

CITY COUNCIL REPORT

DATE: December 13, 2017

TO: Mayor and Councilmembers

FROM: Mark Landsiedel, Community Development Director  
Rick Barrett, City Engineer

CC: Josh Copley, Shane Dille, Leadership Team

SUBJECT: Wireless Facilities in Public Rights-of-Way - A.R.S. § 9-591 et seq.

City Council asked staff to provide information regarding a new law, A.R.S. § 9-591 et seq. that allows wireless communications providers to install wireless facilities in local public rights-of-way. This new law does not apply to state and federal roads (e.g. Milton Road/Highway 89, Route 66, and Highway 180).

The new law is effective February 9, 2018. Enclosed is a publication that summarizes the new law, and includes answers to frequently asked questions. See “Legislative Implementation Guidelines” dated August 2017, prepared by the League of Arizona Cities and Towns. Also enclosed is the Arizona State Legislature’s Senate Fact sheet for the H.B. 2635. If you have additional more specific questions about the new law, please let us know, because we would like to answer your questions at the upcoming public meetings.

The new law allows installation of:

- Any “new, replacement or modified utility pole” that is “associated with the collocation of small wireless facilities” (specific equipment) in the right-of-way, *without* zoning review or approval so long as:
  - The utility pole does not exceed 10 feet above the tallest existing utility pole located within 500 feet and does not exceed 50 feet in height, or the pole does not exceed 40 feet in height.
  
- Any “new small wireless facilities collocated on a utility pole or wireless support structure in the right-of-way”, *without* zoning review or approval so long as:
  - The facilities (such as antennas) do not extend more than 10 feet above the utility pole or structure.

- Monopoles (taller than 50 feet) and related equipment in the City public rights-of-way, *subject to* existing zoning requirements and design standards.

The City will be amending its licensing and engineering standards to regulate the facilities in compliance with the new law (above). City zoning does not extend to public right-of-way. However, per the new law, the City may require the facilities to comply with applicable codes (such as building codes); regulations to protect public safety (including compliance with federal radio frequency emissions standards); objective design standards; reasonable stealth and concealment requirements; and reasonable spacing requirements related to the location of ground-mounted equipment.

City staff anticipates that most wireless providers will seek collocation on a utility pole (such as a street light or traffic signal pole, or an APS pole). City staff anticipates that any collocation on a street light or traffic signal pole will require a replacement pole, and certified by a third party engineer for structural integrity.

The new law also requires the City to:

- Adopt fees by February 9, 2018 or within 3 months after a wireless communications provider has submitted a request to locate its facilities in the public rights-of-way, whichever is later, limited to the following:
  - ~ Small wireless facility – Application fee up to \$750; Annual use fee of \$50;
  - ~ Monopole – Application fee up to \$1,000; Annual use fee that does not exceed “the direct and actual costs of managing the public rights-of-way.”

City staff anticipates the following schedule:

- December 1, 2017 – post notice of proposed fees on website at least 60 days prior to consideration.
- January 16, 2018 – Council Discussion regarding new law and consideration of adopting an ordinance to implement new law (first reading);
- February 6, 2018 – final reading of an ordinance, and adoption of resolution establishing fees per law.
- March 6, 2018 – anticipated effective date of ordinance and resolution.

Valley cities have been meeting on a regular basis to prepare standardized forms for applications, design standards, and licensing for use of public rights-of-way. These forms have been reviewed by many of the standard companies that will benefit from the new law, e.g. Verizon, Sprint, CenturyLink, Mobilitie, and cable operators such as CoxCom, Inc and Suddenlink.

City staff is preparing similar City application and licensing forms.

RECOMMENDATION//CONCLUSION

This report is for information only.

Enclosures:

Legislative Implementation Guidelines

Senate Fact Sheet

S:\Legal\Civil Matters\2017\2017-150 HB2365 Wireless Facilities in ROW\CCR new law chap 124 12-11-17.doc



**ARIZONA STATE SENATE**  
*Fifty-Third Legislature, First Regular Session*

**FINAL AMENDED**  
FACT SHEET FOR H.B. 2365

wireless providers; use of rights-of-way  
(NOW: wireless facilities; rights-of-way)

Purpose

Allows wireless providers to collocate small wireless facilities and install, modify, replace and operate utility poles in rights-of-way. Establishes maximum fees, rates and time frames for city, town and county applications. Provides exemptions to zoning requirements.

