

REFERENCE TITLE: wireless facilities; residential neighborhoods; approval

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2636

Introduced by
Representative Seaman

AN ACT

AMENDING SECTIONS 9-592, 9-593, 9-594, 11-1802, 11-1803, 11-1804 AND
11-1805, ARIZONA REVISED STATUTES; RELATING TO PUBLIC UTILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 9-592, Arizona Revised Statutes, is amended to
3 read:
4 9-592. Applicability; wireless provider; use of right-of-way;
5 rates, fees and terms; right to access; damage and
6 repair
7 A. This section applies to the activities of a wireless provider
8 within a right-of-way.
9 B. An authority may not enter into an exclusive arrangement with a
10 wireless provider for use of a right-of-way for any of the following:
11 1. The construction, installation, maintenance, modification,
12 operation or replacement of utility poles or monopoles.
13 2. ~~The collocation of~~ COLLOCATING small wireless facilities on
14 utility poles or wireless support structures.
15 3. ~~The collocation of~~ COLLOCATING wireless facilities on monopoles.
16 C. An authority may charge a wireless provider a rate or fee for
17 the use of a right-of-way for the construction, installation, maintenance,
18 modification, operation or replacement of a utility pole in the
19 right-of-way or the collocation of a small wireless facility in the
20 right-of-way, only if the authority charges other communications service
21 providers or publicly, cooperatively or municipally owned utilities for
22 the use of the right-of-way and the authority has the legal authority to
23 do so. If an authority charges a rate or fee pursuant to this section,
24 the rate or fee for a wireless provider must be:
25 1. Limited to not more than the direct and actual cost of managing
26 the right-of-way.
27 2. Competitively neutral in regard to other users of the
28 right-of-way, including investor-owned, authority-owned or cooperatively
29 owned entities, unless other users are exempt from such rates or fees
30 under applicable law.
31 D. A rate or fee charged pursuant to subsection C of this section
32 may not do any of the following:
33 1. Result in a double recovery where existing rates, fees or taxes
34 already recover the direct and actual costs of managing a right-of-way.
35 2. Be in the form of a franchise or other fee based on revenue or
36 customer counts.
37 3. Be unreasonable or discriminatory.
38 4. Exceed an annual amount equal to ~~fifty dollars~~ \$50 multiplied by
39 the number of small wireless facilities that are in the authority's
40 geographic jurisdiction and that are placed by the wireless provider in
41 the right-of-way.
42 E. An authority shall establish and make available rates, fees and
43 terms for all of the following, within six months after August 9, 2017 or
44 three months after receiving the first request by a wireless provider,
45 whichever is later:

1 1. The construction, installation, mounting, maintenance,
2 modification, operation or replacement of a utility pole or monopole by a
3 wireless provider in a right-of-way.

4 2. ~~The collocation of~~ COLLOCATING a small wireless facility by a
5 wireless provider in a right-of-way.

6 3. ~~The collocation of~~ COLLOCATING a wireless facility on or within
7 a monopole by a wireless provider in a right-of-way.

8 F. The rates, fees and terms established pursuant to subsection E
9 of this section must be made available for acceptance by a wireless
10 provider. At the wireless provider's option, a wireless provider may
11 request different or additional terms that the parties shall negotiate in
12 good faith. Documents that reflect rates, fees and terms with each
13 wireless provider are public records. Rates, fees and terms must comply
14 with this article, and the terms:

15 1. May not be unreasonable or discriminatory.

16 2. May include requirements applicable to other users of the
17 right-of-way.

18 3. May require that the wireless provider's operation of the small
19 wireless facilities in the right-of-way does not interfere with the
20 authority's public safety communications.

21 4. Subject to subsection ~~K~~ M of this section and section 9-593,
22 subsection ~~F~~ H, may not require the placement of small wireless
23 facilities on any specific utility pole or category of poles or require
24 multiple antenna systems on a single utility pole.

