

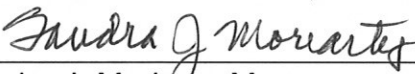
**RESOLUTION NO. 2021-20**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, ESTABLISHING AS A PUBLIC RECORD THE TERMS OF PROPOSED  
AMENDMENTS TO THE SEDONA CITY CODE, CHAPTER 12.**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, that the terms set forth in that document attached hereto as Exhibit A and incorporated herein by this reference, entitled "2021 Amendments to the Sedona City Code, Chapter 12" constitute a public record to be incorporated by reference into Ordinance No. 2021-04.

At least one (1) paper copy and one (1) electronic copy of this public record shall be kept in the office of the City Clerk for public use and inspection.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 10<sup>th</sup> Day of August, 2021.

  
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Sandra J. Moriarty, Mayor

ATTEST:

  
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Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

  
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Kurt W. Christianson, City Attorney

**EXHIBIT A**

**2021 Amendments to the Sedona City Code, Chapter 12**

## Chapter 12.05 RIGHTS-OF-WAY

Sections:

- 12.05.010 Purpose.
- 12.05.020 Scope.
- 12.05.030 Adoption of permit application form.
- 12.05.040 Definitions.
- 12.05.050 Enforcement.
- 12.05.060 Appeals.
- 12.05.070 Permit requirements - Classes of permits.
- 12.05.080 Life of the permit.
- 12.05.090 Denial of permit.
- 12.05.100 Fees.
- 12.05.110 Amendment additions to sections of MAG Uniform Standard Specifications for Public Works Construction, and MAG Standard Details for Public Works Construction.
- 12.05.120 Additional stipulations.
- 12.05.130 Procedures for acceptance of existing private streets as public roads.
- 12.05.140 Art in public right-of-way.
- 12.05.150 Small Wireless Facility

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### 12.05.100 Fees.

A. *Permit Fees.* At the issuance of a permit, the city engineer shall collect the permit fees set forth in ~~Table 12.05.100(A), Permit Fees~~ the city Consolidated Fee Schedule as adopted by the city council from time to time. Such fees shall be paid in lawful money of the United States or by collectible draft, check, credit card or debit card. Should such fee payment instrument be uncollectible within 15 days, the permit shall be null and void. The fee for permits applied for after the fact shall be three times the project permit fee in ~~Table 12.05.100(A)~~ the Consolidated Fee Schedule.

**Table 12.05.100(A). Permit Fees**

General Permit	\$100.00 per permit valid for 1 year
Project Permit	\$60.00 per permit 60 days \$50.00 for each time extension beyond 30 days
City-Developed Consent Permit	As determined by agreement, license or lease
Citywide Permit	No fee

Project permit fees shall be waived for utilities holding a general permit.

**B. Inspection Fees.**

1. Inspection fees shall be waived for utilities holding a general permit.
2. Inspection fees for one inspection are included in the permit fees, except as noted below.
3. If the city engineer determines that more than one inspection is necessary for each project permit issued, the permittee shall be notified and the fee set forth in the ~~Table 12.05.100(B), Inspection Fees, Consolidated Fee Schedule~~ shall be collected before the inspection is conducted. Such fees shall be paid in lawful money of the United States or by collectible draft or check. Should such draft or check be uncollectible within 15 days, the permit shall be null and void.

**~~Table 12.05.100(B). INSPECTION FEES~~**

Inspections under project permit	\$60.00 per inspection per 1 hour
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One hour shall include transit time to the inspection site and return. Additional time during the same inspection visit shall be invoiced at the nonprorated fee of \$50.00 per one hour.

**C. Special Fees.** At the issuance of a permit, the city engineer shall collect the special fees set forth in ~~Table 12.05.100(C), Special Fees~~ the Consolidated Fee Schedule. Such fees shall be paid in lawful money of the United States or by collectible draft or check. Should such draft or check



be uncollectible within 15 days, the permit shall be null and void. Special fees shall be waived for utilities holding a general permit.

**Table 12.05.100(C). SPECIAL FEES**

Traffic control plan review, pursuant to SCC 12.05.070(C)(8)(a)	\$300.00 minimum (1-day review)
Pre-construction and maintenance conference, pursuant to SCC 12.05.070(C)(5)	\$300.00 minimum (1-conference)
Project permit amendment, pursuant to SCC 12.05.080(C)	\$60.00 per amendment
Project specific pollution control plan	\$300.00 (waived if part of a grading plan submitted under provision of the city code or land development code)

[Code 2006 § 7-15-10. Ord. 2008-05, 6-10-2008; Ord. 2008-11, 10-14-2008].