Background

The legislative body of any municipality may adopt zoning regulations in order to conserve public health, safety and general welfare. Pursuant to [A.R.S. § 9-462.01](#), a municipality may regulate: a) signs and billboards; b) the use of buildings, structures and land; and c) the size and location of buildings and structures. A municipality may also require, as a condition of rezoning, public dedication of rights-of-way as streets, alleys, public ways, drainage and public utilities. Municipalities are required to hold a public hearing on any zoning ordinance ([A.R.S. § 9-462.04](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

***Rights-Of-Way Access***

1. Requires cities, towns, special districts or political subdivisions (*authorities*) and counties to establish rates, fees and terms for the installation, modification, replacement and operation of utility poles and collocation of wireless and small wireless facilities in rights-of-way.
2. Requires authorities to adopt rates, fees and terms six months from the general effective date or three months after receiving a request from a provider, whichever is later.
3. Requires rates or fees to be competitively neutral and limited to the actual cost of managing the right-of-way.
4. Prohibits rates or fees that:
  - a) result in double recovery;
  - b) are unreasonable or discriminatory; or
  - c) are based on revenue or customer counts, including franchise fees.

5. Prohibits an authority or county from charging a wireless provider for use of a right-of-way if it does not charge other communications service providers and utilities for use.
6. Prohibits terms that:
  - a) impose minimum separation distances;
  - b) require multiple antenna systems on a single utility pole;
  - c) require placement on a specific utility pole or category of poles; or
  - d) are unreasonable or discriminatory.
7. Prohibits structures and facilities from:
  - a) obstructing, endangering or hindering usual traffic or public safety activity;
  - b) damaging or interfering with any other utility facilities or use; or
  - c) failing to comply with the National Electrical Safety code and other applicable regulations for the protection of underground and overhead utility facilities.
8. Requires terms to remain valid until terminated by the wireless provider or agreed upon end date.
9. Allows a wireless provider to negotiate different or additional terms.
10. Requires projects to be completed within 180 days after permit issuance, unless:
  - a) delay results from a lack of commercial power at the site; or
  - b) the provider and authority or county agree to an extension.
11. Authorizes approved applicants to undertake the requested deployment, operate the facility for at least 10 years and obtain renewals of equivalent duration.
12. Allows an authority to require a wireless provider to repair all damage to an authority's property and right-of-way and, if the provider fails to make the repairs within a reasonable time, recover costs of repairs performed by the authority.
13. Requires an authority relocating a utility pole, monopole or wireless support structure to relocate wireless facilities at no cost.
14. Prohibits an authority or county from entering into exclusive right-of-way agreements for the operation of utility poles or monopoles or collocation of wireless or small wireless facilities.
15. Designates documents regarding rates, fees and terms as public records.
16. Refers disputes to a court of competent jurisdiction.
17. Exempts, from collocation provisions, private easements and authorities within 10 miles of the Mexican border that are negotiating or implementing a contract supporting national security objectives by July 1, 2018.
18. Allows special taxing districts, investor-owned electric utilities and electric cooperatives to deny, limit, restrict or determine attachment conditions.

19. Stipulates that bill provisions do not relieve a wireless provider from any requirement to obtain a franchise or other permission to provide communication service or operate other facilities in a right-of-way.

***Small Wireless Facilities***

20. Defines a *small wireless facility* as a wireless facility that meets both of the following qualifications:
- a) all antennas are located inside an enclosure of not more than six cubic feet in volume or, if the antenna is exposed, all elements must be able to fit in an imaginary enclosure of not more than six cubic feet in volume; and
  - b) all other equipment, excluding ancillary equipment, is not more than 28 cubic feet in volume or 50 cubic feet in volume if ground mounted before the general effective date.
21. Defines *collocation* as installing, mounting, maintaining, modifying, operating or replacing wireless facilities on, within or adjacent to a wireless support structure or utility pole.
22. Exempts collocation of small wireless facilities from zoning review or approval.
23. Allows an applicant seeking to collocate multiple small wireless facilities within a single authority's jurisdiction to file a consolidated application for up to 25 small wireless facilities if the collocations are substantially similar.
24. Allows an authority to remove specific collocations from a consolidated application for separate treatment or denial.
25. Caps authority application fees at \$100 for each of the first five facilities and \$50 for each additional facility included in a consolidated application.
26. Prohibits an authority application fee from including third-party rates, fees or travel expenses.
27. Caps authority annual rates for small wireless facilities at \$50.
28. Requires an authority, within 20 days of receipt, to notify the applicant if the application is incomplete, including identification of any missing information.
29. Requires an authority to approve or deny the application within 75 days or the application is automatically approved.
30. Requires an authority to grant approval unless the application does not meet regulations concerning public safety, design standards, concealment requirements or spacing requirements for ground-mounted equipment in a right-of-way.
31. Allows an authority to condition approval upon replacement of a utility pole or wireless support structure.

