

ORDINANCE NO. G-\_\_\_\_\_

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 FINDINGS; AUTHORITY AND ADMINISTRATION; DEFINITIONS.**

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

A. THE PURPOSE OF THIS CHAPTER ALONG WITH STATE, FEDERAL, AND OTHER LOCAL LAW IS TO ESTABLISH A POLICY GOVERNING THE USE OF CITY-OWNED INFRASTRUCTURE AND CITY MANAGED PUBLIC RIGHTS OF WAY FOR SMALL WIRELESS FACILITIES AND MONOPOLES AND TO ENABLE THE CITY TO:

1. ISSUE LICENSES OR FRANCHISES TO WIRELESS PROVIDERS WHO USE THE PUBLIC RIGHTS OF WAY TO PROVIDE WIRELESS SERVICES ON A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS, EXCEPT IN CASES WHERE STATE LAW FORBIDS ESTABLISHMENT OF A LICENSE OR FRANCHISE REQUIREMENT; AND
2. MANAGE THE PUBLIC RIGHTS OF WAY TO MINIMIZE THE IMPACT AND COST TO PHOENIX CITIZENS OF PLACING WIRELESS FACILITIES WITHIN PUBLIC RIGHTS OF WAY; AND
3. MANAGE THE PUBLIC RIGHTS OF WAY TO MAXIMIZE THEIR EFFICIENT USE, THEREBY MINIMIZING THE FORECLOSURE OF FUTURE ADDITIONAL USES OF SUCH PUBLIC RIGHTS OF WAY; AND
4. PROVIDE FOR THE COMPENSATION FOR THE COMMERCIAL USE OF PUBLIC RIGHTS OF WAY TO PROVIDE WIRELESS SERVICES; AND
5. MINIMIZE CONGESTION, INCONVENIENCE, VISUAL IMPACT, AND OTHER ADVERSE EFFECTS FROM SUCH USE OF THE CITY'S PUBLIC RIGHTS OF WAY.

B. THE CITY COUNCIL FINDS THAT THE CITY'S PUBLIC RIGHTS OF WAY CONSTITUTE A VALUABLE PUBLIC ASSET:

1. HAVING BEEN ACQUIRED AND MAINTAINED BY THE CITY OVER MANY YEARS AT GREAT TAXPAYER EXPENSE;
2. PROVIDING UNIQUELY VALUABLE PROPERTY THAT WIRELESS PROVIDERS MAY WISH TO USE FOR PROFIT-MAKING PURPOSES THAT MAY NOT NECESSARILY BENEFIT ALL THE RESIDENTS OF THE CITY;
3. REPRESENTING PUBLIC INVESTMENTS FOR WHICH THE TAXPAYERS ARE ENTITLED TO A FAIR MONETARY RETURN ON THE CITY'S PAST AND FUTURE INVESTMENT IN THE CITY'S INFRASTRUCTURE;
4. COMPRISING SIGNIFICANT ASSETS, WHICH THE CITY MUST MANAGE AS A PUBLIC FIDUCIARY TRUST TO ENHANCE THE PUBLIC HEALTH, SAFETY, AND WELFARE.

C. THEREFORE, IN THIS CHAPTER THE CITY COUNCIL INTENDS:

1. TO ENSURE THAT LOCALLY ELECTED OFFICIALS MANAGE LOCAL PUBLIC RIGHTS OF WAY CONSISTENT WITH THEIR FIDUCIARY TRUST OBLIGATIONS;
2. TO ENSURE COMPLIANCE WITH PUBLIC HEALTH, SAFETY, AND WELFARE MEASURES FOR PUBLIC RIGHTS OF WAY;
3. TO ENCOURAGE PUBLIC-PRIVATE PARTNERSHIPS TO PROVIDE WIRELESS FACILITIES NEEDED FOR THE MOST COST-EFFECTIVE DELIVERY OF PUBLIC SERVICES, INCLUDING SCHOOLS, LIBRARIES, POLICE AND FIRE PROTECTION, AS WELL AS PRIVATE SERVICES;
4. TO CONSERVE THE LIMITED PHYSICAL CAPACITY OF THE PUBLIC RIGHTS OF WAY HELD IN PUBLIC TRUST BY THE CITY;
5. TO ASSURE THAT THE CITY'S CURRENT AND ONGOING COSTS OF GRANTING AND REGULATING PRIVATE ACCESS TO AND USE OF THE PUBLIC RIGHTS OF WAY ARE FULLY PAID BY THE PERSONS SEEKING SUCH ACCESS AND CAUSING SUCH COSTS.

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

THE CITY MANAGER IS AUTHORIZED TO ISSUE AND ADMINISTER MASTER LICENSE AGREEMENTS AND PERMITS TO PERSONS, ASSOCIATIONS, OR

CORPORATIONS TO INSTALL, OPERATE, AND MAINTAIN SMALL WIRELESS FACILITIES AS PROVIDED IN THIS CHAPTER.

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

A. 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.

“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.

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

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

“SIGHT VISIBILITY TRIANGLES” MEANS THE TRAFFIC ENGINEERING AND SAFETY CONCEPT THAT REQUIRES CLEAR VIEW BY THE DRIVER OF A VEHICLE TO CROSSING TRAFFIC AT A STOP SIGN, DRIVEWAY OR INTERSECTION. IN ORDER TO ACHIEVE CLEAR VISIBILITY OF THE CROSS TRAFFIC, THE LAND AREAS IN THE SIGHT VISIBILITY TRIANGLE HAS SPECIFIC MAXIMUM HEIGHTS ON LANDSCAPING, CABINETS, AND OTHER POTENTIAL VIEW OBSTRUCTIONS AS DESCRIBED IN PHOENIX CITY CODE SECTION 31-13.

“SMALL WIRELESS FACILITY” AS DEFINED IN A.R.S. § 9-591(19), MEANS A WIRELESS FACILITY THAT MEETS BOTH OF THE FOLLOWING QUALIFICATIONS:

(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 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) 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) AN ELECTRIC METER.
- (II) CONCEALMENT ELEMENTS.
- (III) A TELECOMMUNICATIONS DEMARCATION BOX.
- (IV) GROUNDING EQUIPMENT.
- (V) A POWER TRANSFER SWITCH.
- (VI) A CUTOFF SWITCH.
- (VII) VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER SERVICES.

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

## **ARTICLE II. LICENSE OR FRANCHISE TO OCCUPY RIGHTS OF WAY.**

### **SEC. 5C-4 LICENSE OR FRANCHISE REQUIRED.**

A. NO WIRELESS PROVIDER SHALL INSTALL, MAINTAIN, CONSTRUCT OR OPERATE WIRELESS FACILITIES IN PUBLIC RIGHTS OF WAY IN THE CITY, OR PROVIDE SERVICES BY MEANS OF SUCH WIRELESS FACILITIES, UNLESS A LICENSE TO USE THE PUBLIC RIGHTS OF WAY TO PROVIDE COMMUNICATIONS SERVICES HAS FIRST BEEN GRANTED BY THE CITY MANAGER, OR HIS DESIGNEE, UNDER THIS CHAPTER OR A FRANCHISE AWARDED BY THE ELECTORATE UNDER ARTICLE XIII OF THE ARIZONA CONSTITUTION AND THIS CHAPTER TO SUCH COMMUNICATIONS CORPORATION.