25 5. Subject to subsection ~~K~~ M of this section and section 9-593,
26 subsection ~~F~~ H, may not limit the placement of small wireless facilities
27 by minimum separation distances.

28 G. Agreements between authorities and wireless providers that are
29 in effect on August 9, 2017 and that relate to ~~the collocation of~~
30 COLLOCATING small wireless facilities in the right-of-way, including ~~the~~
31 ~~collocation of~~ COLLOCATING small wireless facilities on authority utility
32 poles, remain in effect, subject to applicable termination provisions.
33 The wireless provider may accept the rates, fees and terms established
34 under subsections E and F of this section for small wireless facilities
35 and utility poles that are the subject of an application submitted after
36 the rates, fees and terms become effective.

37 H. Subject to this section and the approval of an application, if
38 required, a wireless provider may do any of the following:

39 1. Collocate small wireless facilities.

40 2. Construct, install, modify, mount, maintain, operate and replace
41 utility poles that are associated with ~~the collocation of~~ COLLOCATING
42 small wireless facilities along, across, on and under the right-of-way.

43 3. Construct, install, modify, mount, maintain, operate and replace
44 monopoles that are associated with ~~the collocation of~~ COLLOCATING wireless
45 facilities along, across, on and under the right-of-way. The

1 installation, modification and replacement of monopoles are subject to
2 review under section 9-594 regardless of the height of the monopole.

3 I. Subject to subsection ~~K~~ M, paragraph 2, subdivision (c) of this
4 section, a new, replacement or modified utility pole that is associated
5 with the collocation of small wireless facilities and that is installed in
6 the right-of-way is not subject to zoning review and approval under
7 section 9-594 if the utility pole does not exceed the greater of either:

8 1. Ten feet in height above the tallest existing utility pole,
9 other than a utility pole supporting only wireless facilities, that is in
10 place on August 9, 2017, that is located within five hundred feet of the
11 new, replacement or modified utility pole and that is in the same
12 right-of-way within the jurisdictional boundary of the authority, but not
13 more than fifty feet above ground level.

14 2. Forty feet above ground level.

15 J. New small wireless facilities collocated on a utility pole or
16 wireless support structure in the right-of-way are not subject to zoning
17 review and approval if they do not extend more than ten feet above the
18 utility pole or wireless support structure and do not exceed fifty feet
19 above ground level.

20 K. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL
21 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL
22 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE
23 SINGLE-FAMILY HOMEOWNERS AND EVERY EDUCATIONAL INSTITUTION WITHIN A
24 ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS
25 FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE AUTHORITY
26 WITH ANY APPLICATION THAT IS REQUIRED UNDER THIS SECTION.

27 L. A WIRELESS PROVIDER THAT COLLOCATES A SMALL WIRELESS FACILITY IN
28 A RESIDENTIAL AREA SHALL CONDUCT A LONG-TERM STUDY ON THE IMPACT TO
29 PERSONS IN THE AREA OF THE COLLOCATION.

30 ~~K~~ M. An authority may require an application under this section
31 for ~~the installation of~~ INSTALLING new, replacement or modified utility
32 poles associated with the collocation of small wireless facilities. An
33 authority shall approve an application unless the authority finds that the
34 utility pole fails to comply with any of the following:

35 1. Applicable codes.

36 2. Local code provisions or regulations that concern any of the
37 following:

38 (a) Public safety.

39 (b) Objective design standards and reasonable stealth and
40 concealment requirements.

41 (c) Undergrounding requirements that prohibit ~~the installation of~~
42 INSTALLING new or ~~the modification of~~ MODIFYING existing utility poles or
43 monopoles in a right-of-way without prior approval, if such requirements
44 include a waiver, zoning or another process that addresses requests to
45 install such new utility poles or monopoles or modify such existing

1 utility poles or monopoles and do not prohibit ~~the replacement of~~
2 REPLACING utility poles or monopoles.

3 3. Requirements that are imposed by a contract between an authority
4 and a private property owner and that concern design standards applicable
5 to utility poles in the right-of-way.