32. Requires an authority to document the basis for a denied application, accept a resubmitted application at no additional cost within 30 days and act on the resubmission within 30 days.
33. Prohibits an authority from denying a resubmitted application for a deficiency not cited in the original denial.
34. Prohibits an authority from otherwise prohibiting, regulating or charging for collocation of small wireless facilities.
35. Prohibits an authority or county from:
  - a) requiring an applicant to perform unrelated services, including in-kind contributions and reservation of pole space;
  - b) requiring more information than is required of other communications service providers attaching facilities to structures;
  - c) instituting a filing, processing or issuing moratorium; or
  - d) requiring an application for routine maintenance or replacement of small wireless facilities with new facilities that are substantially similar.
36. Prohibits collocation on privately owned property, utility poles and support structures without consent of the private property owner.
37. Exempts, from authority and county jurisdiction, small wireless facilities in an interior structure or on a campus, stadium or athletic facility that is not owned by the authority, unless enforcing compliance with applicable codes.
38. Prohibits the state, an authority or county from requiring small wireless facility deployments or regulating wireless services.

#### *Utility Poles*

39. Defines *utility pole* as a pole or similar structure used for communication services, electric distribution, lighting or traffic signals, not including a monopole.
40. Exempts, from authority zoning review, a new, replacement or modified utility pole that is:
  - a) 40 feet or less above ground level; or
  - b) 10 feet or less above a utility pole, in place as of the general effective date, within 500 feet of the new, replaced or modified utility pole, but not more than 50 feet above ground level.
41. Allows an authority to require an application for the installation of new, replacement or modified utility poles associated with the collocation of a small wireless facility.
42. Caps authority utility pole application fees at \$750.
43. Requires an authority to approve an application unless the utility pole fails to comply with:
  - a) applicable codes;
  - b) local regulations concerning public safety, objective design standards, reasonable concealment requirements or underground requirements;

- c) design standards imposed by a contract between an authority and a private property owner;  
or
- d) reasonable spacing requirements.

#### ***Authority Utility Poles***

- 44. Defines *authority utility pole* as a utility pole that is owned or operated by an authority that is in a right-of-way, not including an electric distribution utility pole.
- 45. Allows an authority to prohibit, regulate and charge for the collocation of a wireless facility on a support structure owned by the authority.
- 46. Caps applications fees for collocation of small wireless facilities on authority utility poles at \$100.
- 47. Caps rates for collocation of small wireless facilities on authority utility poles at \$50.
- 48. Allows an authority to require replacement of the authority pole by the wireless provider and retain authority ownership of the pole.
- 49. Requires wireless facility terms for collocation to reasonably accommodate power supply and electric metering.
- 50. Prohibits an authority from entering into exclusive arrangements with any person for the right to attach to authority utility poles.

#### ***Monopoles***

- 51. Defines *monopole* as a wireless support structure that has a 40-inch diameter or less at ground level that has all wireless facilities mounted on the pole or contained inside the pole.
- 52. Adds conditions specific to monopoles in cities and towns, as well as utility poles or small wireless facilities that do not qualify for treatment under previous provisions, in an authority's jurisdiction.
- 53. Stipulates that monopoles are subject to an authority's zoning codes, including review of height and appearance.
- 54. Requires an authority to:
  - a) accept applications for installation of new monopoles or modification of existing monopoles;
  - b) notify the applicant, within 30 days of receipt, if the application is incomplete, including identification of any missing information;
  - c) process the application within 150 days after receipt; and
  - d) provide, if an application is denied, substantial supporting evidence for reasonable denial that is publicly released.