B. NOTHING IN THIS ORDINANCE SHALL BE DEEMED TO AFFECT THE TERMS OR CONDITIONS OF ANY FRANCHISE, LICENSE OR PERMIT ISSUED BY THE CITY PRIOR TO FEBRUARY 9, 2018. EXISTING FRANCHISES, LICENSES OR PERMITS SHALL REMAIN FULLY ENFORCEABLE IN ACCORDANCE WITH THEIR TERMS. THE CITY MANAGER, OR HIS DESIGNEE, MAY ENTER INTO AGREEMENTS WITH WIRELESS PROVIDERS TO MODIFY OR TERMINATE AN EXISTING FRANCHISE, LICENSE, OR AGREEMENT.

C. A FRANCHISE OR LICENSE TO ANY WIRELESS PROVIDER TO USE THE PUBLIC RIGHTS OF WAY TO INSTALL, MAINTAIN, CONSTRUCT OR OPERATE WIRELESS FACILITIES OR TO PROVIDE WIRELESS SERVICES OR UNDER THIS CHAPTER SHALL NOT AUTHORIZE THE USE OF THE PUBLIC RIGHTS OF WAY TO PROVIDE ANY OTHER SERVICE; NOR SHALL THE ISSUANCE OF THE SAME

INVALIDATE ANY FRANCHISE, LICENSE OR PERMIT THAT AUTHORIZES THE USE OF THE PUBLIC RIGHTS OF WAY FOR SUCH OTHER SERVICES; NOR SHALL THE FACT THAT A WIRELESS PROVIDER HOLDS A FRANCHISE, LICENSE OR PERMIT TO MAKE ANY OTHER USE OF THE PUBLIC RIGHTS OF WAY OR TO PROVIDE ANY OTHER SERVICE, AUTHORIZE INSTALLATION, MAINTENANCE, CONSTRUCTION OR OPERATION OF WIRELESS FACILITIES IN ANY PUBLIC RIGHTS OF WAY IN THE CITY, OR PERMIT SUCH WIRELESS PROVIDER TO PROVIDE WIRELESS SERVICES BY MEANS OF SUCH FACILITIES WITHOUT OBTAINING A LICENSE OR FRANCHISE HEREUNDER.

D. ANY LICENSE OR FRANCHISE GRANTED SHALL NOT BE EXCLUSIVE.

E. A WIRELESS LICENSEE MAY ENTER INTO CONTRACTS FOR USE OF WIRELESS FACILITIES WITHIN THE PUBLIC RIGHTS OF WAY TO PROVIDE WIRELESS SERVICES. PERSONS USING SUCH LICENSEE'S FACILITIES MUST THEMSELVES OBTAIN A TELECOMMUNICATIONS LICENSE IF SUCH PERSON CONSTRUCTS, INSTALLS, OPERATES OR MAINTAINS TELECOMMUNICATION FACILITIES WITHIN THE PUBLIC HIGHWAY OF THE CITY/TOWN. IF THE PERSONS USING SUCH LICENSEE'S FACILITIES DO NOT CONSTRUCT, INSTALL, OPERATE OR MAINTAIN TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC HIGHWAY OF THE CITY/TOWN, SUCH PERSONS NEED NOT OBTAIN A SEPARATE LICENSE BUT THE TELECOMMUNICATIONS LICENSEE MUST DISCLOSE THE IDENTITY OF SUCH PERSONS TO THE CITY.

#### **SEC. 5C-5 LICENSE OR FRANCHISE APPLICATION.**

A. ANY WIRELESS PROVIDER DESIRING A LICENSE OR FRANCHISE UNDER THIS CHAPTER TO OCCUPY THE PUBLIC RIGHTS OF WAY OF THE CITY TO PROVIDE WIRELESS SERVICES SHALL FILE AN APPLICATION WITH THE CITY MANAGER REQUESTING AT THE APPLICANT'S ELECTION EITHER A FRANCHISE OR LICENSE, IN THE FORM PRESCRIBED BY THE CITY MANAGER, AND SHALL PAY AN APPLICATION FEE DETERMINED BY THE CITY MANAGER. THE AMOUNT OF THE APPLICATION FEE SHALL BE REASONABLY RELATED TO THE COSTS DIRECTLY INCURRED BY THE CITY RELATING TO THE GRANTING OR ADMINISTRATION OF THE LICENSE.

B. UPON RECEIVING AN APPLICATION FOR A FRANCHISE OR LICENSE THAT SATISFIES THE CITY'S REQUIREMENTS, THE CITY SHALL PROMPTLY PROFFER A FRANCHISE OR LICENSE TO THE APPLICANT FOR ITS REVIEW, AND MAY INQUIRE INTO MATTERS RELEVANT TO THE ISSUANCE OF THE LICENSE OR FRANCHISE. IF THE APPLICANT AGREES TO THE TERMS AND CONDITIONS OF THE FRANCHISE OR LICENSE, THE REQUEST SHALL BE SUBMITTED TO CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL (IN THE CASE OF A LICENSE) OR SCHEDULED FOR A FRANCHISE ELECTION (IN THE CASE OF AN APPLICATION FOR A FRANCHISE). NOTWITHSTANDING THE FOREGOING, THE CITY NEED NOT ISSUE OR RENEW A LICENSE, OR SCHEDULE A FRANCHISE

ELECTION IF THE APPLICANT HAS PREVIOUSLY HAD ITS LICENSE OR FRANCHISE REVOKED, OR FOR ANY OTHER REASON PERMITTED UNDER ARIZONA LAW.

C. AS A CONDITION OF ISSUING OR RENEWING A LICENSE OR FRANCHISE TO USE THE PUBLIC RIGHTS OF WAY TO PROVIDE WIRELESS SERVICES, THE CITY MAY REQUIRE:

1. THE APPLICANT TO AGREE TO COMPLY WITH RIGHT OF WAY USE REQUIREMENTS PROVIDED FOR IN THIS CHAPTER;
2. THE APPLICANT TO AGREE TO PROVIDE AND MAINTAIN ACCURATE MAPS SHOWING THE LOCATION OF ALL ITS FACILITIES AND THE FACILITIES IT WILL USE IN THE PUBLIC RIGHTS OF WAY WITHIN THE CITY AND TO COMPLY WITH SUCH OTHER MAPPING REQUIREMENTS AS THE CITY MAY ESTABLISH FROM TIME TO TIME. APPLICANT SHALL PROVIDE THE CITY WITH ELECTRONIC MAPPING INFORMATION IN A FORMAT COMPATIBLE WITH THE CURRENT CITY ELECTRONIC MAPPING FORMAT;
3. THE APPLICANT TO OBTAIN THE INSURANCE, AND PROVIDE PROOF OF INSURANCE AS REQUIRED BY THE CITY; TO POST THE PERFORMANCE BONDS AND SECURITY FUND REQUIRED BY THE CITY; AND TO AGREE TO FULLY INDEMNIFY 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 OR FRANCHISE; AND
4. THE APPLICANT TO AGREE TO COMPLY WITH AND BE BOUND BY THE ADMINISTRATIVE AND ENFORCEMENT PROVISIONS AS MAY BE PRESCRIBED BY THE CITY.

