED THEREON, THEREIN, OR THEREUNDERIMPROVEMENT IS NOT COMPLETED WITHIN A REASONABLE TIME, OR SUCH REPAIR OR REPLACEMENT DOES NOT MEET DULY ADOPTED STANDARDS, THE CITY SHALL HAVERESERVES THE RIGHT TO PERFORM THE NECESSARY RESTORATION, REPAIR, OR REPLACEMENT, EITHER THROUGH ITS OWN FORCES, OR THROUGH A HIRED CONTRACTOR. THE PROVIDER SHALLMUST PAY THE CITY FOR ITS EXPENSES IN SO DOING COSTS WITHIN ~~THIRTY~~30 DAYS AFTER ~~ITS PROVIDER'S~~ RECEIPT OF THE CITY'S INVOICE ~~THEREFORE. B. THE PROVIDER SHALL REIMBURSE THE CITY FOR ALL COSTS ARISING FROM THE REDUCTION IN THE SERVICE LIFE OF ANY PUBLIC ROAD OR PAVEMENT DAMAGE, TO THE EXTENT REQUIRED BY ANY OTHER CITY CHAPTERS, RESULTING FROM PAVEMENT CUTS OF THE PROVIDER. THE PROVIDER SHALL PAY SUCH COSTS WITHIN THIRTY DAYS FROM THE DATE OF ISSUANCE OF AN INVOICE FROM THE CITY.~~

#### **SEC. 5C-13. RELOCATION OF FACILITIES AND DISPUTE RESOLUTION.**

A. THE CITY WILL NOT BEAR ANY COST ~~OF RELOCATING TO RELOCATE~~ EXISTING INFRASTRUCTURE OR FACILITIES, IRRESPECTIVE OF THE FUNCTION SERVED, WHERE EXISTING CITY INFRASTRUCTURE OR FACILITIES OR OTHER EXISTING INFRASTRUCTURE OR FACILITIES OCCUPYINGOCCUPY THE RIGHTSRIGHT OF WAY UNDER AUTHORITY OF A CITY PERMIT, LICENSE, OR FRANCHISE ~~WHICH MUST BE RELOCATED, ARE ALREADY LOCATED IN THE RIGHTS OF WAY AND THE AND~~ CONFLICT ~~BETWEEN THE WITH A~~ PROVIDER'S ~~POTENTIAL FACILITIES AND THE~~ EXISTING FACILITIES ~~CAN ONLY BE RESOLVED EXPEDITIOUSLY AS DETERMINED BY THE CITY BY THE MOVEMENT OF THE EXISTING CITY OR OTHER APPROVED FACILITIES.~~

B. ~~IF PROVIDER'S RELOCATION EFFORT SO DELAYS CONSTRUCTION OF A PUBLIC PROJECT CAUSING THE CITY TO BE LIABLE FOR DELAY DAMAGES, THE PROVIDER SHALL REIMBURSE THE CITY FOR THOSE DAMAGES ATTRIBUTABLE TO THE DELAY~~

~~CREATED BY THE PROVIDER.~~

~~B. IF THE~~ PROVIDER SHOULD DISPUTE THE AMOUNT OF DAMAGES ~~ATTRIBUTABLE TO THE PROVIDER, FEES, USE RATES, OR THE CONSTRUCTION PERMIT FEE AND OTHER FEES CHARGES~~ PAYABLE BY PROVIDER PURSUANT TO THIS CHAPTER, ~~THE MATTER SHALL BE REFERRED TO~~ PROVIDER MAY FILE A CLAIM WITH THE DISPUTE RESOLUTION BOARD.