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**12.05.150 Small Wireless Facility.**

**A. Intent and purpose.** It is the intent of the city to promote the public health, safety and general welfare by: providing for the placement and maintenance of small wireless facilities in the right-of-way within the city; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including A.R.S. §9-591 et seq., as it may be amended, the city's statutory authority, and in accordance with the provisions of the federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of small wireless facilities in the right-of-way; and minimizing disruption to the right-of-way. In regulating its right-of-way, the city shall be governed by and shall comply with all applicable federal and state laws. The placement and maintenance of wireless communications facilities on private property or property owned, leased or controlled by the city, other than right-of-way, is governed by Article 4

of the city's Land Development Code.

**B. Definitions.** For the purposes of this Section exclusively, the following definitions shall apply:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.
2. "Applicable codes" means uniform building, fire, electrical, plumbing or mechanical codes that are adopted by a recognized national code organization, or local amendments to those codes, that are enacted by the city to address threats of destruction of property or injury to persons and to an extent that is not inconsistent with this section.
3. "Applicant" means any person that submits an application and that is a wireless provider.
4. "Application" means a request that is submitted by an applicant to the city for a permit to collocate small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure on which to collocate a small wireless facility in the right-of-way.
5. "Authority utility pole" means a utility pole that is owned or operated by the City of Sedona and that is in a right-of-way. Authority utility pole does not include a utility pole for electric distribution.
6. "Cable operator" has the same meaning prescribed in section 9-505 and includes a video service provider. Cable operator does not include a special taxing district.
7. "Collocate" or "collocation" means to install, mount, maintain, modify, operate or replace wireless facilities on, within or adjacent to a wireless support structure or utility pole.
8. "Communications service" means cable service as defined in 47 United States Code section 522(6), information service as defined in 47 United States Code section 153(24), telecommunications service as defined in 47 United States Code section 153(53) or wireless service, as may be amended or superseded.
9. "Communications service provider" means a cable operator, a provider of information service as defined in 47 United States Code section 153(24), a telecommunications carrier as defined in 47 United States Code section 153(51) or a wireless services provider, as may be amended or superseded.
10. "Director" means the city's director of public works. References to the director include the director's designee.



11. "Fee" means a onetime charge.

12. "Law" means any federal, state or local law, statute, common law, code, rule, regulation, order or ordinance.

13. "Master License Agreement" means the agreement entered into between the City of Sedona and any person seeking a permit to install a small wireless facility within a right-of-way.

14. "Monopole" means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole.

15. "Permit" means written permission required by an authority to install, mount, maintain, modify, operate or replace a utility pole or monopole, to collocate a small wireless facility on a utility pole or wireless support structure or to collocate wireless facilities on a monopole.

16. "Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including an authority.

17. "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.

18. "Rate" means a recurring charge.

19. "Right-of-way" means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement. Right-of-way does not include a federal interstate highway, a state highway or state route under the jurisdiction of the department of transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.

20. "Small wireless facility" means a wireless facility that meets both of the following qualifications:

a. All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.

b. All other wireless equipment associated with the facility if cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. 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.

21. "Special taxing district" means a special district formed pursuant to A.R.S. title 48, chapter 11, 12, 17, 18, 19, 20 or 22.

22. "Utility pole" means a pole or similar structure that is used in whole or in part for communications services, electric distribution, lighting or traffic signals. Utility pole does not include a monopole.

23. "Wireless facility":

a. Means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:

- i. Equipment associated with wireless communications.
- ii. Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.

b. Includes small wireless facilities.

c. Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

d. Does not include Wi-Fi radio equipment or microcell equipment as those terms are defined in A.R.S. Article 9,



24. "Wireless infrastructure provider" means any person that is authorized to provide telecommunications service in this state and that builds or installs wireless communications transmission equipment, wireless facilities, utility poles or monopoles but that is not a wireless services provider. Wireless infrastructure provider does not include a special taxing district.

25. "Wireless provider" means a cable operator, wireless infrastructure provider or wireless services provider.

26. "Wireless services" means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

27. "Wireless services provider" means a person that provides wireless services. Wireless services provider does not include a special taxing district.

28. "Wireless support structure":

a. Means:

i. A freestanding structure, such as a monopole.

ii. A tower, either guyed or self-supporting.

iii. A sign or billboard.

iv. Any other existing or proposed structure designed to support or capable of supporting small wireless facilities.

b. Does not include a utility pole.

**C. Placement or maintenance of a small wireless facility in right-of-way.**

1. Applicant shall at all times comply with and abide by all applicable provisions of state, federal and local law and city ordinances, codes and regulations, as amended, in placing or maintaining a small wireless facility in right-of-way. Only small wireless facilities shall be permitted within a right-of-way pursuant to this Section. All applicants seeking to install a small wireless facility within a right-of-way must execute a Master License Agreement with the city. Applicants proposing wireless communications facilities which exceed the "small wireless facility" definition or outside of the right-of-way must proceed under Article 4 of the Land Development Code.
2. To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional small wireless facilities within the right-of-way if there is insufficient space to accommodate all of the requests to place and



maintain facilities in that area of the right-of-way, for the protection of existing facilities in the right-of-way or to accommodate city plans for public improvements or projects that the city determines are in the public's interest.