D. EVERY FRANCHISE OR LICENSE SHALL BE SUBJECT TO THE FOLLOWING ADMINISTRATIVE AND ENFORCEMENT PROVISIONS:

1. FRANCHISES AND LICENSES SHALL BE PERSONAL TO THE FRANCHISEE OR LICENSEE. EXCEPT AS PROVIDED IN THE LICENSE OR FRANCHISE, NO TRANSFER OF A FRANCHISE, FRANCHISEE, LICENSOR OR LICENSEE, 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) SHALL OCCUR UNLESS PRIOR APPLICATION IS MADE TO THE CITY AND THE CITY'S PRIOR WRITTEN CONSENT IS OBTAINED, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD OR DELAYED. IN MAKING A DETERMINATION AS TO WHETHER

TO APPROVE A TRANSFER THE CITY MAY CONSIDER THE SAME INFORMATION AND QUALIFICATIONS REQUIRED OF AN ORIGINAL APPLICATION FOR A LICENSE OR FRANCHISE; WHETHER THE LICENSEE OR FRANCHISEE IS IN COMPLIANCE WITH ITS LICENSE OR FRANCHISE AND THIS CHAPTER AND, IF NOT, THE PROPOSED TRANSFEREE'S COMMITMENT TO CURE SUCH NONCOMPLIANCE; WHETHER THE TRANSFER WOULD 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 OR FRANCHISE SHALL BE GRANTED UNLESS THE PROPOSED TRANSFEREE AGREES IN WRITING THAT IT WILL ABIDE BY AND ACCEPT ALL TERMS OF THIS CHAPTER AND THE LICENSE OR FRANCHISE, AND THAT IT WILL ASSUME ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITY FOR ALL ACTS AND OMISSIONS, KNOWN AND UNKNOWN, OF THE PREVIOUS LICENSEE OR FRANCHISEE UNDER THIS CHAPTER AND THE LICENSE OR FRANCHISE FOR ALL PURPOSES, INCLUDING RENEWAL. APPROVAL BY THE CITY OF A TRANSFER OF A LICENSE OR FRANCHISE DOES NOT CONSTITUTE A WAIVER OR RELEASE OF ANY OF THE RIGHTS OF THE CITY UNDER THIS CHAPTER OR THE FRANCHISE OR LICENSE, WHETHER ARISING BEFORE OR AFTER THE DATE OF THE TRANSFER.

2. EVERY FRANCHISEE OR LICENSEE SHALL BE SUBJECT TO THE CITY'S EXERCISE OF SUCH POLICE, REGULATORY AND OTHER POWERS AS IT NOW HAS OR MAY LATER OBTAIN, AND A FRANCHISE OR LICENSE MAY NOT WAIVE THE APPLICATION OF THE SAME.

3. EVERY FRANCHISE OR LICENSE SHALL BE SUBJECT TO REVOCATION IF THE FRANCHISEE OR LICENSEE FAILS TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THE LICENSE OR FRANCHISE, OR APPLICABLE FEDERAL, STATE OR LOCAL LAW. PROVIDED, HOWEVER, THAT A FRANCHISE OR LICENSE SHALL NOT BE REVOKED UNLESS THE FRANCHISEE OR LICENSEE IS GIVEN WRITTEN NOTICE OF THE DEFECT IN PERFORMANCE, AND FAILS TO CURE THE PERFORMANCE WITHIN SIXTY DAYS OF THE NOTICE, EXCEPT WHERE THE CITY FINDS THAT THE DEFECT IN PERFORMANCE IS DUE TO INTENTIONAL MISCONDUCT, IS A VIOLATION OF CRIMINAL LAW, OR IS PART OF A PATTERN OF VIOLATIONS WHERE THE FRANCHISEE OR LICENSEE HAS ALREADY HAD NOTICE AND OPPORTUNITY TO CURE. A HEARING SHALL BE HELD BEFORE A LICENSE IS REVOKED IF THE LICENSEE REQUESTS A HEARING.

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 FRANCHISE, OR PURSUANT TO ANY LIQUIDATED DAMAGES PROVISIONS, OR PURSUANT TO AN INDEMNITY CLAUSE.

5. A REQUIREMENT THAT IF THE FRANCHISEE OR LICENSEE FAILS TO PAY AMOUNTS OWED TO THE CITY BY THE TIME PRESCRIBED FOR PAYMENT, THE FRANCHISEE OR LICENSEE SHALL PAY INTEREST ON THE AMOUNTS OWED, AT THE RATE OF ONE PERCENT PER MONTH.

6. A REQUIREMENT THAT FRANCHISEE OR LICENSEE SHALL 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 IN ORDER TO DETERMINE WHETHER LICENSEE OR FRANCHISEE HAS COMPLIED WITH ITS OBLIGATIONS UNDER THE FRANCHISE OR LICENSE, OR OTHER APPLICABLE LAW.

E. A LICENSEE THAT RECEIVES A LICENSE PURSUANT TO THIS CHAPTER MAY APPLY FOR A RENEWAL OF ITS LICENSE, WHICH RENEWAL SHALL BE REVIEWED IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW.

F. THE ISSUANCE OF A LICENSE, PERMIT OR OTHER AUTHORIZATION BY THE CITY IS NOT A REPRESENTATION OR WARRANTY THAT SUCH LICENSE, PERMIT, OR AUTHORIZATION IS A LEGALLY SUFFICIENT SUBSTITUTE FOR A FRANCHISE, AND IS NOT A REPRESENTATION OR WARRANTY THAT A FRANCHISE IS NOT REQUIRED.

**SEC. 5C-6 LICENSE OR FRANCHISE TERMS.**

A. *FRANCHISE ELECTION.* UPON FINDING THAT A FRANCHISE PROPOSAL IS ACCEPTABLE AND IN GOOD ORDER, THE CITY MANAGER SHALL PROMPTLY NOTIFY THE PERSONS SEEKING THE FRANCHISE, AND ADVISE THEM TO PAY A FRANCHISE ELECTION FEE TO THE CITY CLERK WITHIN A SPECIFIED NUMBER OF DAYS IN AN AMOUNT TO BE DETERMINED BY THE CITY CLERK THAT RECOVERS ALL CITY COSTS TO SCHEDULE AND HOLD AN ELECTION. UPON THE CITY CLERK'S RECEIPT OF THE FEE, THE CITY CLERK SHALL SCHEDULE A FRANCHISE ELECTION AT THE NEXT DATE DETERMINED BY THE CITY COUNCIL.

B. *LENGTH OF LICENSE.* ANY LICENSE GRANTED BY THE CITY PURSUANT TO THIS CHAPTER SHALL COMMENCE UPON ADOPTION OF THE LICENSE OR FRANCHISE AND ACCEPTANCE OF THE LICENSE BY THE PROVIDER WITHIN THIRTY DAYS OF THE GRANT. THE LICENSE SHALL BE EFFECTIVE FOR A PERIOD OF TEN YEARS, AND SUBJECT TO THE CONDITIONS AND RESTRICTIONS PROVIDED IN THE LICENSE AND THIS CHAPTER.

C. *LICENSE OR FRANCHISE AGREEMENT.* WIRELESS PROVIDERS MUST EXECUTE A LICENSE OR FRANCHISE AGREEMENT SETTING FORTH ALL TERMS AND PROVISIONS OF THE RELATIONSHIP BETWEEN THE CITY AND THE



PROVIDER REGARDING THE PRESENCE OF WIRELESS FACILITIES WITHIN CITY RIGHTS OF WAY.