~~C. THE DISPUTE RESOLUTION BOARD SHALL CONSIST~~ CONSISTS OF ONE MEMBER SELECTED BY THE CITY, ONE MEMBER SELECTED BY THE WIRELESS PROVIDER, AND A THIRD PERSON AGREED UPON BY BOTH PARTIES. THE PERSON AGREED UPON BY BOTH PARTIES ~~SHALL BE WILL SERVE AS CHAIRPERSON OF THE~~ DISPUTE RESOLUTION BOARD. ~~EXPENSES FOR THE DISPUTE RESOLUTION BOARD SHALL COSTS WILL~~ BE SHARED EQUALLY BY THE CITY AND THE WIRELESS PROVIDER. THE BOARD WILL HEAR THE DISPUTE PROMPTLY, AND RENDER AN OPINION AS SOON AS POSSIBLE, BUT IN NO CASE LATER THAN ~~SIXTY~~ 60 DAYS AFTER ~~NOTIFICATION BY THE CITY OF PROVIDER'S ALLOCATED SHARE OF DAMAGES SUFFERED BY THE CITY. CLAIM IS FILED.~~ ALL DECISIONS OF THE DISPUTE RESOLUTION BOARD ARE NON-BINDING ~~ON EITHER THE CITY OR THE PROVIDER~~; HOWEVER, THE FINDINGS OF THE DISPUTE RESOLUTION BOARD SHALL BE ADMISSIBLE IN ANY LEGAL ACTION. THE CITY AND THE WIRELESS PROVIDER SHALL ACCEPT OR REJECT FINDINGS OF THE DISPUTE RESOLUTION BOARD WITHIN ~~THIRTY~~ 30 DAYS AFTER RECEIPT OF THE FINDINGS. IF DAMAGES ARE ASSESSED BY THE DISPUTE RESOLUTION BOARD, THE WIRELESS PROVIDER SHALL PAY THE CITY WITHIN ~~THIRTY~~ 30 DAYS OF RECEIPT OF AN INVOICE. LATE CHARGES OF FIVE PERCENT AND INTEREST CHARGES OF ONE AND ONE-HALF PERCENT PER MONTH ~~SHALL WILL~~ BE ADDED FOR LATE PAYMENT.

~~D. EXCEPT AS OTHERWISE PROVIDED IN A LICENSE, OR PERMIT, OR BY OTHER PROVISION OF LAW, THE ENTIRE COST OF~~

~~C. CITY WILL BEAR~~ RELOCATION SHALL BE BORNE BY THE CITY COSTS IF THE WIRELESS PROVIDER IS REQUIRED BY THE CITY TO RELOCATE FACILITIES ~~WHICH THAT~~ ARE LOCATED IN PRIVATE EASEMENTS OBTAINED BY THE WIRELESS PROVIDER PRIOR TO THE DEDICATION OF THE PUBLIC STREET OR EASEMENT FROM WHICH THE FACILITIES MUST BE RELOCATED. ~~THESE PROVIDER'S~~ PRIOR RIGHTS ~~OF THE PROVIDER WOULD ALSO BE REMAIN~~ UNAFFECTED BY ANY SUBSEQUENT RELOCATION. A PRIOR RIGHT AS USED IN THIS SUBSECTION, MEANS PRIVATE EASEMENT RIGHTS OBTAINED BY THE WIRELESS PROVIDER PRIOR TO THE DEDICATION OF THE STREETS OR PUBLIC WAYS FROM WHICH THE FACILITIES ARE REQUESTED BY THE CITY TO BE RELOCATED. IN THE CASE OF A FACILITY THAT SERVES MULTIPLE PURPOSES, THE PRIOR RIGHTS MUST EXTEND TO ALL USES FOR THIS EXCEPTION TO APPLY.

#### **SEC. 5C-14. REMOVAL OF IMPROVEMENTS SMALL WIRELESS FACILITIES.**

A WIRELESS PROVIDER MUST REMOVE ALL SMALL WIRELESS FACILITIES AND RESTORE THE USE AREAS INCLUDING POLE, MAST ARMS, LUMINAIRES, OR WIRELESS SUPPORT STRUCTURE TO ITS PRIOR CONDITION, OR TO A CONDITION MATCHING

~~CITY'S~~THAT MATCHES THE SURROUNDING LAND AND IMPROVEMENTS, AS DIRECTED BY CITY, AT WIRELESS PROVIDER'S EXPENSE PRIOR TO NORMAL EXPIRATION OF THE TERM OF A MASTER LICENSE AGREEMENT OR SITE LICENSE AGREEMENT OR WITHIN ~~NINETY (90)~~ DAYS AFTER TERMINATION OF A MASTER LICENSE AGREEMENT OR SITE LICENSE AGREEMENT. WITHOUT LIMITATION, SUCH REMOVAL MUST INCLUDE REVEGETATION AND APPROPRIATE IRRIGATION SYSTEMS FOR REVEGETATED AREAS. NOTWITHSTANDING THE ABOVE, THE CITY MAY ELECT TO REQUIRE WIRELESS PROVIDER TO LEAVE ANY OR ALL CONSTRUCTION OR OTHER ITEMS (EXCEPT THE COMMUNICATIONS EQUIPMENT) IN PLACE, AND ALL SUCH ITEMS WILL BE OWNED BY CITY. UNLESS CITY DIRECTS OTHERWISE, ALL WIRING, PIPES AND CONDUITS MUST BE LEFT IN GOOD AND SAFE CONDITION, IN WORKING ORDER, WITH EACH END PROPERLY LABELED AND ENCLOSED IN PROPER JUNCTION BOXES. A WIRELESS ~~PROVIDE~~PROVIDER THAT FAILS TO REMOVE THE SMALL WIRELESS FACILITIES AS PROVIDED IN THIS SECTION WILL BE LIABLE TO THE CITY FOR ALL OF THE CITY'S COSTS OF REMOVAL, AND WILL HAVE BEEN DEEMED TO WAIVE ANY PROPERTY RIGHTS AND INTERESTS IN THE FACILITIES. PROVIDED, HOWEVER, ~~WIRELESS~~THE PROVIDER WILL REMAIN LIABLE FOR ANY OF ITS OBLIGATIONS AND DUTIES UNDER THE MASTER LICENSE AND SITE LICENSE AGREEMENTS.