3. No person or provider may install, maintain, construct, or operate small wireless facilities in right-of-way, or provide services by means of such small wireless facilities, without first filing an application for the facility, entering into a Master License Agreement as provided in this Section 12.05.150, and obtaining applicable permits. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of small wireless facilities.
4. Small wireless facilities located in the right-of-way must meet the "small wireless facility" definition size parameters set forth above, and meet the following minimum standards:
  - a. Required approvals. No application for placement of small wireless facilities in the right-of-way shall be permitted without approval of the department of public works.
  - b.
    - i. An applicant proposing placement of an antenna in the right-of-way shall submit an application for approval through the department of public works. The application shall consist of the following:
      - (a) Completed application form provided by the city accompanied by the required application fee;
      - (b) Copy of current business tax receipt or business license;
      - (c) A scaled site plan depicting an area within a six hundred (600) foot radius from the center of the proposed small wireless facility, and showing the proposed antennas, equipment, related infrastructure, sidewalks, all existing utilities, antennas, towers, concealed facilities, the right-of-way boundaries, small wireless facility boundary, road improvements, all ingress and egress to nearby streets, major vegetation, required grading, existing and proposed elevations, easements, and other significant features of the site.
      - (d) Certification signed by the applicant confirming the distance separation from other non right-of-way wireless service facilities.
      - (e) An attestation from the wireless service provider intending to utilize the proposed facility that "small wireless facilities" will be installed and operational on the proposed structure within 180 days after the date the application is approved.
    - ii. No permits shall be issued by the city prior to the approval of an application where required pursuant to this Section. An application may include up to twenty-five (25) separate small wireless service facility proposals provided each proposed small wireless facility is substantially similar, but shall include sufficient information for EACH such separate facility proposed in the application.
  - c. Completeness review; time limitation. The city shall grant or deny a properly completed application for small wireless facilities in the public right-of-way within seventy-five (75) days or, as required by federal and state law, after the date the application is determined



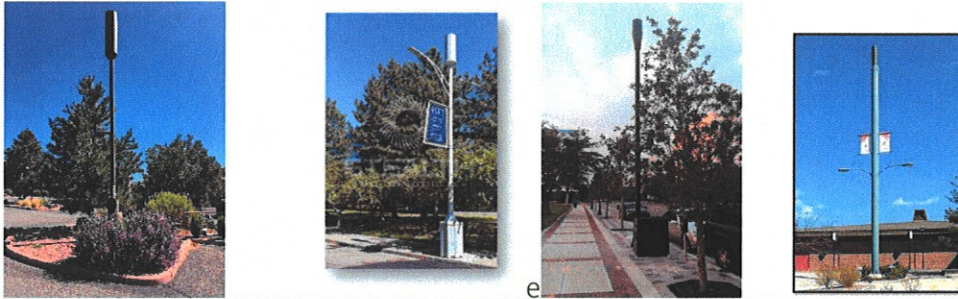
to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the department of public works. The department of public works shall notify the applicant within twenty (20) days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the city's requirements. If the application is not completed in compliance with the city's requirements, the department of public works shall so notify the applicant in writing indicating with specificity any deficiencies which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the department of public works shall notify the applicant, in writing, no later than twenty (20) days after the additional information is submitted, of any remaining deficiencies that must be cured. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the department of public works may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed.

- d. Collocation or use of concealed facilities. An antenna in the right-of-way shall, to the extent possible, be collocated on an existing power, light or other utility pole. When collocation of an antenna is not possible, a freestanding concealed facility is required. For collocations and freestanding concealed facilities, the applicant shall submit an application to the department of public works for approval.
- e. Statement. A statement or statements shall be submitted with the application certifying that the construction of small wireless facilities proposed to be located in the right-of-way will comply with all applicable codes, regulations and standards including as set forth in the International Building Code, latest edition, the State of Arizona Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, and applicable electrical codes; and describing the proposed small wireless facilities' capacity to permit multiple users, including an example of the number and type of antennas or other attachments that can be accommodated on support structures. No small wireless facility which exceeds its support structure's loading capacity, which causes any pole or structure to exceed its loading capacity or which does not conform to applicable electrical codes shall be permitted in the right-of-way.
- f. All equipment should be contained within the vertical infrastructure installed in the right-of-way except where not feasible, in which event cabinets, boxes and vaults may be used if approved by the director. No permit or order shall be granted authorizing the placement, construction or modification in the right-of-way of a wireless service facility cabinet, box or vault exceeding 28 cubic feet in volume.
- g. Height, setbacks, concealment and related location requirements.
  - i. The height of a new small wireless facility in the public right-of-way to which an antenna is attached shall not exceed the height of existing poles or structures in the



right-of-way within five hundred (500) feet of such proposed new small wireless facility, plus ten (10) feet, or if no such existing poles are present in the right-of-way within five hundred (500) feet of such proposed new small wireless facility, the new small wireless facility shall not exceed a height of forty (40) feet. Height shall be measured from the crown point of the road nearest to such facility. Any wireless provider that seeks to install, modify, or replace facilities on a pole in the right-of-way that exceeds the height limits, shall be subject to applicable requirements of Article 4 of the city's Land Development Code.