D. *NO WARRANTY.* WIRELESS PROVIDERS MAY CHOOSE BETWEEN REQUESTING A LICENSE OR FRANCHISE UNDER THIS CHAPTER. THE CITY MAKES NO WARRANTY OR REPRESENTATION TO PROVIDERS ABOUT WHICH FORM OF AUTHORIZATION MEETS THEIR BUSINESS AND LEGAL NEEDS.

**SEC. 5C-7 RIGHTS OF WAY PERMIT.**

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

**SEC. 5C-8 LOCATION AND RELOCATION OF FACILITIES IN RIGHTS OF WAY.**

A. EACH WIRELESS PROVIDER IS RESPONSIBLE FOR ENSURING THAT ITS FACILITIES ARE INSTALLED, CONSTRUCTED AND MAINTAINED IN STRICT ACCORDANCE WITH THE CITY CODE AND THE CITY'S DESIGN STANDARDS, CONCEPTS & REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY; THAT ALL REQUIRED LICENSES, FRANCHISES AND PERMITS ARE APPLIED FOR AND OBTAINED BEFORE ANY WORK COMMENCES; AND THAT THE TERMS AND CONDITIONS THEREOF ARE STRICTLY FOLLOWED. IF A FACILITY HAS MORE THAN ONE WIRELESS PROVIDER, EACH WIRELESS PROVIDER IS FULLY RESPONSIBLE FOR ENSURING THAT ALL REQUIREMENTS ARE SATISFIED. FACILITIES SHALL 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 OF WAY. WITHOUT LIMITING THE REQUIREMENT OF ANY OTHER PROVISION OF THE CITY CODE, OR THE PROVISIONS OF ANY LICENSE, PERMIT, OR FRANCHISE ISSUED BY THE CITY, THIS SHALL REQUIRE, AT A MINIMUM, COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER.

B. THE FACILITIES TO BE CONSTRUCTED, INSTALLED, OPERATED, AND MAINTAINED BY THE WIRELESS PROVIDER SHALL BE AS LOCATED OR RELOCATED AS TO INTERFERE AS LITTLE AS POSSIBLE WITH TRAFFIC OR OTHER AUTHORIZED USES OVER, UNDER, OR THROUGH THE PUBLIC RIGHTS OF WAY. THOSE PHASES OF CONSTRUCTION RELATING TO TRAFFIC CONTROL, BACKFILLING, COMPACTION, AND PAVING, AS WELL AS THE LOCATION OR RELOCATION OF SAID FACILITIES SHALL BE SUBJECT TO REGULATION BY THE CITY MANAGER, OR HIS DESIGNEE.

C. THE WIRELESS PROVIDER SHALL KEEP ACCURATE INSTALLATION RECORDS OF THE LOCATION OF ALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS 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 OF WAY, THE WIRELESS PROVIDER SHALL PROVIDE THE CITY, IF REQUESTED OR AS REQUIRED, WITH INSTALLATION RECORDS IN A FORMAT COMPATIBLE WITH THE THEN-CURRENT CITY MAPPING FORMAT SHOWING THE LOCATION OF THE UNDERGROUND AND ABOVE GROUND FACILITIES.

D. WHENEVER THE WIRELESS PROVIDER SHALL CAUSE ANY OPENING OR ALTERATION WHATEVER TO BE MADE FOR ANY PURPOSE IN ANY PUBLIC RIGHTS OF WAY, THE WORK SHALL BE COMPLETED WITHIN THE TIME SPECIFIED IN THE LICENSE, PERMIT, OR FRANCHISE, OR IF NO TIME IS SPECIFIED THEN WITHIN A REASONABLE TIME. IN ADDITION, THE WIRELESS PROVIDER SHALL, 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 ITS PERMITS, LICENSES, AND FRANCHISES.

E. THE INSTALLATION, USE, AND MAINTENANCE OF THE WIRELESS PROVIDER'S FACILITIES WITHIN THE PUBLIC RIGHTS OF WAY AUTHORIZED IN THIS CHAPTER SHALL 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 WILL 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 MAY BILL THE WIRELESS PROVIDER THE COSTS THEREFORE AND THE WIRELESS PROVIDER SHALL PAY THOSE COSTS WITHIN THIRTY DAYS AFTER ITS RECEIPT OF THE INVOICE THEREFORE. FURTHER, THE WIRELESS PROVIDER SHALL REIMBURSE THE CITY ANY ADDITIONAL COST THE CITY INCURS DUE TO THE LOCATION OR RELOCATION OF THE PROVIDER'S FACILITIES, INCLUDING ALL DESIGN AND CONSTRUCTION COSTS.

F. THE WIRELESS PROVIDER SHALL NOT INSTALL, MAINTAIN, OR USE ANY OF ITS FACILITIES IN SUCH A MANNER AS TO DAMAGE OR INTERFERE WITH FACILITIES OF ANOTHER LOCATED WITHIN THE PUBLIC RIGHTS OF WAY OF THE CITY.

G. ALL FACILITIES SHALL BE INSTALLED ACCORDING TO PLANS APPROVED BY THE CITY. WIRELESS PROVIDER MAY INSTALL 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 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 PROVIDER INSTALLS FACILITIES ON EXISTING POLES AS PROVIDED HEREIN, THE PROVIDER SHALL BURY ITS FACILITIES WHEN SUCH POLES ARE REMOVED AND NOT REPLACED IN KIND FOR ANY REASON. IF THE PROVIDER MAKES USE OF EXISTING CONDUIT OF ANOTHER PROVIDER, THE PROVIDER SHALL BE SUBJECT TO THE PROVISIONS OF THIS CHAPTER IN THE USE OF SUCH CONDUIT IN THE PUBLIC RIGHTS OF WAY.

H. 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 SHALL COMMENCE UNLESS THESE REQUIREMENTS HAVE BEEN SATISFIED, AND THE CITY MAY REQUIRE THE PROVIDER TO REMOVE OR STOP WORK ON FACILITIES, OR REQUIRE A PROVIDER TO CEASE USING THE FACILITY, WHEN ANY INSURANCE, BONDING, OR SECURITY FUND REQUIREMENTS ARE NOT SATISFIED.

I. A PERMIT SHALL 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. NOTWITHSTANDING THE FOREGOING, THE CITY UNDERSTANDS AND ACKNOWLEDGES THERE MAY BE INSTANCES WHEN A PROVIDER IS REQUIRED TO MAKE REPAIRS, IN COMPLIANCE WITH FEDERAL OR STATE LAWS, THAT ARE OF AN EMERGENCY NATURE. THE PROVIDER WILL NOTIFY THE CITY PRIOR TO SUCH REPAIRS, IF PRACTICABLE, AND WILL OBTAIN THE NECESSARY PERMITS WITHIN 5 BUSINESS DAYS OF NOTIFYING THE CITY.

## **SEC. 5C-9 SMALL WIRELESS FACILITIES AND POLE STRUCTURES.**

A. WIRELESS POLE STRUCTURE TYPES. THE FOLLOWING EIGHT WIRELESS POLE STRUCTURE-TYPES WILL BE PERMITTED IN CITY RIGHTS 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 IS NECESSARY TO THE POLE FOR THE INSTALLATION OF SMALL WIRELESS FACILITIES EQUIPMENT ON THE POLE. NO MODIFICATION TO OR REPLACEMENT OF THE POLE IS

NECESSARY FOR THE INSTALLATION OF 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 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 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 SMALL WIRELESS FACILITIES EQUIPMENT ON THE POLE.