**ARTICLE IV. PUBLIC HEALTH, SAFETY, AND WELFARE  
REVIEW, NOTIFICATION, TRAINING, AND ENFORCEMENT.**

**SEC. 5C-15. INSTALLATION SAFETY REVIEW.**

- A. FOR THE PERIOD BEGINNING ON THE DATE AN INSTALLATION PERMIT IS ISSUED AND ENDING ON THE DATE THE PERMITTED WORK IS ACCEPTED, CITY MAY PERFORM A SAFETY REVIEW OF CONSTRUCTION, RECONSTRUCTION OR INSTALLATION OF ALL SMALL WIRELESS FACILITIES ~~AND TO MAKE SUCH TESTS AS~~ IT DEEMS NECESSARY TO ENSURE COMPLIANCE WITH THIS CHAPTER 5C, THE CODE, OR OTHER TELECOMMUNICATIONS LAWS. ALL CITY PLANS, REVIEWS, INSPECTIONS, STANDARDS, AND OTHER RIGHTS AND ACTIONS RELATED TO ~~WIRELESS~~ PROVIDER'S IMPROVEMENTS ARE FOR CITY'S SOLE AND EXCLUSIVE BENEFIT AND NEITHER ~~WIRELESS~~ PROVIDER NOR ANY OTHER PERSON MAY RELY ON THE CITY'S SAFETY REVIEWS OR HAVE ANY RIGHTS RELATED TO THE REVIEWS. THE PRECEDING SENTENCE DOES NOT PREVENT ~~WIRELESS~~ PROVIDER FROM RELYING ON CONSENTS, PERMITS, OR APPROVALS THE CITY MAY GRANT BASED ON CITY'S PLANS, REVIEWS, AND INSPECTIONS. AS A CONDITION OF OBTAINING THE LICENSES AUTHORIZED BY THIS CHAPTER, THE WIRELESS PROVIDER GRANTS THE CITY THE RIGHT TO ACCESS THE WIRELESS PROVIDER'S SMALL WIRELESS FACILITIES. EXCEPT FOR EMERGENCIES, THIS RIGHT OF ACCESS IS LIMITED TO DATES AND TIMES AGREED TO BY THE PARTIES AND TO CITY INSPECTORS, OTHER EMPLOYEES, CONTRACTORS, OR OFFICERS ACTING WITHIN THEIR LEGAL AUTHORITY.
- B. CONSISTENT WITH STATE LAW, THE CITY MAY RECOVER THE CITY'S COSTS INCURRED TO PERFORM SUCH INSTALLATION SAFETY REVIEWS AS THE CITY

DEEMS NECESSARY AT THE HOURLY RATE OF \$150 PER HOUR PER PERSON. HOWEVER, IN NO EVENT WILL THE ~~CITY'S COSTS FOR EACH SITE INSTALLATION~~ SAFETY REVIEW EXCEED THE TOTAL NUMBER OF HOURS LISTED IN THE TABLE BELOW. ~~FOR EACH SITE INSTALLATION.~~ THE CITY WILL SUBMIT AN INVOICE TO THE WIRELESS PROVIDER FOR EACH SITE INSTALLATION SAFETY REVIEW THAT SHOWS THE NUMBER OF HOURS BILLED IN INCREMENTS OF A QUARTER HOUR (15 MINUTES) FOR THE TIME SPENT PER PERSON ON-SITE FOR EACH REVIEW; EXCEPT THAT A FLAT RATE OF ONE QUARTER HOUR (15 MINUTES) WILL BE CHARGED FOR TRAVEL TO AND FROM EACH SITE FOR EACH REVIEW, AND A FLAT RATE OF ONE HOUR WILL BE CHARGED FOR A WIRELESS PROVIDER'S FAILURE TO PERMIT ACCESS TO THE FACILITIES AT THE AGREED ~~UPON~~ TIME AND DATE (A NO-SHOW). THE WIRELESS PROVIDER MUST PAY ANY SUCH INVOICE WITHIN 30 CALENDAR DAYS OF THE INVOICE DATE.