55. Caps monopole application fees at \$1,000.
56. Allows an authority to:
- a) adopt reasonable requirements regarding the appearance and concealment of facilities;
  - b) adopt substantially similar setback or fall zone requirements imposed on other commercial structures of similar height;
  - c) charge a rate for the use of the right-of-way limited to the actual cost of managing the right-of-way.
57. Prohibits an authority from:
- a) requiring an applicant to submit business decision information;
  - b) instituting a filing, processing or issuing moratorium; or
  - c) issuing decisions for modifications or installations that are not a permitted use.

***Provisions Specific to Counties***

58. Requires counties to adopt rates, fees and terms within the later of:
- a) time frames allowed for ordinance adoption; or
  - b) three months after receiving a request from a provider.
59. Prohibits a county from requiring an application or charging a rate or fee for collocations on utility poles or wireless support structures that are not owned by the county and that don't include ground-mounted equipment.
60. Prohibits a county from charging a rate for collocations on replaced county utility poles.
61. Allows an applicant seeking to collocate multiple small wireless facilities within a single county's jurisdiction to file a consolidated application for up to 35 small wireless facilities if the collocations are substantially similar.
62. Allows a county to remove specific collocations from a consolidated application for separate treatment or denial.
63. Caps county collocation application fees at \$100 for each of the first five facilities and \$65 for each additional facility included in a consolidated application.
64. Caps county application fees for modification or installation of utilities poles at \$100 or the amount charged by the county for similar activity, whichever is lesser.
65. Requires county collocation rates to be based on 90 percent of the average fair market value of the right-of-way.
66. Caps rates at \$175 for collocations that require ground mounted equipment.
67. Caps rates at \$20 for collocations not requiring ground mounted equipment on county utility poles.

68. Requires counties to approve an application, exempt from zoning review, for collocation of small wireless facilities or installation, modification or replacement of a utility pole if the applicant provides a sealed statement from a registered engineer demonstrating that the utility pole or support structure is structurally sound.
69. Limits the height of proposed or modified utility poles to the greater of:
  - a) 50 feet above ground level; or
  - b) 10 feet above a utility pole, in place as of the general effective date, within 500 feet of the new, replaced or modified utility pole.
70. Requires a county to establish a process for receiving a height or separation distance waiver.
71. Excludes monopole installers from county wireless infrastructure providers.

### *Definitions*

72. Defines *antenna* as communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.
73. Defines *applicable codes* as uniform building, fire, electrical, plumbing or mechanical codes that are adopted by a recognized national code organization or local amendments to those codes that are enacted to address threats of destruction of property or injury to persons.
74. Defines *applicant* as any person that submits an application and is a wireless provider.
75. Defines *application* as a request that is submitted by an applicant to an authority for a permit to collocate small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure.
76. Defines *cable operator* as a person that is issued a license to construct, operate and maintain a cable television system in public streets, roads and alleys, but does not include a special taxing district.
77. Defines *communication service* as a cable, information, telecommunication or wireless service.
78. Defines *communication service provider* as a cable operator, provider of information service, telecommunications carrier or wireless service provider.
79. Defines *fee* as a one-time charge.
80. Defines *law* as any federal, state or local law, statute, common law, code, rule, regulation, order or ordinance.
81. Defines *permit* as written permission required by an authority to:
  - a) install, mount, maintain, modify, operate or replace a utility pole or monopole;
  - b) collocate a small wireless facility on a utility pole or wireless support structure; or
  - c) collocate wireless facilities on a monopole.

82. Defines *person* as an individual, corporation, limited liability company, partnership, association, trust or other entity, including an authority.
83. Defines *private easement* as an easement or other real property right that is only for the benefit of the grantor, grantee and their successors.
84. Defines *rate* as a recurring charge.
85. Defines *right-of-way* as the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement, not including:
  - a) a federal interstate highway, a state highway or state route under the jurisdiction of the Department of Transportation;
  - b) an easement that is granted to a private property owner;
  - c) property owned by a special taxing district; or
  - d) a utility easement that doesn't authorize the deployment sought by the wireless provider.
86. Defines *wireless facility* as equipment at a fixed location that enables wireless communications between user equipment and a communication network, excluding the collocated structures or improvements.
87. Defines *wireless infrastructure providers* as a person authorized to provide telecommunications service that installs transmission equipment, wireless facilities, utility poles or monopoles.
88. Defines *wireless provider* as a cable operator, wireless infrastructure or wireless services provider.
89. Defines *wireless services* as any fixed or mobile services provided to the public using wireless facilities and licensed or unlicensed spectrum.
90. Defines *wireless services provider* as a person that provides wireless services excluding a special taxing district.
91. Defines *wireless support structure* as a free standing structure, monopole, tower, sign, billboard or any other existing or proposed structure designed to support, or capable of supporting, small wireless facilities, excluding utility poles.
92. Becomes effective on the general effective date.