- ii. All new small wireless facilities within a right-of-way shall be constructed using concealment techniques. All pole mounted equipment and facilities, including the antenna, must be concealed in a manner that minimizes the visual impact of the pole mounted equipment and facilities. In all residential districts, the concealment technique shall be similar to the following options, after consultation with the department of public works:



The department of public works reserves the right to designate a different design in any location depending upon the site specific circumstances.

In all non-residential districts the concealment technique to be utilized shall be similar to the following option, after consultation with the department of public works:



The department of public works reserves the right to designate a different design in any location depending upon the site specific circumstances.

- iii. No antenna attached to a freestanding pole in the right-of-way, other than as a collocation with an existing power, light or other utility pole, or unless installed as a concealed facility, shall be permitted within fifty (50) feet of any principal residential structure as measured from the location of the small wireless facility to the nearest



wall of a residential structure. Small wireless facilities shall maintain a minimum 25-foot distance from the primary doorway of businesses or residences measured from the outer door frame.

- iv. A box or cabinet housing the equipment connected to an antenna attached to a freestanding pole in the right-of-way shall be placed on the ground instead of attached to the pole supporting the antenna, and in accordance with the buffering provisions in subsection I. below.
  - v. Small wireless facilities shall be located in state or county arterial or collector right-of-way, whenever possible. In circumstances where such locations are not possible, the applicant shall include with its city permit application sufficient evidence consistent with industry standards to justify placement in a city right-of-way. Whenever small wireless facilities must be placed in a right-of-way with residential uses on one (1) or both sides, neither poles, equipment, antennas nor other structures shall be placed in front of a residential structure. If a right-of-way has residential structures on only one (1) side, the small wireless facilities shall be located on the opposite side of the right-of-way whenever possible. All small wireless facilities shall be sited to minimize visual impacts to adjacent properties and viewsheds.
  - vi. No new wireless support structure will be permitted in the right-of-way if there is an existing city wireless support structure within 100 feet of the proposed location that may be used to install a small wireless facility. To the extent possible, all new wireless support structures must serve a dual purpose (power, light, utility, etc.) unless otherwise approved by the city. Availability and use of existing city wireless support structures for small wireless facilities installations are on a first come, first served basis.
  - vii. All small wireless facilities mounted on a pole or any wireless support structure must be installed with a cutoff switch.
  - viii. The average noise level of small wireless facilities located in right-of-way, including antenna and ground mounted equipment and facilities and electric meter, measured at any property line that is zoned or used for residential purposes must not exceed the lowest level of either: (a) 55 decibels or (b) such noise level standard as may be established by federal or state law for small wireless facilities.
- h. Antennas.
- i. Each application for a small cell wireless facility shall contain a rendering or photograph of the proposed antenna which depicts its aesthetic features including, but not limited to, the use of colors and screening devices. Such renderings shall provide a visual illustration of the small wireless facility in context with its surrounding area.
  - ii. No signals, lights, or illumination shall be permitted on an antenna or, except in the case of a light pole or a concealed facility designed to emulate a light pole, on a pole



to which such antenna is attached, unless required by applicable state or federal laws or rules.