INSTALLATION SAFETY REVIEW		NOT TO EXCEED TOTAL NUMBER OF HOURS
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	<del>-PER SITE</del> <u>PERMIT</u>	10
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	<del>-PER SITE</del> <u>PERMIT</u>	10
<del>POLE TYPE-STRUCTURE #3:</del>	<del>-PER SITE</del>	<del>20</del>
<del>POLE TYPE-STRUCTURE #3:</del> EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	<u>PER PERMIT</u>	<u>20</u>
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER <del>SITE</del> <u>PERMIT</u>	20
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER <del>SITE</del> <u>PERMIT</u>	20
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER <del>SITE</del> <u>PERMIT</u>	20

~~C. C.~~ CONSISTENT WITH STATE LAW AND TO FULLY RECOVER ITS COSTS, THE CITY MAY INCREASE THE HOURLY RATE CHARGED EVERY TWO YEARS BY THE SAME PERCENTAGE REFLECTED BY THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX FOR THE PRECEDING TWO YEARS.

**SEC. 5C-16. CONSTRUCTION NOTIFICATION.**

~~A.~~

~~A. FOR ANY NEW SMALL WIRELESS FACILITIES INSTALLATIONS, NEW OR MODIFIED POLES, AND NEW OR MODIFIED MONOPOLES/POLES, THE WIRELESS PROVIDER WILL BE REQUIRED TO MUST PROVIDE ADVANCED PRE-CONSTRUCTION NOTIFICATION NO LATER THAN TEN (10) CALENDAR DAYS PRIOR TO THE START OF CONSTRUCTION ACTIVITIES TO POTENTIALLY IMPACTED PROPERTY OWNERS WITHIN THREE HUNDRED (300) FEET OF THE INSTALLATION. THE WIRELESS PROVIDER MAY ACCOMPLISH SUCH PRE-CONSTRUCTION NOTIFICATION BY MAILING A LETTER TO THE ADDRESS OF EACH IMPACTED PROPERTY OWNER OR BY PLACING A DOOR HANGER AT THE PROPERTY OWNER'S ADDRESS NO LATER THAN TEN CALENDAR DAYS PRIOR TO THE START OF CONSTRUCTION ACTIVITIES. THE LANGUAGE OF SUCH/THE NOTIFICATION WILL BE IN A FORM PROVIDED BY THE CITY TO THE WIRELESS PROVIDER AND MUST INCLUDE TELEPHONE AND ELECTRONIC MESSAGE CONTACT INFORMATION FOR THE WIRELESS PROVIDER.~~

~~B.~~

~~B. EACH WIRELESS PROVIDER MUST REGISTER WITH AND COMPLY WITH THE LOCAL BLUE STAKE PROGRAM AS ESTABLISHED BY STATE LAW A.R.S. TITLE 40, CHAPTER 2, ARTICLE 6.3, SECTIONS 40-360.21 THROUGH 40-360.32.~~

**SEC. 5C-17. ~~SAFETY TRAINING.~~**

~~BECAUSE THE SMALL WIRELESS FACILITIES FOR EACH PROVIDER USE DIFFERENT TECHNOLOGIES OR ARE ENERGIZED IN DIFFERENT WAYS, EACH WIRELESS PROVIDER MUST CONTRIBUTE \$3,000 ANNUALLY TO PROVIDE TRAINING TO CITY STAFF RELATED TO SAFETY AND BEST PRACTICES WORKING AROUND SMALL WIRELESS FACILITIES. IN ADDITION, EACH PROVIDER MUST ALSO FURNISH FIVE PERSONAL RADIO FREQUENCY MONITORS. THE MONITORS MUST BE NEWLY MANUFACTURED NARDALERT S3 PERSONAL AREA MONITOR OR EQUIVALENT AS AGREED BY THE CITY. IN ADDITION, AT EACH FIVE YEAR ANNIVERSARY OF THE MASTER LICENSE, PROVIDER MUST FURNISH THREE ADDITIONAL NEWLY MANUFACTURED NARDALERT S3 PERSONAL AREA MONITORS OR EQUIVALENT AS AGREED BY THE CITY.~~