#### Amendments Adopted by Committee

- Adopted the strike everything amendment.

#### Amendments Adopted by Committee of the Whole

1. Specifies that a cable operator does not include a special taxing district.

2. Removes monopole installers from county wireless infrastructure providers.

Senate Action

House Action

COMPS	3/20/17	DPA/SE	8-0-0-0	Final Read	3/30/17	53-1-6
3 <sup>rd</sup> Read	3/29/17	DPA	29-0-1-0			

Signed by the Governor 3/31/17  
Chapter 124

Prepared by Senate Research  
April 10, 2017  
GH/rr

# LEGISLATIVE IMPLEMENTATION GUIDELINES

**HB 2365**  
**WIRELESS FACILITIES;  
RIGHTS-OF-WAY GUIDE**  
**August, 2017**



**The HB 2365 Guide, published as a service to the members of the League of Arizona Cities and Towns, does not identify every provision of this new law. It is neither designed nor intended to provide legal advice or counsel. It should be used only as a reference tool and not as a comprehensive guidance document. In certain limited instances, the Guide does highlight action items that should be considered by cities and towns. In no case, however, should the Guide substitute for the independent judgment of your city or town manager or attorney.**

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## A. Introduction

On March 31, 2017 HB 2365 wireless facilities; rights-of-way was signed into law, which allows wireless providers to install and operate small cells and related equipment in city, town and county rights-of-way (ROW) and public easements, excluding deployment in areas outside of the right-of-way, on private easements or on electric distribution poles. Small cells are low-powered wireless base stations that typically provide coverage for targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals and metropolitan outdoor spaces. The installations of this equipment in city and town rights-of-way help wireless carriers add capacity to their networks to provide better access to cell phone coverage and high-speed wireless data services in areas that are not being served by traditional cell sites.

The legislation also allows the wireless provider to construct, install, modify, mount, maintain, operate and replace utility poles that are associated with the collocation of small cells and to construct, install, modify, mount, maintain, operate and replace monopoles<sup>1</sup> that are associated with the collocation of wireless facilities (not just small cells) in the ROW.

While the legislation set the fees for small cells, it is silent on the fees for monopoles. Cities and towns are required to accept and process applications for the installation of new monopoles in the ROW<sup>2</sup> and to establish and make available rates, fees and terms for such monopoles.<sup>3</sup> Siting of monopoles is subject to zoning codes and other regulatory processes governing use of the ROW.<sup>4</sup> The installation, modification and replacement of monopoles are subject to municipal review regardless of the height of the monopole.<sup>5</sup>

Cities and towns that have already been working with wireless carriers on small cell equipment siting will need to thoroughly review this new law to determine its impact on existing agreements, existing zoning codes and regulatory processes for siting new small cells, monopoles, and utility poles in the ROW.

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<sup>1</sup> ARS 9-592(H)(3)

<sup>2</sup> ARS 9-594(C)(1)

<sup>3</sup> ARS 9-592(E)(1)

<sup>4</sup> ARS 9-594(A)

<sup>5</sup> ARS 9-592(H)(3)

## B. Effective Dates

The effective date of HB 2365 is August 9, 2017. Cities and towns are required to establish and make available rates, fees and terms that are consistent with HB 2365 by February 9, 2018 or three months after receiving the first request by a wireless provider, whichever is later.<sup>6</sup>

## C. Key definitions<sup>7</sup>

**Applicable Codes:** Uniform building, fire, electrical, plumbing or mechanical codes that are adopted by a recognized national code organization or local amendments to those codes that are enacted to address threats of destruction of property or injury to persons.

**Authority:** Cities and towns

**Authority utility pole:** a utility pole, excluding a utility pole for electric distribution, that is owned or operated by an authority and that is in a ROW.

**Monopole:** a wireless support structure that is not more than 40 inches in diameter at the ground level and that has all of the wireless facilities mounted on or inside of the pole.