- iii. Antennas shall be mounted at a height and location that will not interfere with use of the right-of-way, but shall in no event exceed 50 feet in height.
- iv. No exterior antenna in the right-of-way shall exceed the height of the pole to which it is attached by more than twenty-four (24) inches, unless it is attached as a collocation to an existing power, light or other utility pole or on a pole designed to emulate a light pole. Further, if any part of the antenna extends above the top of the pole it shall not be allowed to extend away from the exterior side of the pole in an amount greater than twelve (12) inches on any side.
- v. No antenna shall be mounted where the edge of the antenna is more than four (4) inches from the exterior side of the pole to which it is attached unless it is attached as a collocation to an existing power, light or other utility pole. No part of the antenna shall be allowed to extend more than twenty-four (24) inches away from the exterior side of the pole.
- vi. All cabling and interconnecting wires must be concealed. Exterior looping of excess cable length installed on any small wireless facility located in the public right-of-way is prohibited.
- vii. Distance between antenna locations/number of antenna locations within a specified area. To minimize the adverse visual impacts associated with the proliferation and clustering of antennas and associated above-ground small wireless facilities, no antenna site in the right-of-way shall be located within six hundred (600) feet of any other non "small cell" antenna site or telecommunications tower that is NOT within a right-of-way. This subsection shall not apply to any antenna collocated on an existing power, light or other utility pole within the right-of-way.
- i. Collocation. In any collocation, as defined in Section B.7, the existing power, light or other utility pole may be modified or replaced to accommodate the new attachment, provided however that the modified or replacement pole complies with the height, setback and related location requirements. For the purposes of this section, an existing power, light or other utility pole modified or replaced to accommodate a new attachment shall continue to be considered an existing pole after replacement or modification.
- j. Approval required from other governmental agencies and owners. Each application for the location of a small wireless facility in the right-of-way may be required to include written approval, or a statement of no objection, from agencies that regulate siting, design, and construction of such facilities, or have jurisdiction over the right-of-way, if any such agencies require the applicant to seek their review or approval. An existing facility in the right-of-way shall only be utilized in a manner consistent with the City Code and with the written permission of the facility owner.



- k. FCC emissions standards. All small wireless facilities in the right-of-way shall comply with current radio frequency emissions standards of the Federal Communications Commission. A signed statement shall be provided from the small wireless facility owner or owner's agent stating that the radio frequency emissions comply with FCC standards for such emissions as set forth in 47 CFR 1.1307, 1.310, 2.091 or 2.093, as applicable (Report and Order, ET Docket 93-62 (Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation), 11 FCC Rcd 15123 (1996); Second Memorandum Opinion and Order and Notice of Proposed Rule Making, ET Docket 93-62 (WT Docket 97-192), 12 FCC Rcd 13494 (1997). In particular, the statement shall demonstrate that the proposed facility, individually and cumulatively, will not exceed the maximum permissible exposure level to the general public of approximately 580 microwatts per square centimeter. In addition, any collocation application shall contain an analytical report which confirms that following installation, the composite facility will remain in compliance with FCC standards as stated in OET-65.
- l. Design Requirements. Small wireless facilities and equipment shall be designed, located and installed to minimize the visual impacts and:
- i. Utilize the smallest, least visually intrusive antennas, components, and other necessary equipment.
  - ii. Be designed to be aesthetically and architecturally compatible with the natural and built environments and minimize the visual impacts of the facility.
  - iii. Incorporate landscaping to offset the overall visual impacts. All landscaping shall conform to the city's Land Development Code landscaping requirements. The application shall include a site plan identifying existing landscaping and proposed landscaping. Landscaping shall be provided around ground equipment and the small wireless facility for screening and aesthetic purposes. The planting quality and size shall be such that sufficient screening is achieved within two (2) years of installation. All disturbed landscape shall be replaced in-kind and areas of bare or disturbed soil must be revegetated in accordance with the city's landscaping requirements. In the event landscaping screening is not feasible, ground mounted facilities and equipment must be screened by a screen wall or painted so as to blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Ground mounted facilities and equipment shall be concealed as much as possible by blending into the natural and/or physical environment.
  - iv. Vaulting underground freestanding equipment cabinets or shelters and/or power meters is preferred. However, if the applicant can demonstrate that underground water table or floodplain issues prevent vaulting the supporting ground equipment then the director may approve placement on the ground. In no instance shall supporting equipment be located farther than 2 feet from the base of the structure



without approval from the director. Supporting equipment shall not interfere with pedestrian or vehicular traffic.

- v. When underground vaults are proposed, they shall be located to minimize disruption of existing trees and landscaping. Adequate planning depth shall be provided between the top of the vault and the finished grade to allow plants to grow in a healthy condition.
- vi. When faux trees are proposed to house small wireless facilities, live trees of similar size and species ~~are~~ may be required by the director. Additional trees should be added to create a grove-like appearance that effectively integrates the faux tree. Detailed specifications for faux trees shall be provided. Faux trees shall incorporate a sufficient number of branches and design materials so that the structure is as natural in appearance as possible.
- vii. When ground mounted facilities are used, they shall satisfy all required Americans with Disabilities Act requirements, be limited to the minimum height necessary, maintain a minimum 20-foot distance from existing fire hydrants, driveways and sight visibility triangles, and incorporate landscape screening as specified above.
- viii. Colors and materials shall be harmonious with the character of the surrounding area to enhance compatibility with adjacent residential and nonresidential land uses.
- ix. All screening required in connection with the use of small wireless facilities in the right-of-way shall be maintained by the owner of such facilities at its own cost.
- m. Equipment. The location in the right-of-way of any equipment or equipment cabinets associated with small wireless facilities shall be subject to the approval of the director. Any such cabinets or equipment must be approved by the director as to safety, and shall not interfere with the use of the right-of-way. The director may require a statement certifying the need for the proposed equipment and location. No generators utilized in connection with small wireless facilities may be placed in the right-of-way, except temporarily in the case of emergency and only if approved within forty-eight (48) hours of placement by the director.
- n. Signs and advertising. The use of any portion of a small wireless facility in the right-of-way for the posting of signs or for advertising purposes, including, but not limited to, the display of lights, banners and streamers is strictly prohibited. For purposes of emergency contact, the owner of the small wireless facility shall place one (1) identification label on the equipment or equipment cabinet advising of the name and contact telephone number of the owner of the small wireless facility. The label shall be limited in size to what can be legible from a distance of 10 feet and the font size shall not exceed .5 inches.
- o. Inspections.