**SEC. 5C-18. DE-ENERGIZING SMALL WIRELESS FACILITIES FOR POLE MAINTENANCE.**

ALL SMALL WIRELESS FACILITIES MOUNTED ON A CITY POLE OR ANY WIRELESS SUPPORT STRUCTURE WITH A SMALL WIRELESS FACILITY LOCATED WITHIN TWENTY-FIVE (25) FEET OF A CITY POLE WILL BE REQUIRED TO BE EQUIPPED WITH MUST INSTALL A DEACTIVATION SWITCH, CONSISTENT WITH CITY DESIGN STANDARDS, FOR BOTH PRIMARY AND BACKUP POWER ACCESSIBLE TO CITY STAFF TO DE-ENERGIZE THE FACILITY FOR CITY STAFF REPAIR/ MAINTENANCE, AND SAFETY PURPOSES.

ALL EXISTING SMALL WIRELESS FACILITIES CONSTRUCTED WITHOUT A DEACTIVATION SWITCH MUST BE RETROFITTED TO INCLUDE A DEACTIVATION SWITCH, CONSISTENT WITH CITY DESIGN STANDARDS, FOR BOTH PRIMARY AND



BACK UP POWER ACCESSIBLE TO CITY STAFF TO DE-ENERGIZE THE FACILITY FOR REPAIR, MAINTENANCE, AND SAFETY PURPOSES. BY FEBRUARY 9, 2019.

**SEC. 5C-~~19~~18. NOISE LEVEL STANDARD.**

THE AVERAGE NOISE LEVEL OF SMALL WIRELESS FACILITIES LOCATED IN ~~LOCAL PUBLIC~~ RIGHT OF WAY, INCLUDING ANTENNA AND GROUND-MOUNTED EQUIPMENT AND ELECTRIC METER, MEASURED AT ANY PROPERTY LINE THAT IS ZONED OR USED FOR RESIDENTIAL PURPOSES MUST NOT EXCEED THE LOWEST LEVEL OF EITHER:

- ~~1.~~ 4. CONSISTENT WITH EXISTING CODE PROVISIONS FIFTY-FIVE (55-) DECIBELS (DB) WHEN MEASURED ON AN "A WEIGHTED" SOUND LEVEL METER AND PER THE PROCEDURES OF THE ENVIRONMENTAL PROTECTION AGENCY. ~~A WHISPER QUIET GENERATOR; OR OTHER UTILITY SOURCE TO POWER THE FACILITIES MUST NOT EMIT AN AVERAGE NOISE LEVEL MEASURED AT ANY PROPERTY LINE THAT IS ZONED OR USED FOR RESIDENTIAL PURPOSES THAT EXCEEDS 55 DB WHEN MEASURED ON AN "A WEIGHTED" SOUND LEVEL METER, PER THE PROCEDURES OF THE ENVIRONMENTAL PROTECTION AGENCY; OR~~
- ~~2.~~ 2. SUCH NOISE LEVEL STANDARD AS MAY BE ESTABLISHED BY FEDERAL OR STATE LAW FOR SMALL WIRELESS FACILITIES.

**SEC. 5C-~~20~~19. RADIO FREQUENCY SPACING FROM OCCUPIED STRUCTURES.**

~~SMALL WIRELESS FACILITIES (ANTENNA EQUIPMENT)~~ MUST BECOMPLY WITH THE LARGEST DISTANCE OF EITHER:

- ~~1.~~ 25 FEET FCC ESTIMATED "WORST CASE" HORIZONTAL DISTANCES AT THE SAME ELEVATION FROM A WINDOW OR BALCONY OF ANY OCCUPIED DWELLING OR STRUCTURE; OR WINDOWS, BALCONIES AND PUBLIC SPACES.
- ~~2.~~ SUCH RADIO FREQUENCY STANDARD FOR SMALL WIRELESS FACILITIES (ANTENNA EQUIPMENT) AS MAY BE ESTABLISHED BY FEDERAL OR STATE LAW.