**Small wireless facility (SWF):** a wireless facility that meets the following size qualifications of not more than:

1. 6 cubic feet of antennas, enclosed or fits within an imaginary enclosure;
2. 28 cubic feet of wireless equipment; and
3. 50 cubic feet of wireless equipment **only** if it was ground-mounted prior to August 9, 2017.

Equipment not included in size calculation:

1. Electric meters
2. Concealment elements
3. Demarcation boxes
4. Grounding equipment
5. Power transfer switches
6. Cutoff switches
7. Vertical cable runs

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<sup>6</sup> A.R.S. §§ 9-592(E), 9-595(D)

<sup>7</sup> A.R.S. § 9-591

**Utility pole:** a pole or similar structure used in whole or part for communications services, electric distribution, lighting or traffic signals.

**Wireless facility:** Equipment, including small wireless facilities, that enables wireless communications between user equipment and a communications network, including:

1. Equipment associated with wireless communications; and
2. Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment.

**Wireless support structure:** a freestanding structure, such as a:

1. Monopole;
2. Guyed or self-supporting tower;
3. Sign or billboard; or
4. Any other existing or proposed structure designed to support, or capable of supporting SWFs.

The definition does not include a utility pole.

#### **D. Application processes**

##### **1. Applications that are NOT subject to zoning review:**

###### **Utility poles**

A new, replacement or modified utility pole for SWF collocations installed in the ROW is **NOT** subject to zoning review or approval if it does not exceed the greater of either **(i) 10 feet** above the tallest existing utility pole (excluding utility poles supporting only wireless facilities), that is located within 500 feet of the proposed site for the new, replacement or modified pole if that existing pole was in place prior to August 9, 2017, but the new pole cannot be more than 50 feet above ground level; or **(ii) 40 feet** above ground level. The existing utility pole that is used as the basis for the new, replacement or modified utility pole must be in the same ROW and jurisdictional boundary of the city or town.

If there is no existing verticality, the new, replacement or modified utility pole may not exceed 40 feet above ground level.<sup>8</sup>

Applications are required to be approved unless the utility pole does not comply with<sup>9</sup>:

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<sup>8</sup> A.R.S. § 9-592(I)(1), (2)

<sup>9</sup> A.R.S. § 9-592(K)

1. Applicable Codes;
2. Code provisions or regulations that concern public safety;
3. Objective design standards;
4. Reasonable stealth and concealment requirements;
5. Undergrounding requirements;
6. Undergrounding requirements that may require a waiver before a new pole or monopole can be installed in the ROW without prior approval. The undergrounding requirements cannot prohibit the replacement of utility poles or monopoles.
7. Contractual requirements between a city or town and a private property owner concerning design standards for utility poles in the ROW; or
8. Reasonable spacing requirements concerning the location of new utility poles in the ROW.

### **SWFs**

Collocations of new small wireless facilities are **NOT** subject to zoning review and approval if they do not exceed 10 feet above the utility pole or wireless support structure (defined as including a monopole if there was an existing one in the ROW) and do not exceed 50 feet above ground level.<sup>10</sup>

Applications for a permit to collocate SWFs to utility poles in the ROW, in any zone, are required to be approved unless the application does not meet;

1. Applicable Codes;
2. Code provisions or regulations that concern public safety;
3. Objective design standards for decorative utility poles;
4. Reasonable stealth and concealment requirements; or
5. Reasonable spacing requirements concerning the location of ground-mounted equipment.<sup>11</sup>

**Note:** If a city or town determines that the utility pole or wireless support structure must be replaced prior to collocation, the application to collocate may be conditionally approved pending replacement of the utility pole or wireless support structure. Requests for replacement utility poles are to be processed pursuant to A.R.S. § 9-592.

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<sup>10</sup> A.R.S. § 9-592(J)

<sup>11</sup> A.R.S. § 9-593(F)(4)

Consolidated applications for the collocation of up to 25 SWFs may be submitted by an applicant only if all SWFs included are substantially the same type and involve substantially the same type of structure.<sup>12</sup> SWF collocations may be removed from the application and considered separately if incomplete information was provided, the SWF does not qualify for consolidated treatment or the SWF is subject to a denial.<sup>13</sup>

If a city or town denies an application for not meeting one or more of the requirements listed above, documentation must be submitted to the applicant on or before the date of denial that includes the specific code provisions, regulations or requirements on which the denial was based.