- a. Owners or operators of small wireless facilities in the right-of-way shall ensure that the department of public works has current contact information for such owner or its authorized representative.
- b. The owner or operator of a small wireless facility in the right-of-way shall submit a report to the department of public works, certifying the integrity of the small wireless facility and the safety of electrical components at least once every two (2) years.
- c. Following the completion of construction of a small wireless facility within a right-of-way, the owner shall submit a report to the department of public works certifying "as-built" compliance with the permitted structural and electrical parameters. The city shall conduct a post-construction inspection to verify the submitted report and confirm the constructed facility does not present a public safety hazard to vehicular and pedestrian traffic. The fee for the post-construction inspection shall be as provided in the city's fee schedule and shall be paid by the owner to the city. Notwithstanding any requirements contained in this section, all applicants for small wireless facilities shall obtain appropriate building permits and comply with all required inspections.
- p. Cooperative determination. In the event an applicant demonstrates, in writing, to the satisfaction of the director, that the operation of this section produces a result which is either (i) a burdensome hardship on the applicant, and is inconsistent with the general public welfare; or (ii) inconsistent with the intent of the particular provisions of this section, and inconsistent with the general public welfare, the applicant and the director shall cooperate to determine an appropriate location and aesthetic design for the proposed facility. In any such cooperative determination there shall be a preference for collocation with existing small wireless facilities or other utility facilities, or for use of unused capacity on existing small wireless facilities. Where facilities cannot be collocated and no such unused capacity exists, there shall be a preference for the use of free-standing concealed type structures which are consistent, to the extent possible, with this section.
- q. Modifications or replacements. Modification or replacement of any small wireless facilities in the right-of-way shall be subject to approval of the department of public works. Any collocation of additional small wireless facilities, removal of small wireless facilities or replacement of small wireless facilities that substantially changes the physical dimensions of an antenna node site shall be subject to approval of the department of public works.
- r. Statements and certifications. Any statement or certification submitted by or on behalf of an applicant pursuant to the provisions of this section shall be prepared applying rational analysis by one (1) or more engineers registered and licensed in the state, or by such other person or persons designated by the applicant who are qualified to perform the required analysis. Any person or persons providing such a statement or statements



shall also certify as to his or her competence in the discipline or disciplines necessary to perform the analysis and to provide the statement.

s. The city may deny an application subject to this Section if the proposed small wireless facility, ground equipment, or new, modified, or replaced pole:

a. Materially and demonstrably interferes with the safe operation of traffic control equipment;

b. Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;

c. Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;

d. Fails to comply with applicable codes, standards and regulations, including the city's design standards; or

e. Fails to comply with the provisions in this Section 9.05.150.

5. An applicant shall, at its own expense, restore the right-of-way to at least its original condition before such work after the completion of any placement or maintenance of a small wireless facility in right-of-way or each phase thereof. If the applicant fails to make such restoration within thirty (30) days following the completion of such placement or maintenance, the city may perform such restoration as it deems necessary and charge all costs of the restoration against the applicant. The applicant shall guarantee its restoration work and shall correct any improper restoration work at its own expense for twelve (12) months following the original completion of the work.

6. A permit from the city constitutes authorization to undertake only certain activities on right-of-way in accordance with this section, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the right-of-way.

7. All wireless facilities must be maintained in a good and safe condition, including kept free of graffiti. An applicant shall maintain its wireless facility in right-of-way in a manner consistent with accepted industry practice and applicable law.

8. In the interest of the public's health, safety and welfare, upon request of the city, an applicant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject right-of-way. The city may require an applicant to alter its placement or maintenance schedule as the city determines to be reasonably necessary so as to minimize disruptions and disturbance in the right-of-way. The city may provide a more definite time frame based on individual city construction or maintenance schedules.

9. The city makes no warranties or representations (including within the Master License Agreement) regarding the fitness, suitability, or availability of city's right-of-way for the applicant's small wireless facilities and any performance of work or costs incurred by applicant or provision of services shall be at applicant's sole risk. Nothing in this section or the Master License Agreement shall affect the city's authority to add, vacate or abandon



right-of-way and city makes no warranties or representations regarding the availability of any added, vacated or abandoned right-of-way for small wireless facilities.