**SEC. 5C-~~21~~20. ENFORCEMENT OF PUBLIC SAFETY VIOLATIONS; CIVIL SANCTIONS.**

A. AUTHORITY AND ADMINISTRATION. THE CITY MANAGER IS AUTHORIZED TO ISSUE NOTICES OF VIOLATION OF THIS CHAPTER AND MAY TAKE THOSE MEASURES NECESSARY TO PROMOTE, PRESERVE, AND PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE WITHIN THE ~~LOCAL PUBLIC~~ RIGHT OF WAY. THE CITY MANAGER WILL ISSUE A WARNING FOR THE FIRST VIOLATION BY A PROVIDER UNDER THIS SECTION. EXCEPT FOR FACILITIES THAT HAVE NOT BEEN MAINTAINED AS REQUIRED BY THIS CHAPTER. THE CITY MANAGER MAY NOT ISSUE A NOTICE OF VIOLATION UNDER SECTIONS 5C-~~21~~20(B)(~~43~~) OR (B)(~~54~~) FOR SMALL WIRELESS FACILITIES THAT HAVE BEEN SUBJECT TO AN INSTALLATION SAFETY REVIEW. THE CITY MANAGER WILL

ISSUE NOTICE TO THE PROVIDER'S EMERGENCY CONTACT LISTED IN THE MASTER LICENSE AGREEMENT.

B. CIVIL SANCTIONS. THE FOLLOWING VIOLATIONS MAY RESULT IN A CIVIL SANCTION. THE AMOUNT OF THE CIVIL SANCTION LISTED IS THE AMOUNT PER DAY FOR A VIOLATION PRIOR TO COMMENCEMENT OF AN ACTION AS PROVIDED IN THIS SECTION.

SANCTION PER DAY	VIOLATION DESCRIPTION
\$1,000	<del>1. FAILURE TO TAKE NECESSARY STEPS TO PROTECT, PROMOTE PUBLIC SAFETY WITHIN 24 HOURS AFTER NOTICE OR FAILURE TO CURE WITHIN 48 HOURS</del> <u>FIVE BUSINESS DAYS</u> AFTER NOTICE OF AN ACT, ERROR, OR OMISSION BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS THAT CAUSES AN IMMINENT RISK OF DEATH, HARM, OR INJURY TO PERSONS OR PROPERTY.
\$1,000	<del>2. FAILURE TO CURE WITHIN THREE BUSINESS DAYS AFTER NOTICE FALSE, INCOMPLETE, MISTAKEN, MISLEADING, OR INACCURATE INFORMATION OR CERTIFICATION BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS TO OBTAIN A LICENSE, PERMIT, OR AGREEMENT UNDER THIS CHAPTER.</del>
\$1,000	<del>3.2.</del> UNAUTHORIZED USE OR FACILITIES AS PROVIDED IN SECTION 5C-4(E).
\$1,000	<del>43.</del> FAILURE TO REMOVE FACILITIES FROM THE SIGHT VISIBILITY TRIANGLE <u>AS PROVIDED IN CODE SECTION 31-13</u> WITHIN <del>48 HOURS</del> <u>FIVE BUSINESS DAYS</u> AFTER NOTICE.
\$800	<del>54.</del> FAILURE TO CURE WITHIN <del>THREE</del> <u>FIVE</u> BUSINESS DAYS AFTER NOTICE SMALL WIRELESS FACILITIES THAT EXCEED AUTHORIZED NOISE OR RADIO FREQUENCY LEVELS.
\$500	<del>6. FAILURE TO PROVIDE EMERGENCY SERVICES WITHIN ONE HOUR AFTER NOTICE.</del>

C. SUSPENSION OF LICENSE.

C.1. IN ADDITION TO OR IN PLACE OF THESE CIVIL SANCTIONS, THE CITY MANAGER MAY SUSPEND FOR FIVE BUSINESS DAYS THE SUBJECT MASTER LICENSE AND SITE LICENSE AGREEMENTS.

2. IN ADDITION, THE CITY MANAGER MAY SUSPEND FOR FIVE BUSINESS DAYS THE SUBJECT MASTER LICENSE AND SITE LICENSE AGREEMENTS FOR A PROVIDER'S FAILURE TO CURE WITHIN FIVE BUSINESS DAYS AFTER NOTICE OF FALSE, INCOMPLETE, MISTAKEN, MISLEADING OR INACCURATE INFORMATION OR CERTIFICATION USED BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS TO OBTAIN A LICENSE, PERMIT, OR AGREEMENT UNDER THIS CHAPTER.

D. FOR CONTINUING VIOLATIONS WITHIN A TWENTY-FOUR-HOUR PERIOD, EACH CALENDAR DAY SHALL BE CONSIDERED A SEPARATE PERIOD FOR PURPOSES OF RECOVERY OF CIVIL SANCTIONS.