6 4. The authority's public safety and reasonable spacing
7 requirements that concern the location of new utility poles in a
8 right-of-way.

9 5. SUBSECTION K OF THIS SECTION.

10 ~~t.~~ N. An authority shall process applications under subsection
11 ~~K~~ M of this section in compliance with applicable law. If an authority
12 fails to approve or deny an application within the time frame specified by
13 applicable law, the application shall be deemed approved. Any application
14 fee is subject to the requirements provided in section 9-593, subsection
15 ~~J~~ L. The total application fee, if allowed, may not exceed ~~seven hundred~~
16 ~~fifty dollars~~ \$750.

17 ~~M.~~ O. The construction, installation, mounting, maintenance,
18 modification, operation or replacement for which a permit is granted shall
19 be completed within one hundred eighty days after the permit issuance
20 date, unless the authority and wireless provider agree to extend this
21 period or a delay is caused by a lack of commercial power at the site.

22 ~~N.~~ P. Approval of an application by an authority authorizes the
23 applicant to do both of the following:

- 24 1. Undertake the requested deployment.
- 25 2. Subject to applicable relocation requirements, the authority's
26 terms as described in this section and the wireless provider's right to
27 terminate at any time, operate and maintain the wireless provider's new,
28 modified or replacement utility pole for a period of not less than ten
29 years, which must be renewed for equivalent durations unless the authority
30 makes a finding that the new or modified utility pole does not comply with
31 the requirements described in subsection ~~K~~ M of this section.

32 ~~O.~~ Q. An authority may require a wireless provider to repair all
33 damage to the authority's property and the right-of-way that is caused by
34 the activities of the wireless provider or the wireless provider's
35 contractor while occupying, installing, repairing or maintaining small
36 wireless facilities, wireless support structures or utility poles in the
37 right-of-way and to return the damaged property to the same condition as
38 before the damage pursuant to the competitively neutral, reasonable
39 requirements and specifications of the authority. If the wireless
40 provider fails to make the repairs required by the authority within a
41 reasonable time after the authority provides written notice to the
42 wireless provider, the authority may make the repairs and charge the
43 applicable party the reasonable, documented cost of the repairs.

1 ~~P.~~ R. This article does not relieve a wireless provider from any
2 applicable requirement to obtain a franchise, license or other permission
3 to provide communications service or to install, place, maintain or
4 operate facilities or structures that are not authorized by this article
5 in the right-of-way to provide a communications service.

6 Sec. 2. Section 9-593, Arizona Revised Statutes, is amended to
7 read:

8 9-593. Applicability; collocation of small wireless
9 facilities; permits; application; fee

10 A. This section applies to the activities of a wireless provider
11 within a right-of-way.

12 B. Except as provided in this section and sections 9-592, 9-594,
13 9-595, 9-597, 9-598 and 9-599, as applicable, an authority may not
14 prohibit, regulate or charge for ~~the collocation of~~ COLLOCATING small
15 wireless facilities.

16 C. Subject to this section and section 9-592, subsection J, a small
17 wireless facility is classified as a permitted use and is not subject to
18 zoning review or approval if the small wireless facility is collocated in
19 a right-of-way in any zone.

20 D. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL
21 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL
22 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE
23 SINGLE-FAMILY HOMEOWNERS AND EVERY EDUCATIONAL INSTITUTION WITHIN A
24 ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS
25 FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE AUTHORITY
26 WITH ANY APPLICATION THAT IS REQUIRED UNDER THIS SECTION.

27 E. A WIRELESS PROVIDER THAT COLLOCATES A SMALL WIRELESS FACILITY IN
28 A RESIDENTIAL AREA SHALL CONDUCT A LONG-TERM STUDY ON THE IMPACT TO
29 PERSONS IN THE AREA OF THE COLLOCATION.