5. POLE-TYPE STRUCTURE #5 – NEW CITY POLE (<50' TALL). A NEW UTILITY POLE THAT IS TO BE INSTALLED IN CITY RIGHT-OF-WAY AND WILL BE OWNED BY THE CITY OF PHOENIX AS PART OF A NEW SMALL WIRELESS FACILITIES INSTALLATION, AND 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 IN CITY RIGHT-OF-WAY AS PART 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.

7. POLE-TYPE STRUCTURE #7 – NEW POLE (>50' TALL). A NEW UTILITY POLE THAT IS TO BE INSTALLED IN CITY RIGHT-OF-WAY AS PART 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, AND WILL BE SUBJECT TO ADDITIONAL RESTRICTIONS AND REVIEW PRIOR TO APPROVAL AND INSTALLATION.

8. POLE-TYPE STRUCTURE #8 – NEW/MODIFIED MONOPOLE. A NEW OR MODIFIED UTILITY MONOPOLE THAT IS TO BE INSTALLED IN CITY RIGHT-OF-WAY AS PART OF A NEW WIRELESS FACILITIES INSTALLATION AND WILL NOT BE OWNED BY THE CITY OF PHOENIX. THE POLE WILL FUNCTION

SOLELY AS A WIRELESS SUPPORT STRUCTURE, AND WILL BE SUBJECT TO ADDITIONAL RESTRICTIONS AND REVIEW PRIOR TO APPROVAL AND INSTALLATION.

B. THE CITY MANAGER, OR HIS DESIGNEE, SHALL FORMULATE AND ADOPT DESIGN STANDARDS, CONCEPTS & REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY. ALL SMALL WIRELESS FACILITIES, INCLUDING ANTENNA AND GROUND-MOUNTED EQUIPMENT, MUST MEET STATE LAW SIZE LIMITATION REQUIREMENTS AS SET FORTH IN A.R.S. §§ 9-591–9-599 AND THE CITY’S DESIGN STANDARDS, CONCEPTS & REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE RIGHT OF WAY.

C. SCREENING OF GROUND-MOUNTED EQUIPMENT. ALL GROUND-MOUNTED EQUIPMENT (EXCLUDING ANY ELECTRICAL SERVICE METER) MUST BE AESTHETICALLY-SCREENED WITH LANDSCAPING, MINIMUM OF 3, 5-GALLON THORN LESS EVERGREEN SHRUBS, OR METAL-FRAMED SCREENING WITH A DECORATIVE, WHICH MAY INCLUDE ART, FINISHED APPEARANCE-COMPATIBLE WITH PRIMARY ADJACENT STRUCTURE(S). GROUND-MOUNTED EQUIPMENT SIZE LIMITATIONS ARE EXCLUSIVE OF ANY SCREENING MATERIALS OR FABRICATION. SCREENING MATERIALS SHALL HAVE A COLOR AND FINISH CONSISTENT AND APPROPRIATE WITH THE ADJACENT AREA.

D. 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.

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. ENSURE ALL REQUIRED AMERICANS WITH DISABILITIES ACT (ADA) ROUTES ARE MAINTAINED AND SMOOTH FLOW OF PEDESTRIANS CAN OCCUR;
3. AT THE TIME OF INSTALLATION, MAINTAIN A MINIMUM 20 FOOT DISTANCE FROM EXISTING FIRE HYDRANTS, EXISTING DRIVEWAYS, AND

VISIBILITY TRIANGLES FOR NEW POLES AND GROUND MOUNTED EQUIPMENT ONLY;

4. HAVE NO IMPACT TO EXISTING TREES IN THE RIGHT OF WAY AND PERFORM LIKE-FOR-LIKE REPLACEMENT OF ANY OTHER LANDSCAPING OR IRRIGATION SYSTEM DAMAGED BY THE INSTALLATION;

5. 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;

6. AT THE TIME OF INSTALLATION, MAINTAIN A MINIMUM 25 FOOT DISTANCE FROM THE PRIMARY DOORWAY OF BUSINESSES OR RESIDENCES MEASURED FROM THE OUTER DOOR FRAME AND A MINIMUM 10 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;

7. CREATE NO BLOCKAGE OR OBSTRUCTION OF EXISTING ROADWAY, COMMERCIAL, OR RESIDENTIAL SIGNAGE;

8. HAVE A COLOR AND FINISH CONSISTENT AND APPROPRIATE WITH OTHER SIMILAR POLES IN THE ADJACENT AREA;

9. HAVE ALL WIRES INTERNAL TO THE POLE OR GROUND-MOUNTED EQUIPMENT; AND

10. MUST BE MAINTAINED IN A GOOD AND SAFE CONDITION, INCLUDING BEING 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 AT THE SERVICE PROVIDER'S SOLE EXPENSE AND COST WITHIN 48 HOURS AFTER NOTICE FROM THE CITY.

F. ALL SMALL WIRELESS FACILITY INSTALLATIONS PROPOSED IN SPECIAL OVERLAY OR HISTORIC DISTRICTS WILL BE SUBJECT TO ADDITIONAL REVIEW, WITHIN STATE LAW-MANDATED REVIEW TIMES, AND BE REQUIRED TO COMPLY WITH APPLICABLE AND APPROPRIATE DESIGN GUIDELINES.

G. 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 BE USED FOR A SMALL WIRELESS FACILITY INSTALLATION.

H. TO THE EXTENT POSSIBLE, ALL NEW WIRELESS POLE STRUCTURES IN THE RIGHT-OF-WAY WILL BE REQUIRED TO HAVE A DUAL PURPOSE AS A STREET LIGHT OR TRAFFIC SIGNAL POLE, UNLESS OTHERWISE APPROVED BY THE CITY.

I. 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/SIDEWALKS, AND MAY BE REQUIRED TO INCORPORATE ART INTO ANY STRUCTURED SHADE ELEMENT, AS APPROVED BY THE CITY.

J. 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 SMALL WIRELESS FACILITY MUST BE REVIEWED BY AND COORDINATED WITH BOTH THE CITY AND THE WIRELESS PROVIDER WITH THE EXISTING INSTALLATION ON THE POLE.

K. THIRD-PARTY SAFETY AND BEST PRACTICES TRAINING AND EQUIPMENT FOR CITY STAFF. EACH WIRELESS PROVIDER WILL BE REQUIRED TO CONTRIBUTE \$3,000 ANNUALLY TO THE CITY FOR THIRD-PARTY TRAINING FOCUSED ON SAFETY AND BEST PRACTICES WORKING AROUND SMALL WIRELESS FACILITIES SPECIFICALLY FOR CITY MAINTENANCE STAFF. THE FUNDS MAY ALSO BE USED FOR THE PURCHASE AND CALIBRATION OF RADIO FREQUENCY (RF) MONITORING EQUIPMENT FOR USE BY CITY STAFF WORKING AROUND SMALL WIRELESS FACILITY INSTALLATIONS.