The applicant may resubmit the application to cure the deficiencies that the denial was based on within 30 days after denial. The city or town must approve or deny the resubmitted application within 30 days of receipt with no additional fee charged to the applicant. The review of the resubmitted application is limited to the deficiencies that were cited for the basis or denial.<sup>14</sup>

Listed below are the application timelines for small wireless facilities and utility poles and collocations to authority utility poles that are **NOT** subject to zoning review. If a city or town takes no action on the application within the specified time frame, the application is deemed approved.<sup>15</sup>

20 days to determine and notify applicant if application is complete
75 days to take action on application
30 days to take action on revised applications

**2. Applications subject to zoning review:**

The modification of existing or the installation of new monopoles, the installation or collocation of wireless facilities, and the installation of utility poles and SWFs that exceed the heights that are exempt from zoning review are subject to all of the zoning codes, regulations and regulatory processes governing the rights-of-way.<sup>16</sup>

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<sup>12</sup> A.R.S. § 9-593(D)

<sup>13</sup> A.R.S. § 9-593(F)(6)

<sup>14</sup> A.R.S. § 9-593(F)(5)

<sup>15</sup> A.R.S. §§ 9-593(F)(2), 9-593(F)(3), 9-595(D)(1) Note: Statute requires applications for collocating to authority utility poles to be processed in the same manner as applications to collocate to utility poles

<sup>16</sup> A.R.S. § 9-594(B)

Cities and towns are permitted to require reasonable appearance and concealment requirements and setback or fall zone requirements for these structures<sup>17</sup> and prohibit, regulate and charge for the collocation of a wireless facility on municipally-owned wireless support structures.<sup>18</sup>

The following are the time frames established for processing applications:

30 days to determine and notify applicant if application is complete
150 days to take action on application

Collocation of wireless facilities<sup>19</sup>:

30 days to determine and notify applicant if application is complete
90 days to take action on application

**Note:** The application time period for approval may be tolled to accommodate requests for information or extended by mutual agreement of the applicant and the city or town<sup>20</sup>.

A city or town may deny an application only if there is a reasonable basis for the denial and the denial is not discriminatory against the applicant with respect to the placement of the facilities of other wireless providers. If an application is denied, the city or town must notify the applicant in writing and provide substantial supporting evidence for the reason for denial.<sup>21</sup>

### **Rates and fees**

Cities and towns are permitted to charge wireless providers a rate or fee for the use of and activities conducted in the ROW. Rates and fees are limited to the direct and actual cost of managing the ROW and may only be charged if other ROW users, such as telecom providers and utilities, are charged ROW use fees and there is legal authority for the fee.<sup>22</sup>

The rate or fee charged may not do any of the following:

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<sup>17</sup> A.R.S. § 9-594(E)

<sup>18</sup> A.R.S. § 9-595(E)

<sup>19</sup> A.R.S. § 9-594(C)(3)

<sup>20</sup> A.R.S. § 9-594(C)(3) Note: Statute allows the time period to be tolled to accommodate timely requests for information or may be extended by mutual agreement of the city or town and the applicant.

<sup>21</sup> A.R.S. § 9-594(C)(4)

<sup>22</sup> A.R.S. § 9-592(C)

1. Result in a double recovery where existing rates, fees or taxes already recover ROW management costs;
2. Be in the form of a franchise or other revenue-based fees;
3. Be unreasonable or discriminatory;
4. Exceed the specified rate caps (see chart below).<sup>23</sup>

In addition, rates and fees are capped as follows:

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

Application for collocating SWFs<sup>27</sup>:

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

Batched applications up to 25 SWFs<sup>28</sup>:

First five SWFs @ \$100	\$500
Additional 20 sites @ \$50	\$1,000
<b>Total for batch of 25</b>	<b>\$1,500</b>

Utility pole and monopole applications:

New, replacement or modified utility poles <b>NOT</b> subject to zoning review <sup>29</sup>	\$750
New, replacement or modified monopoles and utility poles and collocation of wireless facilities subject to zoning review <sup>30</sup>	\$1,000

## **E. Terms and conditions**

In addition to the establishment of rates and fees described above, cities and towns are required to establish and make available to wireless providers terms and conditions for the following activities conducted in the ROW:

<sup>23</sup> A.R.S. § 9-592(D)

<sup>24</sup> A.R.S. § 9-592(C)(4)

<sup>25</sup> A.R.S. § 9-594(D)(5)