10. The city shall have the right to make such inspections of small wireless facilities placed or maintained in right-of-way as it finds necessary to ensure compliance with this section. In the event the city determines that a violation exists with respect to applicant's placement or maintenance of facilities in the right-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide the applicant at least three (3) days' written notice setting forth the violation and requesting correction.
11. The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in right-of-way occupied by the applicant. Applicant may allow city facilities to be collocated within city's right-of-way through the use of a joint trench during applicant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between the applicant and the city and may be subjected to other city right-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the right-of-way within the limits of the city and within said limits as same may from time to time be altered.
12. An applicant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its small wireless facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the applicant shall have the authority to require such payment in advance. The applicant shall be given not less than thirty (30) days' advance written notice to arrange for such temporary relocation. If the city requests a temporary raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary raising or lowering of the facility.
13. Notice. The city reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any right-of-way, aerial, surface, or subsurface improvements or any other public works construction within the right-of-way. The city shall provide the applicant reasonable advance notice, but no less than 30 days following written notice from the city, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the right-of-way whenever the city has determined that such removal relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the right-of-way. The city retains the right and privilege to cut or move any wireless facility located within the right-of-way in the event of an emergency.
14. The city will not bear any cost to relocate existing infrastructure or facilities, irrespective of the function served where existing city infrastructure or facilities or other existing infrastructure or facilities occupy the local right-of-way and conflict with a proposed wireless facility.



#### **D. Fees & Rates, Cost Recovery.**

1. The application fees for a permit for a small wireless facility within a right-of-way and the rate for use of any city utility pole for a small wireless facility shall be as identified in the city's consolidated fee schedule. A resubmittal of a rejected application for deficiencies as set forth in subsection C.4.s above shall be deemed a new application which shall require payment of a new application fee. The fee for use of any city utility pole for a small wireless facility colocation shall be payable annually by the applicant on the anniversary of the issuance of the permit for such facility.
2. In addition to the application fees provided herein, an applicant for a permit for a small wireless facility shall reimburse the city a cost recovery amount for the fixed cost of third party review of the application, which shall not include any travel expenses for the third party reviewer and shall not be a contingency based fee nor a results-based fee but rather a fixed amount for all reviews. The cost recovery amount shall be as set forth in the city's consolidated fee schedule.
3. A wireless provider may remove one or more of its small wireless facilities at any time from the right-of-way with the required permit. The wireless provider will cease owing the city compensation, as of the date of removal, for such removed facilities.

#### **E. Transfer, sale or assignment of small wireless facilities.**

1. If an applicant transfers, sells or assigns its small wireless facilities in the right-of-way, incident to a transfer, sale or assignment of the applicant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Section. Written notice of any such transfer, sale or assignment shall be provided to the city within twenty (20) days of the effective date of the transfer, sale or assignment. If permit applications are pending in the applicant's name, the transferee, buyer or assignee shall notify the public works department that the transferee, buyer or assignee is the new applicant.
2. Any mortgage, pledge, lease or other encumbrance on the small wireless facilities shall be subject and subordinate to the rights of the city under this section and applicable law.

#### **F. Insurance.**

1. An applicant shall provide, pay for and maintain satisfactory to the city the types of insurance described herein prior to issuance of any permit for a small wireless facility. All insurance shall be from responsible companies duly authorized to do business in the State of Arizona and having a rating in best's insurance guide of A or better or having a rating acceptable to the city. All insurance coverage shall be primary over any city insurance coverage. Further, all insurance coverage shall be "by occurrence" rather than on a "claims made" basis. All liability policies shall provide that the city is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the city annually. Thirty (30) days' advance written



notice by registered or certified mail must be given to the city of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the director.

2. The limits of coverage of insurance required shall be not less than the following:
    - (i) Worker's compensation and employer's liability insurance shall be provided as required by Title 23, Chapter 6 of the Arizona Revised Statutes.
    - (ii) Comprehensive general liability. Bodily injury and property damage—One million dollars (\$1,000,000.00) per each occurrence and Two million dollars (\$2,000,000.00) general aggregate. Said coverage shall not exclude contractual liability, products/completed operations or independent contractors.
    - (iii) Business automobile liability. Bodily injury and property damage—One million dollars (\$1,000,000.00) combined single limit each occurrence.
  3. Umbrella or excess liability. Applicant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The city shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
  4. Self-insurance. Applicant may satisfy the insurance requirements and conditions of this section under a self-insurance plan and/or retention. Applicant agrees to notify the city, and/or indicate on the certificate(s) of insurance, when self-insurance is relied upon or when a self-insured retention exceeds one hundred thousand dollars (\$100,000.00). The city reserves the right, but not the obligation, to request and review a copy of the applicant's most recent annual report or audited financial statement, which the applicant agrees to furnish for the purpose of determining the applicant's financial capacity to self-insure.
  5. Right to review. City reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements. City reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
  6. This section shall not be construed to affect in any way the city's rights, privileges and immunities as set in applicable state law. Insurance under this section shall run continuously with the presence of the applicant's small wireless facilities in the public right-of-way and any termination or lapse of such insurance shall be a violation of this section and subject to the remedies as set forth herein. Notwithstanding the foregoing, the city may, in its sole discretion require increased or decreased levels of insurance for any other object placed in the city's right-of-way by way of individual license agreements.
- G. Indemnification.** An applicant shall, at its sole cost and expense, indemnify, hold harmless and defend the city, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief,