L. DE-ENERGIZING SMALL WIRELESS FACILITIES FOR POLE MAINTENANCE BY CITY STAFF. ALL SMALL WIRELESS FACILITIES MOUNTED ON A CITY POLE OR ANY WIRELESS SUPPORT STRUCTURE WITH A SMALL WIRELESS FACILITY LOCATED WITHIN 25 FEET OF A CITY POLE WILL BE REQUIRED TO BE EQUIPPED WITH A DEACTIVATION SWITCH FOR BOTH PRIMARY AND BACKUP POWER ACCESSIBLE TO CITY STAFF TO DE-ENERGIZE THE FACILITY FOR CITY STAFF REPAIR/MAINTENANCE PURPOSES.

M. THE CITY MAY STOP ACCEPTING APPLICATIONS FOR NEW WIRELESS FACILITIES FROM A WIRELESS PROVIDER, IF THAT WIRELESS PROVIDER IS NOT IN GOOD STANDING WITH ITS EXISTING AGREEMENTS WITH THE CITY. ONCE ANY DEFICIENCIES ARE CURED, THE CITY WILL RESUME ACCEPTANCE OF NEW WIRELESS FACILITIES APPLICATIONS FROM THAT WIRELESS PROVIDER.

N. NOISE RESTRICTIONS. THE AVERAGE NOISE LEVEL OF SMALL WIRELESS FACILITIES, INCLUDING ANTENNA AND GROUND-MOUNTED EQUIPMENT, MEASURED AT ANY PROPERTY LINE THAT IS ZONED OR USED FOR RESIDENTIAL PURPOSES MUST NOT EXCEED 55 DB WHEN MEASURED ON AN

"A WEIGHTED" SOUND LEVEL METER AND ACCORDING TO 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, ACCORDING TO THE PROCEDURES OF THE ENVIRONMENTAL PROTECTION AGENCY.

O. SPACING FROM BUILDING WINDOWS OR BALCONIES. ANTENNA EQUIPMENT MUST BE AT LEAST 25 FEET FROM THE WINDOWS OR BALCONIES OF ANY OCCUPIED DWELLING OR STRUCTURE.

P. NEW OR MODIFIED MONOPOLES OR POLES GREATER THAN 50 FEET IN HEIGHT WILL BE REQUIRED TO COMPLY WITH THE CITY'S ZONING REQUIREMENTS FOR MONOPOLES AT THE PROPOSED LOCATION(S) PRIOR TO THE SUBMITTAL OF ANY APPLICATION FOR INSTALLATION IN THE RIGHT OF WAY OF THE POLE(S) AND RELATED EQUIPMENT

#### **SEC. 5C-10 PUBLIC NOTIFICATION.**

FOR ANY NEW SMALL WIRELESS FACILITIES INSTALLATIONS, NEW OR MODIFIED POLES, AND NEW OR MODIFIED MONOPOLES, THE WIRELESS PROVIDER WILL BE REQUIRED TO PROVIDE ADVANCED PRE-CONSTRUCTION NOTIFICATION NO LATER THAN TEN CALENDAR DAYS PRIOR TO THE START OF CONSTRUCTION ACTIVITIES TO POTENTIALLY IMPACTED PROPERTY OWNERS WITHIN 300 FEET OF THE INSTALLATION. THE WIRELESS PROVIDER MAY ACCOMPLISH SUCH 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 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.

#### **SEC. 5C-10 FEE STRUCTURE.**

A. FEE STRUCTURE. THE FOLLOWING FEE STRUCTURE WILL BE ESTABLISHED TO GOVERN THE APPLICATION, PERMITTING, INSPECTION, AND ACCEPTANCE OF SMALL WIRELESS FACILITIES AND WIRELESS MONOPOLES IN CITY RIGHTS OF WAY; THE USE OF CITY RIGHTS OF WAY BY WIRELESS PROVIDERS FOR SMALL WIRELESS FACILITIES 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.



<u>RATE / FEE TYPE</u>	<u>RATE / FEE DESCRIPTION</u>	<u>RATE / FEE</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
POLE TYPE-STRUCTURE #7: NEW POLE (>50' TALL)	PER SITE	\$ 1,000
POLE TYPE-STRUCTURE #8: NEW/MODIFIED MONOPOLE	PER SITE	\$ 1,000
<b>SPECIAL REVIEW FEE</b>		
DOWNTOWN URBAN / REINVENT PHOENIX AREA REVIEW FEE	PER SITE	\$ 750
HISTORIC PRESERVATION/DISTRICT REVIEW FEE	PER SITE	\$ 750
<b>INSPECTION FEE</b>		<b>HOURLY RATE OF \$150 AN HOUR FOR STAFF TIME UP TO A MAXIMUM OF:</b>
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE	\$1,500
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE	\$ 1,500
POLE TYPE-STRUCTURE #3:	PER SITE	\$ 3,000

EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)		
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 3,000
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE	\$ 4,000
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE	\$ 4,000
POLE TYPE-STRUCTURE #7: NEW POLE (>50' TALL)	PER SITE	\$ 5,000
POLE TYPE-STRUCTURE #8: NEW/MODIFIED MONOPOLE	PER SITE	\$ 5,000
ONE TIME PERMIT EXTENSION FEE (FOR AN ADDITIONAL 180 DAYS)	PER SITE	\$ 200
<b>RIGHT OF WAY USE RATE</b>		
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE	\$ 50 PER YEAR
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE	\$ 100 PER YEAR
POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 50 PER YEAR
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 100 PER YEAR
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE	\$ 100 PER YEAR
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE	\$ 50 PER YEAR
POLE TYPE-STRUCTURE #7: NEW POLE (>50' TALL)	PER SITE	\$ 5,000 PER YEAR
POLE TYPE-STRUCTURE #8: NEW/MODIFIED MONOPOLE	PER SITE	\$ 10,000 PER YEAR
<b>AGREEMENT RENEWAL FEE</b>		
POLE TYPE-STRUCTURE #1: EXISTING NON-CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE	\$ 800
POLE TYPE-STRUCTURE #2: EXISTING CITY POLE (NO MODIFICATION OR REPLACEMENT)	PER SITE	\$ 800

POLE TYPE-STRUCTURE #3: EXISTING NON-CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 1,600
POLE TYPE STRUCTURE #4: EXISTING CITY POLE (MODIFICATION OR REPLACEMENT REQUIRED)	PER SITE	\$ 1,600
POLE TYPE-STRUCTURE #5: NEW CITY POLE (<50' TALL)	PER SITE	\$ 2,000
POLE TYPE-STRUCTURE #6: NEW NON-CITY POLE (<50' TALL)	PER SITE	\$ 2,000
POLE TYPE-STRUCTURE #7: NEW POLE (>50' TALL)	PER SITE	\$ 5,000
POLE TYPE-STRUCTURE #8: NEW/MODIFIED MONOPOLE	PER SITE	\$ 5,000

B. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE OBLIGATION OF ANY PERSON TO PAY AMOUNTS OWED UNDER ANY 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-11 CONFLICT WITH CITY PROJECTS.**

A. IF, DURING THE DESIGN PROCESS FOR PUBLIC IMPROVEMENTS, THE CITY DISCOVERS A POTENTIAL CONFLICT WITH PROPOSED CONSTRUCTION, THE PROVIDER SHALL EITHER:

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

THE CITY WILL MAKE REASONABLE EFFORTS TO DESIGN AND CONSTRUCT PROJECTS PURSUANT TO THIS SUBSECTION (A) SO AS TO AVOID RELOCATION EXPENSE TO THE PROVIDER. PROVIDER SHALL 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 REQUEST.