30 ~~D.~~ F. An authority may require an applicant to obtain one or more
31 permits to collocate a small wireless facility if the permit requirement
32 is of general applicability and does not apply exclusively to wireless
33 facilities. An applicant seeking to collocate multiple small wireless
34 facilities within the jurisdiction of a single authority may file a
35 consolidated application ~~for the collocation of~~ TO COLLOCATE up to
36 twenty-five small wireless facilities if the collocations each involve
37 substantially the same type of small wireless facilities and substantially
38 the same type of structure.

39 ~~E.~~ G. An application must include an attestation that the small
40 wireless facilities will be collocated on the utility pole or wireless
41 support structure and that the small wireless facilities will be
42 operational for use by a wireless services provider to provide service
43 within one hundred eighty days after the permit issuance date, unless the
44 authority and the wireless provider agree to extend this period or a delay
45 is caused by a lack of commercial power at the site.

1 ~~F.~~ H. An authority:

2 1. Shall accept applications for, process and issue permits to
3 collocate small wireless facilities.

4 2. Within twenty days after receiving an application, shall
5 determine and notify the applicant whether the application is complete.
6 If an applicant is not notified within the twenty-day period, the
7 application is deemed complete. If an application is incomplete, the
8 authority must specifically identify the information missing from the
9 application.

10 3. Shall process each application on a nondiscriminatory basis. A
11 complete application is deemed approved if the authority fails to approve
12 or deny the application within seventy-five days after receiving a
13 complete application.

14 4. Shall approve an application unless the application does not
15 **COMPLY WITH SUBSECTION D OF THIS SECTION OR** meet the applicable codes,
16 local code provisions or regulations that concern public safety, objective
17 design standards for decorative utility poles or reasonable stealth and
18 concealment requirements or public safety and reasonable spacing
19 requirements concerning the location of ground-mounted equipment in a
20 right-of-way. If an authority determines that applicable codes or local
21 code provisions or regulations require that the utility pole or wireless
22 support structure be replaced before the requested collocation, approval
23 may be conditioned on such replacement of the utility pole or wireless
24 support structure. The wireless provider's request for a replacement
25 utility pole or wireless support structure will be processed pursuant to
26 section 9-592.

27 5. If an application is denied, shall document the basis for the
28 denial, including the specific code provisions, regulations or
29 requirements on which the denial was based, and send the documentation to
30 the applicant on or before the date that the application is denied. The
31 applicant may cure the deficiencies identified by the authority and
32 resubmit the application within thirty days after the denial without
33 paying an additional application fee. The authority shall approve or deny
34 the revised application within thirty days after receiving the revised
35 application. Any subsequent review is limited to the deficiencies cited
36 in the denial.

37 6. If an application includes multiple small wireless facilities,
38 may remove small wireless facility collocations from the application and
39 treat separately small wireless facility collocations for which incomplete
40 information has been provided or that do not qualify for consolidated
41 treatment or that are denied. The authority may issue separate permits
42 for each collocation that is approved in a consolidated application.

43 ~~G.~~ I. An authority may not:

44 1. Directly or indirectly require an applicant to perform services
45 that are unrelated to the collocation for which approval is sought, such

1 as in-kind contributions to the authority, including reserving fiber,
2 conduit or pole space on the wireless provider's monopole or utility pole
3 for the authority.

4 2. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, require an
5 applicant to provide more information to obtain a permit than the
6 authority requires of a communications service provider that is not a
7 wireless provider and that requests to attach facilities to a structure.
8 An authority may require the applicant to certify that the small wireless
9 facilities to be collocated comply with the federal communications
10 commission's regulations concerning radio frequency emissions referenced
11 in 47 United States Code section 332(c)(7)(B)(iv).

12 3. Institute, either expressly or de facto, a moratorium on filing,
13 receiving or processing applications or issuing permits or other
14 approvals, if any, for ~~the collocation of~~ COLLOCATING a small wireless
15 facility.

16 4. Require an application for routine maintenance or the
17 replacement of small wireless facilities with small wireless facilities
18 that are substantially similar or the same size or smaller. An authority
19 may require a permit to work within a right-of-way for such activities, if
20 applicable. A permit issued pursuant to this paragraph is subject to the
21 requirements of this section.