E. CIVIL ACTION FOR VIOLATIONS.

1. ~~THESE~~ REMEDIES ~~HEREIN~~ ARE CUMULATIVE AND THE CITY MAY PROCEED UNDER ONE OR MORE REMEDIES.

2. ANY PARTY WHO CAUSES, PERMITS, FACILITATES, OR AIDS OR ABETS ANY VIOLATION OF ANY PROVISION OF THIS ARTICLE SECTION OR WHO FAILS TO PERFORM ANY ACT OR DUTY REQUIRED BY THIS ARTICLE SECTION IS SUBJECT TO A CIVIL SANCTION OF NOT LESS THAN FIVE EIGHT HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS. THE FIVE EIGHT HUNDRED DOLLAR MINIMUM SANCTION MAY NOT BE WAIVED.

3. EACH DAY ANY VIOLATION OF ANY PROVISION OF THIS ARTICLE SECTION OR THE FAILURE TO PERFORM ANY ACT OR DUTY REQUIRED BY THIS ARTICLE SECTION EXISTS SHALL CONSTITUTE A SEPARATE VIOLATION OR OFFENSE.

4. ANY CIVIL ACTION TO ENFORCE A CIVIL SANCTION IMPOSED PURSUANT TO THIS ARTICLE SHALL SECTION WILL BE COMMENCED AND SUMMONS SHALL BE ISSUED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THE ARIZONA REVISED STATUTES, A.R.S., CITY ORDINANCE OR AS PROVIDED IN THE LOCAL RULES OF PRACTICE AND PROCEDURE, CITY COURT, CITY OF PHOENIX.

5. ANY PARTY MAY APPEAL THE JUDGMENT OF THE CITY COURT TO THE SUPERIOR COURT. APPEALS FROM CIVIL PROCEEDINGS SHALL BE IN ACCORDANCE WITH THE SUPERIOR COURT RULES OF APPELLATE PROCEDURE, CIVIL. EXECUTION OF ANY JUDGMENT SHALL BE STAYED PENDING APPEAL WHEN THE DEFENDANT POSTS AN APPEAL BOND IN ACCORDANCE WITH THE ORDER OF THE TRIAL COURT, OR WHEN NO BOND IS FIXED AND A NOTICE OF APPEAL HAS BEEN FILED.

6. A CIVIL CITATION OR COMPLAINT BROUGHT PURSUANT TO THIS SECTION SHALL BE SERVED WITHIN ONE YEAR OF THE OFFENSE.

F. JURISDICTION OF COURT.

1. JURISDICTION OF ALL PROCEEDINGS TO ENFORCE THE PROVISIONS OF THIS ARTICLESECTION RELATING TO CIVIL SANCTIONS SHALL BE IN THE MUNICIPAL COURT OF THE CITY OF PHOENIX.

2. CIVIL ACTIONS TO ENFORCE THIS ARTICLESECTION MAY BE ADJUDICATED BY A JUDGE OR A COURT HEARING OFFICER.

G. ADMISSION OR DENIAL OF ALLEGATION; HEARING; FINDINGS OF COURT; CIVIL SANCTION.

1. A PARTY SERVED WITH A CIVIL CITATION OR COMPLAINT SHALL APPEAR AT THE TIME AND PLACE STATED IN THE CITATION OR SUMMONS, OR MAY APPEAR PRIOR TO THE TIME AND ADMIT OR DENY THE ALLEGATIONS OF THE COMPLAINT. ALLEGATIONS NOT DENIED AT THE TIME OF APPEARANCE ARE DEEMED ADMITTED.

2. IF THE ALLEGATIONS ARE ADMITTED, THE COURT SHALL ENTER JUDGMENT FOR THE CITY AND IMPOSE A CIVIL SANCTION.

3. IF THE PARTY DENIES THE ALLEGATIONS, THE COURT SHALL SET THE MATTER FOR HEARING. CIVIL HEARINGS ARE INFORMAL AND HELD WITHOUT A JURY, AND THE CITY IS REQUIRED TO PROVE THE VIOLATION CHARGED BY A PREPONDERANCE OF THE EVIDENCE. TECHNICAL RULES OF EVIDENCE DO NOT APPLY, EXCEPT FOR STATUTORY PROVISIONS RELATING TO PRIVILEGED COMMUNICATIONS. IF THE PERSON ELECTS TO BE REPRESENTED BY COUNSEL, THE PERSON SHALL SO NOTIFY THE COURT AT LEAST TEN DAYS PRIOR TO THE HEARING DATE. HEARINGS MAY BE RECORDED. IF THE COURT FINDS IN FAVOR OF THE PARTY, THE COURT SHALL ENTER AN ORDER DISMISSING THE CITATION OR COMPLAINT. IF THE COURT FINDS IN FAVOR OF THE CITY, THE COURT SHALL ENTER JUDGMENT FOR THE CITY AND IMPOSE A CIVIL SANCTION.