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 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 CONSTRUCTION WITHIN THE RIGHTS OF WAY OF THE CITY.

C. WHEN THE CITY INVOKES ITS PRIOR SUPERIOR RIGHT TO THE RIGHTS OF WAY, THE PROVIDER SHALL MOVE ITS FACILITIES LOCATED IN THE RIGHTS OF WAY, AT ITS OWN COST, TO SUCH A LOCATION AS THE CITY DIRECTS.

D. IF, DURING THE COURSE OF A PROJECT, THE CITY DETERMINES PROVIDER'S FACILITIES ARE IN CONFLICT, THE FOLLOWING SHALL APPLY:

1. PRIOR TO CITY NOTICE TO PROCEED TO CONTRACTOR: THE PROVIDER SHALL, WITHIN A REASONABLE TIME, BUT IN NO EVENT EXCEEDING ONE MONTH, REMOVE OR RELOCATE THE CONFLICTING FACILITY. THIS TIME PERIOD SHALL BEGIN RUNNING UPON RECEIPT BY THE PROVIDER OF WRITTEN NOTICE FROM THE CITY. HOWEVER, IF BOTH THE CITY AND THE PROVIDER AGREE, THE TIMEFRAME MAY BE EXTENDED BASED ON THE REQUIREMENTS OF THE PROJECT.

2. SUBSEQUENT TO CITY NOTICE TO PROCEED TO CONTRACTOR: THE CITY AND THE PROVIDER WILL IMMEDIATELY BEGIN THE COORDINATION NECESSARY TO REMOVE OR RELOCATE THE FACILITY. ACTUAL CONSTRUCTION OF SUCH REMOVAL OR RELOCATION IS TO BEGIN NO LATER THAN SEVENTY-TWO HOURS, IF PRACTICABLE, AFTER WRITTEN NOTIFICATION FROM THE CITY OF THE CONFLICT.

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

A. IF, IN THE INSTALLATION, USE, OR MAINTENANCE OF ITS FACILITIES, THE PROVIDER DAMAGES OR DISTURBS THE SURFACE OR SUBSURFACE OF ANY RIGHTS OF WAY OR ADJOINING PUBLIC PROPERTY, OR THE PUBLIC IMPROVEMENT LOCATED THEREON, THEREIN, OR THEREUNDER, THE PROVIDER SHALL PROMPTLY, AT ITS OWN EXPENSE, AND IN A MANNER ACCEPTABLE TO THE CITY, RESTORE THE SURFACE OR SUBSURFACE OF THE RIGHTS OF WAY OR PUBLIC PROPERTY, OR REPAIR OR REPLACE THE PUBLIC IMPROVEMENT THEREON, THEREIN, OR THEREUNDER, IN AS GOOD A CONDITION AS BEFORE SUCH DAMAGE OR DISTURBANCE. IF SUCH RESTORATION, REPAIR, OR REPLACEMENT OF THE SURFACE, SUBSURFACE, OR ANY STRUCTURE LOCATED THEREON, THEREIN, OR THEREUNDER IS NOT COMPLETED WITHIN A REASONABLE TIME, OR SUCH REPAIR OR REPLACEMENT DOES NOT MEET DULY ADOPTED STANDARDS, THE CITY SHALL HAVE THE RIGHT TO PERFORM THE NECESSARY RESTORATION, REPAIR, OR REPLACEMENT, EITHER THROUGH ITS OWN FORCES, OR THROUGH A HIRED CONTRACTOR. THE PROVIDER SHALL PAY THE CITY FOR ITS EXPENSES IN SO DOING WITHIN THIRTY DAYS AFTER ITS 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 SHALL NOT BEAR ANY COST OF RELOCATING EXISTING FACILITIES, IRRESPECTIVE OF THE FUNCTION SERVED, WHERE CITY FACILITIES OR OTHER FACILITIES OCCUPYING THE RIGHTS 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 CONFLICT BETWEEN THE 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.

C. IF THE PROVIDER SHOULD DISPUTE THE AMOUNT OF DAMAGES ATTRIBUTABLE TO THE PROVIDER, OR THE CONSTRUCTION PERMIT FEE AND OTHER FEES PAYABLE BY PROVIDER PURSUANT TO THIS CHAPTER, THE MATTER SHALL BE REFERRED TO THE DISPUTE RESOLUTION BOARD. THE DISPUTE RESOLUTION BOARD SHALL CONSIST OF ONE MEMBER SELECTED BY THE CITY, ONE MEMBER SELECTED BY THE PROVIDER, AND A THIRD PERSON AGREED UPON BY BOTH PARTIES. THE PERSON AGREED UPON BY BOTH PARTIES SHALL BE CHAIRPERSON OF THE DISPUTE RESOLUTION BOARD. EXPENSES FOR THE DISPUTE RESOLUTION BOARD SHALL BE SHARED EQUALLY BY THE CITY AND THE PROVIDER. THE BOARD WILL HEAR THE DISPUTE PROMPTLY, AND RENDER AN OPINION AS SOON AS POSSIBLE, BUT IN NO CASE LATER THAN SIXTY DAYS AFTER NOTIFICATION BY THE CITY OF PROVIDER'S ALLOCATED SHARE OF DAMAGES SUFFERED BY THE CITY. 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 PROVIDER SHALL ACCEPT OR REJECT FINDINGS OF THE DISPUTE RESOLUTION BOARD WITHIN THIRTY DAYS AFTER RECEIPT OF THE FINDINGS. IF DAMAGES ARE ASSESSED BY THE DISPUTE RESOLUTION BOARD, THE PROVIDER SHALL PAY THE CITY WITHIN THIRTY DAYS OF RECEIPT OF AN INVOICE. LATE CHARGES OF FIVE PERCENT AND INTEREST CHARGES OF ONE AND ONE-HALF PERCENT PER MONTH SHALL BE ADDED FOR LATE PAYMENT.

D. EXCEPT AS OTHERWISE PROVIDED IN A LICENSE, FRANCHISE, OR PERMIT, OR BY OTHER PROVISION OF LAW, THE ENTIRE COST OF RELOCATION SHALL BE BORNE BY THE CITY IF THE PROVIDER IS REQUIRED BY THE CITY TO RELOCATE FACILITIES WHICH ARE LOCATED IN PRIVATE EASEMENTS OBTAINED BY THE PROVIDER PRIOR TO THE DEDICATION OF THE PUBLIC STREET OR EASEMENT FROM WHICH THE FACILITIES MUST BE RELOCATED. THESE PRIOR RIGHTS OF THE PROVIDER WOULD ALSO BE UNAFFECTED BY ANY SUBSEQUENT RELOCATION. A PRIOR RIGHT AS USED IN THIS SUBSECTION, MEANS PRIVATE EASEMENT RIGHTS OBTAINED BY THE 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.

#### **ARTICLE IV. GENERAL PROVISIONS.**

##### **SEC. 5C-14 RIGHTS RESERVED TO CITY.**

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

1. TO EXERCISE ITS GOVERNMENTAL POWERS NOW OR HEREAFTER TO THE FULL EXTENT THAT SUCH POWERS MAY BE VESTED IN OR GRANTED TO THE CITY.
2. 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.
3. TO GRANT MULTIPLE, NONEXCLUSIVE LICENSES, FRANCHISES, LICENSES, OR PERMITS WITHIN THE CITY TO OTHER PERSONS.