<sup>26</sup> A.R.S. § 9-595(C)

<sup>27</sup> A.R.S. §§ 9-593(I), 9-593(J)

<sup>28</sup> A.R.S. § 9-592(D)

<sup>29</sup> A.R.S. § 9-592(L)

<sup>30</sup> A.R.S. § 9-594(E)(3)

1. Construction, installation, mounting, maintenance, operation or replacement of utility poles and monopoles;
2. Collocation of SWFs;
3. Collocation of wireless facilities on or within a monopole
4. Collocation of SWFs on authority utility poles.<sup>31</sup>

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

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

The standard terms and conditions may, however, include requirements that are applicable to other ROW users and require that the operation of SWFs do not interfere with public safety communications.<sup>32</sup> The terms must reasonably accommodate power supply and electric metering for the SWF.

The wireless provider may accept the standard terms and conditions or they may negotiate with the city or town for different or additional terms.

The legislation is silent as to whether the time deadlines for granting or denying the application are then tolled while the negotiations are taking place.

### **Existing agreements**

Existing agreements with wireless providers that are in effect on August 9, 2017 will remain in effect subject to applicable termination provisions. Wireless providers may accept the new rates, fees and terms that are consistent with HB 2365 for SWF's and utility poles that are the subject of an application submitted after the rates, fees and terms become effective. .<sup>33</sup>

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<sup>31</sup> A.R.S. §§ 9-592(E), 9-595(D)

<sup>32</sup> A.R.S. §§ 9-592(F), 9-595(D)

<sup>33</sup> A.R.S. § 9-592(G)

## **Frequently asked questions**

**Q.** Relocation of wireless equipment?

**A.** A.R.S. § 9-596(D) requires wireless equipment to be relocated at no cost to the city or town in order to accommodate a public project but does not specify any particular type of project.

**Q.** Are cities and towns permitted to apply spacing requirements for siting of new utility poles and equipment?

**A.** A.R.S. § 9-592(K)(4) allows cities and towns to apply “reasonable” spacing requirements to applications for new utility poles in the ROW in addition to “reasonable” spacing for ground-mounted equipment.

**Q.** Are cities and towns able to reserve space on poles as well as conduit and fiber?

**A.** A.R.S. § 9-593(G)(1) prohibits cities and towns from requiring applicants to reserve conduit, fiber or pole space on a wireless provider’s pole for the city or town. There is no similar prohibition for municipally-owned poles.

**Q.** What period of time does the new law provide for wireless providers to operate their equipment in the ROW?

**A.** Application approval allows the applicant to operate and maintain new, modified or replacement poles<sup>34</sup> and SWFs<sup>35</sup> for 10 years, subject to applicable relocation requirements and terms and conditions.

**Q.** Is there a time frame within which the wireless provider must complete construction or installation of the small cell for operational use?

**A.** Yes. For utility poles<sup>36</sup> the construction, installation, mounting, maintenance, modification, operation or replacement for which a permit is granted shall be completed within 180 days after the permit issuance date, unless the city or town and the wireless provider agree to extend the period or a delay is caused by lack of commercial power at the site and for small cells, they must be operational within that time period.<sup>37</sup>

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<sup>34</sup> A.R.S. § 9-592(M)(2)

<sup>35</sup> A.R.S. § 9-593(H)(3)

<sup>36</sup> ARS 9-592(M)

<sup>37</sup> ARS 9-593(E) and ARS 9-593(H) (collocations)

**Q.** What ability does a city or town have to address the radio frequency (RF) emissions from small cells?

**A.** The city or town may require the applicant to certify that the SWF to be collocated comply with the FCC's regulations concerning RF emissions. Beyond that, there is no basis to deny access to the ROW if compliance is demonstrated.

**Q.** What does the legislation say with respect to ground equipment?

**A.** A city or town may adopt reasonable requirements regarding the appearance and concealment of facilities, including those relating to materials used for arranging, screening or landscaping.<sup>38</sup> Facilities must be constructed, maintained and located so that they don't obstruct, endanger or hinder the usual travel or public safety on the ROW.<sup>39</sup>

**Q.** Who will own the replacement utility pole?

**A.** The city or town.<sup>40</sup>

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<sup>38</sup> ARS 9-594(E)(1)

<sup>39</sup> ARS 9-598

<sup>40</sup> ARS 9-595(D)(1)