22 ~~H.~~ J. Collocation for which a permit is granted shall be completed
23 within one hundred eighty days after the permit issuance date, unless the
24 authority and the wireless provider agree to extend this period or a delay
25 is caused by the lack of commercial power at the site.

26 ~~I.~~ K. Approval of an application by an authority allows the
27 applicant to do both of the following:

- 28 1. Collocate the small wireless facilities.
- 29 2. Subject to applicable relocation requirements, the wireless
30 provider's right to terminate at any time and the authority's terms
31 described in section 9-592, operate and maintain the small wireless
32 facilities for a period of not less than ten years, which must be renewed
33 for equivalent durations unless the authority makes a finding that the
34 small wireless facilities do not comply with the applicable codes or local
35 code provisions or regulations described in subsection ~~F~~ H, paragraph 4
36 of this section.

37 ~~J.~~ L. An authority may charge an application fee that is limited
38 to the actual, direct and reasonable costs that are incurred by the
39 authority and that relate to the granting or processing of an application.
40 An application fee shall be reasonably related in time to the incurring of
41 such costs. If such costs are already recovered by existing fees, rates
42 or taxes that are paid by a wireless provider, an authority may not charge
43 an application fee to recover such costs. An application fee may not
44 include:

1 1. Third-party travel expenses that are incurred to review an
2 application.

3 2. The direct payment or reimbursement of third-party rates or fees
4 that are charged on a contingency basis or pursuant to a result-based
5 arrangement.

6 ~~K.~~ M. The total application fee, if allowed, may not exceed
7 ~~one hundred dollars~~ \$100 each for up to five small wireless facilities
8 addressed in an application and ~~fifty dollars~~ \$50 for each additional
9 small wireless facility addressed in the application.

10 ~~L.~~ N. This article does not allow a person to collocate small
11 wireless facilities on a privately owned utility pole, a privately owned
12 wireless support structure or private property without the consent of the
13 property owner.

14 Sec. 3. Section 9-594, Arizona Revised Statutes, is amended to
15 read:

16 9-594. Structures subject to zoning; time frames;
17 application; fees

18 A. The following activities that take place inside of a
19 right-of-way are subject to this section and all of the authority's codes
20 and regulations, including the authority's zoning codes and other
21 regulatory processes governing use of the rights-of-way, unless the
22 activities are exempt from zoning review and approval under section 9-592,
23 subsection I or J or section 9-593, subsection C:

24 1. The installation of new monopoles, utility poles or wireless
25 facilities.

26 2. The collocation of wireless facilities.

27 B. Notwithstanding any provision in this article to the contrary,
28 the construction, installation, maintenance, modification, operation or
29 replacement of a monopole or associated wireless facility in a
30 right-of-way is subject to all of the authority's codes and regulations,
31 including the authority's zoning codes and other regulatory processes
32 governing use of the rights-of-way.

33 C. An authority shall:

34 1. Accept and process applications for the modification of existing
35 or the installation of new monopoles, utility poles or wireless facilities
36 and the collocation of wireless facilities.

37 2. Within thirty days after receiving an application, notify the
38 applicant whether the application is complete. If an application is
39 incomplete, the authority must specifically identify the information
40 missing from the application.

41 3. Process each complete application on a nondiscriminatory basis.
42 A complete application is deemed approved if the authority fails to
43 approve or deny the application within one hundred fifty days after
44 receipt of an application for the modification of existing or the
45 installation of new monopoles, utility poles or wireless facilities or

1 within ninety days after receipt of a complete application for the
2 collocation of wireless facilities. The time period for approval may be
3 tolled to accommodate timely requests for information required to complete
4 the application or may be extended by mutual agreement between the
5 applicant and authority.

6 4. If a complete application is denied, notify the applicant in
7 writing and provide substantial supporting evidence of the reason for
8 denial in the written record. The written notification of the denial and
9 the supporting evidence shall be publicly released contemporaneously.
10 There must be a reasonable basis for the denial of an application. An
11 authority may not deny an application if the denial is discriminatory
12 against the applicant with respect to the placement of the facilities of
13 other wireless providers.