4. IF THE PARTY SERVED WITH A CIVIL CITATION OR COMPLAINT FAILS TO APPEAR ON OR BEFORE THE TIME DIRECTED TO APPEAR OR AT THE TIME SET FOR HEARING BY THE COURT, THE ALLEGATIONS SHALL BE DEEMED ADMITTED AND THE COURT SHALL ENTER JUDGMENT FOR THE CITY AND IMPOSE A CIVIL SANCTION.

5. FAILURE OF A PARTY TO PAY A CIVIL SANCTION UPON FINAL ADJUDICATION OF THE CIVIL ACTION AS PROVIDED BY LAW SHALL RESULT IN THE AUTOMATIC TERMINATION OF THE LICENSE AND ANY SUCH PARTY WILL BE PROHIBITED FROM

OBTAINING ADDITIONAL LICENSES OR PERMITS UNTIL ALL OUTSTANDING CIVIL SANCTIONS HAVE BEEN DISMISSED OR PAID IN FULL.

## ARTICLE V. GENERAL PROVISIONS.

### SEC. 5C-~~2221~~. RIGHTS RESERVED TO CITY.

WITHOUT LIMITING THE RIGHTS THAT THE CITY MIGHT OTHERWISE HAVE, THE CITY DOES HEREBY EXPRESSLY RESERVE THE FOLLOWING RIGHTS, POWERS, AND AUTHORITIES:

- A. TO EXERCISE ITS GOVERNMENTAL POWERS NOW OR HEREAFTER TO THE FULL EXTENT THAT SUCH POWERS MAY BE VESTED IN OR GRANTED TO THE CITY.
- B. TO DETERMINE ANY QUESTION OF FACT RELATING TO THE MEANING, TERMS, OBLIGATIONS, OR OTHER ASPECTS OF THIS CHAPTER AND THE INSTRUMENTS ISSUED UNDER THIS CHAPTER.
- C. TO GRANT MULTIPLE, NONEXCLUSIVE LICENSES, FRANCHISES, LICENSES, OR PERMITS WITHIN THE CITY TO OTHER PERSONS.

### SEC. 5C-~~2322~~. CITY POLICE POWER; CONTINUING JURISDICTION.

- A. THE WIRELESS PROVIDER IS SUBJECT TO ALL LAWFUL EXERCISE OF THE POLICE POWER BY THE CITY, INCLUDING ANY AND ALL CHAPTERS, RULES, OR REGULATIONS WHICH THE CITY HAS ADOPTED OR MAY ADOPT, AND ALL LAWS, RULES, REGULATIONS, ORDERS, AND POLICIES OF THE STATE AND THE UNITED STATES GOVERNMENT. IN THE EVENT OF A CONFLICT BETWEEN THIS CHAPTER AND OTHER PROVISIONS OF THE CITY CODE, THE STRICTER REQUIREMENT WILL APPLY.
- B. THE CITY POSSESSES CONTINUING JURISDICTION AND SUPERVISION OVER ANY FACILITIES LOCATED WITHIN OR ON CITY RIGHTS OF WAY. HOWEVER, IT IS RECOGNIZED THAT THE DAILY ADMINISTRATIVE, SUPERVISORY, AND ENFORCEMENT RESPONSIBILITIES OF THE PROVISIONS OF THIS CHAPTER MAY BE DELEGATED AND ENTRUSTED TO THE CITY MANAGER OR DESIGNEE TO INTERPRET, ADMINISTER, AND ENFORCE THE PROVISIONS OF THIS CHAPTER, AND TO PROMULGATE STANDARDS REGARDING THE CONSTRUCTION, RECONSTRUCTION, RELOCATION, MAINTENANCE, DISMANTLING, ABANDONMENT, OR USE OF THE FACILITIES WITHIN THE CITY RIGHTS OF WAY.

SECTION 2. The provisions of this Ordinance shall be effective February 9, 2018.

PASSED by the Council of the City of Phoenix this \_\_\_\_ day of \_\_\_\_, 2018.

MAYOR

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_

\_\_\_\_\_  
City Manager

dlb/DLB/2011931V2

DRAFT