and costs and expenses incurred by the city arising out of the placement or maintenance of the applicant's small wireless facilities in right-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this section, provided, however, that an applicant's obligation hereunder shall not extend to any damages caused solely by the negligence, gross negligence or wanton or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The city agrees to notify the applicant, in writing, within a reasonable time of city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Arizona; (2) as consent by the city to be sued; or (3) as a waiver of any existing city sovereign immunity.

#### **H. Construction bond.**

1. Prior to performing any permitted work in the right-of-way, the city shall require the applicant to establish in the city's favor a construction bond in an amount equal to a minimum of one hundred (100) percent of the cost of the work being permitted exclusive of equipment cost to secure the restoration of the right-of-way and to ensure the applicant's faithful performance of the construction or other work in the right-of-way, in accordance with applicable sections of the City Code.
2. In the event an applicant fails to complete the work in accordance with the provisions of the permit and this section, or fails to complete all restoration work in the right-of-way as required in subsection C above, including but not limited to repair or replacement of damaged landscaping, structures, hardscape, underground utility facilities, structures or equipment, or any other item or feature disturbed by the permitted work, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the applicant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
3. No less than twelve (12) months after completion of the construction and satisfaction of all obligations in accordance with the bond, the applicant may request the director to remove the requirement to continue the construction bond and the city shall release the bond within ten (10) days. Notwithstanding, the city shall require a new bond for any subsequent work performed in the right-of-way.
4. The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the city attorney; and shall provide that:



"Unless released by the city, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

5. The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this section, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.

#### **I. Decommission Bond.**

1. Prior to performing any permitted work in the right-of-way, the city shall require the applicant to establish in the city's favor a decommission bond in an amount equal to a minimum of one hundred (100) percent of the estimated cost of the work necessary to remove the equipment and secure restoration of the right-of-way following the applicant's discontinuance of use of the permitted wireless facility, and to ensure the applicant's faithful performance of its obligation to restore the right-of-way, in accordance with applicable sections of the City Code.
2. In the event an applicant fails to complete all restoration work in the right-of-way as required in subsection C above following discontinuance of use of a permitted wireless facility, including but not limited to repair or replacement of damaged landscaping, structures, hardscape, underground utility facilities, structures or equipment, or any other item or feature disturbed by the permitted work, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the applicant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
3. No less than twelve (12) months after completion of the restoration work in the right of way and satisfaction of all obligations in accordance with the bond, the applicant may request the director to remove the requirement to continue the decommission bond and the city shall release the bond within ten (10) days.
4. The decommission bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the city attorney; and shall provide that:

"Unless released by the city, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

#### **J. Enforcement remedies.**

1. In addition to any other remedies available at law or equity or as provided in this chapter, the city may apply any one or combination of the following remedies in the event an applicant violates this chapter, or applicable local law or order related to the right-of-way:



- (i) Failure to comply with the provisions of the chapter or other law applicable to occupants of the right-of-way, may result in imposition of penalties to be paid by the applicant the city in an amount of not less than five hundred dollars (\$500.00) each day or part thereof that the violation continues. Each unauthorized small wireless facility or use is a separate offense.
  - (ii) Failure of an approved small wireless facility pursuant to this section to be installed and operational within 180 days after application approval shall constitute a failure to comply with the provisions of this chapter and shall result in the revocation of permit granted herein.
  - (iii) In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.
2. Before imposing a fine pursuant to paragraph (1)(i) of this subsection J, the city shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the applicant shall have thirty (30) days to either: (a) cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or (b) file an appeal with the city to contest the alleged violation. If no appeal is filed and if the violation is not cured within the thirty-day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.
  3. In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.
  4. Failure of the city to enforce any requirements of this section shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
  5. Jurisdiction of all proceedings to enforce the provisions of this section relating to civil sanctions shall be in the municipal court of the City of Sedona. Civil actions to enforce this section may be adjudicated by a judge or a court hearing officer.