14 D. An authority may not:

15 1. Require an applicant to submit information about the applicant's
16 business decisions regarding the need for the monopole, utility pole or
17 wireless facilities.

18 2. Require an applicant to submit information about, or evaluate an
19 applicant's business decisions regarding, the applicant's service,
20 customer demand for service or quality of service.

21 3. Institute, either expressly or de facto, a moratorium on filing,
22 receiving or processing applications or issuing decisions for
23 modifications or installations that are not a permitted use.

24 E. An authority, in addition to other rights the authority has
25 under federal, state or local law, may:

26 1. Adopt reasonable requirements regarding the appearance and
27 concealment of facilities, including those relating to materials used for
28 arranging, screening or landscaping.

29 2. Adopt setback or fall zone requirements that are substantially
30 similar to setback or fall zone requirements that are imposed on other
31 types of commercial structures of a similar height.

32 3. Charge an application fee. Any application fee is subject to
33 the requirements provided in section 9-593, subsection ~~ç~~ L. The total
34 application fee, if allowed, may not exceed ~~one thousand dollars~~ \$1,000
35 for the modification of existing or the installation of new monopoles or
36 utility poles or for the collocation of wireless facilities.

37 4. Charge a rate or fee for the use of the right-of-way for the
38 installation of a monopole and associated wireless facility that is
39 limited to not more than the direct and actual costs of managing the
40 right-of-way and that is not in the form of a franchise or other fee based
41 on revenue or customer counts.

42 F. An applicant's business decisions regarding the type and
43 location of wireless facilities, monopoles or utility poles or the
44 technology to be used are presumed to be reasonable. This presumption
45 does not apply to the height or appearance of wireless facilities,

1 monopoles or utility poles. An authority may consider the height of such
2 structures in the zoning or other regulatory review, provided that the
3 authority does not unreasonably discriminate between the applicant and
4 other communications service providers that install wireless facilities.

5 G. Subject to applicable relocation requirements, the authority's
6 terms described in section 9-592 and the wireless provider's right to
7 terminate at any time, the approval term of an application shall be for a
8 period of not less than ten years, which must be renewed for equivalent
9 durations unless the authority makes a finding that the structure or
10 facilities do not comply with the applicable codes or terms of the zoning
11 or other regulatory process approval. Construction of the approved
12 structure or facilities shall be completed within one hundred eighty days
13 after the permit issuance date, unless the authority and the wireless
14 provider agree to extend this period or a delay is caused by the lack of
15 commercial power at the site.

16 Sec. 4. Section 11-1802, Arizona Revised Statutes, is amended to
17 read:

18 11-1802. Exclusive arrangements prohibited; permit; rates,
19 fees and terms; access and use of county
20 structures

21 A. A county may not enter into an exclusive arrangement with any
22 wireless provider for use of a right-of-way for the construction,
23 operation or maintenance of utility poles or ~~the collocation of~~
24 COLLOCATING small wireless facilities on utility poles or wireless support
25 structures.

26 B. Subject to subsection C of this section, a county may require a
27 permit and charge a fee for processing an application by a wireless
28 provider and conducting associated inspections for the installation,
29 modification or replacement of a utility pole or ~~the collocation of~~
30 COLLOCATING a small wireless facility on a utility pole or a wireless
31 support structure in a right-of-way. Any fee charged pursuant to this
32 section must be reasonable and conform to authorized and published fees
33 for similar permits issued by the county and may not exceed ~~one hundred~~
34 ~~dollars~~ \$100 per collocation or installation.

35 C. For the collocation of a small wireless facility on a utility
36 pole or wireless support structure in the right-of-way that is not owned
37 by the county and that does not include ground-mounted equipment, the
38 county may not charge a wireless provider a rate or fee and may not
39 require a permit.