##### **SEC. 5C-15 CITY POLICE POWER; CONTINUING JURISDICTION.**

A. THE 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 SHALL APPLY.

B. THE CITY SHALL HAVE 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 SHALL 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.

**SEC. 5C-16 DEFAULT; LIQUIDATED DAMAGES.**

A. AUTHORITY AND ADMINISTRATION. THE CITY MANAGER IS AUTHORIZED TO ISSUE NOTICES OF DEFAULT FOR A BREACH OF PERMIT OR MASTER LICENSE AGREEMENT TERMS AND CONDITIONS AS AUTHORIZED BY THIS CHAPTER AND MAY TAKE THOSE MEASURES NECESSARY TO PROMOTE, PRESERVE, AND PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE WITHIN THE PUBLIC RIGHT-OF-WAY.

B. LIQUIDATED DAMAGES. PROVIDER ACKNOWLEDGES AND AGREES THAT THE REQUIREMENTS IN THIS SECTION ARE NECESSARY TO PRESERVE AND PROTECT PUBLIC HEALTH, SAFETY AND WELFARE. ACCORDINGLY, PROVIDER AGREES TO PROPERLY CURE ANY DEFAULT AS PROVIDED UNDER THIS SECTION WITHIN TWO BUSINESS DAYS FROM THE DATE NOTICE OF DEFAULT IS SENT BY THE CITY. THE PARTIES AGREE THAT PROVIDER'S FAILURE TO PROPERLY CURE ANY DEFAULT UNDER THIS SECTION SHALL CONSTITUTE A BREACH OF THE TERMS AND CONDITIONS OF A PERMIT OR AGREEMENT ISSUED UNDER THIS CHAPTER. IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO THE CITY AT LAW OR IN EQUITY, PROVIDER SHALL BE LIABLE FOR AND SHALL PAY TO CITY THE SUMS LISTED BELOW FOR EACH BREACH BY PROVIDER. THE PARTIES FURTHER AGREE THE SUMS FIXED BELOW ARE REASONABLE AND APPROXIMATE THE ACTUAL OR ANTICIPATED LOSS TO THE CITY AT THE TIME AND MAKING OF THIS AGREEMENT FOR PROVIDER'S BREACH. FURTHER, THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE TO THE FIXED SUMS SET FORTH BELOW BECAUSE OF THE DIFFICULTY OF PROVING THE CITY'S ACTUAL DAMAGES FOR PROVIDER'S BREACH OF THE TERMS AND CONDITIONS OF A PERMIT OR AGREEMENT ISSUED UNDER THIS CHAPTER. THE PARTIES FURTHER AGREE THAT THREE (3) BREACHES BY PROVIDER UNDER THIS SECTION ARISING OUT OF ANY DEFAULT WITHIN A CONSECUTIVE PERIOD OF THREE (3) MONTHS OR THREE (3) BREACHES BY PROVIDER UNDER THIS SECTION ARISING OUT OF THE SAME DEFAULT WITHIN A PERIOD OF TWELVE (12) CONSECUTIVE MONTHS SHALL CONSTITUTE A MATERIAL BREACH OF THE AGREEMENT BY PROVIDER AND THE CITY EXPRESSLY RESERVES ALL OF ITS RIGHTS, REMEDIES, AND INTERESTS UNDER THIS AGREEMENT, AT LAW AND IN EQUITY INCLUDING, BUT NOT LIMITED TO TERMINATION OF ANY PERMIT OR LICENSE AGREEMENT.

LIQUIDATED DAMAGE PER DAY	DEFAULT DESCRIPTION
\$25,000	ACT, ERROR, OR OMISSION BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS THAT CREATES AN IMMINENT RISK OF DEATH, HARM, OR INJURY TO PERSON OR PROPERTY.
\$5,000	FALSE, INCOMPLETE, MISTAKEN, MISLEADING, OR INACCURATE INFORMATION OR CERTIFICATION BY PROVIDER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS TO OBTAIN A PERMIT OR AGREEMENT.
\$2,500	FAILURE BY PROVIDER, ITS AGENTS, EMPLOYEES OR CONTRACTORS TO OBTAIN REQUIRED AUTHORIZATION FROM ALL UTILITIES, GOVERNMENTS, ASSOCIATIONS, TRIBAL NATIONS, AND AGENCIES AS REPRESENTED BY PROVIDER.
\$1,000	RESTRICTION OF RIGHT-OF-WAY WITHOUT PROPER RIGHT-OF-WAY TEMPORARY USE PERMIT.
\$1,000	WIRELESS FACILITIES EXCEED AUTHORIZED NOISE LEVELS.
\$1,000	FAILURE TO COMPLY WITH FEDERAL, STATE, OR LOCAL LAWS.
\$1,000	FAILURE TO CORRECT OR CURE A DEFAULT AS LISTED IN THIS SCHEDULE WITHIN THE TIME PERIOD STATED ON THE CURE NOTICE.
\$1,000	FAILURE TO REMOVE FACILITIES FROM SIGHT VISIBILITY TRIANGLE UPON NOTICE.
\$500	FAILURE TO RESTORE OR REPLACE IN-KIND CONCEALMENT STRUCTURES, LANDSCAPING.
\$500	FAILURE TO PROVIDE EMERGENCY SERVICES WITHIN ONE HOUR AFTER NOTICE.
\$250	FAILURE TO REMOVE GRAFFITI WITHIN 48 HOURS AFTER NOTICE.
\$250	FAILURE TO PROPERLY IDENTIFY WIRELESS FACILITIES AS REQUIRED.

C. PERMIT SUSPENSION. IN ADDITION TO OR IN PLACE OF THESE LIQUIDATED DAMAGES, THE CITY MAY SUSPEND FOR FIVE BUSINESS DAYS THE SUBJECT AGREEMENT OR PERMIT.

D. FOR CONTINUING DEFAULTS WITHIN A TWENTY-FOUR HOUR PERIOD, EACH CALENDAR DAY SHALL BE CONSIDERED A SEPARATE PERIOD FOR PURPOSES OF RECOVERY OF LIQUIDATED DAMAGES.



E. PAYMENT OF LIQUIDATED DAMAGES. A PROVIDER RECEIVING A NOTICE OF LIQUIDATED DAMAGES SHALL MAKE PAYMENT TO THE CITY OF PHOENIX WITHIN THIRTY BUSINESS DAYS OF THE NOTICE OF LIQUIDATED DAMAGES OR PARTICIPATE IN THE DISPUTE RESOLUTION PROCESS PURSUANT TO SECTION \_\_\_\_\_.

F. FAILURE TO PAY OR DISPUTE LIQUIDATED DAMAGES. FAILURE TO PAY OR DISPUTE THE LIQUIDATED DAMAGES AS PROVIDED HEREIN SHALL RESULT IN THE AUTOMATIC TERMINATION OF THE SUBJECT FACILITIES PERMIT, AND ANY SUCH PROVIDER SHALL BE PROHIBITED FROM OBTAINING ADDITIONAL FACILITY PERMITS UNTIL ALL OUTSTANDING LIQUIDATED DAMAGES HAVE BEEN RESOLVED OR PAID IN FULL.

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