40 D. A county may charge a wireless provider a rate for the wireless
41 provider's use of a right-of-way in accordance with this section. The
42 county may:

43 1. For the collocation of a small wireless facility on a utility
44 pole or wireless support structure that is not owned by the county that
45 includes ground-mounted equipment, charge a rate for the ground-mounted

1 equipment using the methodology described in paragraph 5 of this
2 subsection, require an application and charge a fee. The rate for
3 ground-mounted equipment may not exceed ~~one hundred seventy-five dollars~~
4 \$175.

5 2. For the collocation of a small wireless facility on a county
6 utility pole that does not include ground-mounted equipment, charge a rate
7 using the methodology described in paragraph 5 of this subsection that
8 does not exceed ~~twenty dollars~~ \$20. If the collocation includes
9 ground-mounted equipment, the county may charge an additional rate using
10 the methodology described in paragraph 5 of this subsection. The rate for
11 ground-mounted equipment may not exceed ~~one hundred seventy-five dollars~~
12 \$175.

13 3. For the installation of a utility pole, together with the
14 collocation of small wireless facilities, that will not be owned by the
15 county, charge a wireless provider a rate using the methodology described
16 in paragraph 5 of this subsection. The rate may not exceed ~~one hundred~~
17 ~~seventy-five dollars~~ \$175. An additional rate may not be charged for
18 collocated small wireless facilities, including ground-mounted equipment
19 that is requested in the application.

20 4. For the replacement of a utility pole owned by the county,
21 require the applicant to comply with the county's processes and
22 requirements for installing such structures. The county may not charge a
23 rate for the replaced utility pole.

24 5. Charge a rate that has been lawfully adopted and published. The
25 rate shall be based on the average fair market value of the county
26 right-of-way that is suitable for the deployment of wireless facilities
27 and utility poles. All materials used to derive these values shall be
28 readily available to the public at least ninety days before the adoption
29 of the rate. The rate adopted shall be based on ninety percent of the
30 average fair market values that have been determined and are subject to
31 the applicable rate caps in paragraphs 1, 2 and 3 of this subsection.

32 E. A county shall:

33 1. Adopt an ordinance establishing rates, fees and terms for the
34 following:

35 (a) The installation, modification or replacement by a wireless
36 provider of a utility pole located in a right-of-way.

37 (b) The collocation by a wireless provider of a small wireless
38 facility in a right-of-way.

39 (c) The collocation by a wireless provider of a small wireless
40 facility on a county utility pole.

41 2. Adopt the ordinance described in paragraph 1 of this subsection
42 within the time period beginning on August 9, 2017 and ending after the
43 time allowed under the county's procedures adopted under section 11-1605
44 for the adoption of an ordinance, or ninety days after receiving the first
45 request by a wireless provider, whichever is later.

1 3. Establish rates, fees and terms that comply with this section.

2 The terms:

3 (a) May not be unreasonable or discriminatory.

4 (b) May include requirements applicable to other users of the
5 right-of-way.

6 (c) May require ~~that~~ the wireless provider's operation of the small
7 wireless facilities and wireless facilities in the right-of-way ~~does~~ **TO**
8 not interfere with the county's public safety communications.

9 (d) May not require the placement of small wireless facilities on
10 any specific utility pole or category of utility poles or require multiple
11 antenna systems on a single utility pole.

12 (e) May not limit the placement of pole-mounted small wireless
13 facilities by minimum separation distances but may require reasonable
14 spacing requirements that concern the location of ground-mounted
15 equipment.

16 **F. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL
17 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL
18 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE
19 SINGLE-FAMILY HOMEOWNERS AND EVERY EDUCATIONAL INSTITUTION WITHIN A
20 ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS
21 FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE COUNTY WITH
22 ANY APPLICATION THAT IS REQUIRED UNDER THIS ARTICLE.**

23 **G. A WIRELESS PROVIDER THAT COLLOCATES A SMALL WIRELESS FACILITY IN
24 A RESIDENTIAL AREA SHALL CONDUCT A LONG-TERM STUDY ON THE IMPACT TO
25 PERSONS IN THE AREA OF THE COLLOCATION.**

26 ~~F.~~ **H.** Agreements that are in effect on August 9, 2017 between
27 counties and wireless providers and that relate to the collocation of
28 small wireless facilities in the right-of-way, including the collocation
29 of small wireless facilities on county utility poles, remain in effect,
30 subject to applicable termination provisions. The wireless provider may
31 elect to pay the rates and fees provided under subsection D of this
32 section for small wireless facilities and utility poles that are the
33 subject of an application submitted after the rates, fees and terms become
34 effective, if the wireless provider notifies the county of the wireless
35 provider's election and agreement to comply with the terms adopted by the
36 county under subsection E of this section.

37 ~~G.~~ **I.** This chapter does not relieve a wireless provider from any
38 applicable requirement to obtain a franchise, **A** license or other
39 permission to provide communications service or to install, place,
40 maintain or operate facilities or structures that are not authorized by
41 this chapter in the right-of-way to provide a communications service.

1 Sec. 5. Section 11-1803, Arizona Revised Statutes, is amended to
2 read:

3 11-1803. Access to right-of-way by wireless providers

4 A. Subject to this section and sections 11-1802, 11-1804, 11-1806,
5 11-1807, 11-1809 and 11-1810, a wireless provider may construct, install,
6 modify, mount, maintain, operate and replace utility poles along, across,
7 on and under the right-of-way and collocate small wireless facilities on
8 utility poles and wireless support structures.

9 B. The following requirements apply to the construction,
10 installation, mounting, maintenance, modification, operation or
11 replacement of utility poles by a wireless provider in the right-of-way
12 and the collocation of small wireless facilities on utility poles or
13 wireless support structures by wireless providers in the right-of-way:

14 1. A county shall issue a permit for the collocation of small
15 wireless facilities on or adjacent to a county utility pole or the
16 collocation of small wireless facilities with ground-mounted equipment
17 adjacent to any other party's utility pole or wireless support structure
18 if both of the following apply:

19 (a) The applicant provides the sealed statement of a registered
20 engineer demonstrating that the utility pole or wireless support structure
21 is structurally sound and able to support the proposed small wireless
22 facility.

23 (b) The collocation complies with applicable codes and the terms
24 for collocation adopted under SUBSECTIONS C AND D OF THIS SECTION AND
25 section 11-1802, ~~subsection~~ SUBSECTIONS E, F AND G.

26 2. The collocation of small wireless facilities pursuant to
27 paragraph 1 of this subsection is a permitted use in all zoning districts
28 and zoning review and approval is not required. If the applicant fails to
29 demonstrate that a county utility pole is structurally sound and able to
30 support the proposed small wireless facility, the county may condition a
31 permit on replacement of the county utility pole at the applicant's
32 expense. The wireless provider's request to install a replacement utility
33 pole will be processed under section 11-1802, subsection D, paragraph
34 4. The county shall own the replacement utility pole.

35 3. A county shall issue a permit for the installation, modification
36 or replacement of a utility pole if all of the following apply:

37 (a) The applicant provides the sealed statement of a registered
38 engineer demonstrating that the utility pole is structurally sound and
39 able to support the proposed small wireless facility.

40 (b) The proposed location of the utility pole complies with
41 reasonable restrictions adopted by the county that require distances of
42 separation between utility poles, ground-mounted equipment and wireless
43 support structures.

1 (c) The installation, modification or replacement complies with the
2 applicable codes and terms for installation, modification or replacement
3 adopted under section 11-1802, ~~subsection~~ SUBSECTIONS E, F AND G.

4 4. The installation, modification or replacement of a utility pole
5 approved pursuant to paragraph 3 of this subsection is a permitted use in
6 all zoning districts and subject to only administrative zoning review and
7 approval unless the installation, modification or replacement would not
8 comply with the height requirements of paragraph 5 of this subsection, an
9 undergrounding requirement described in paragraph 6 of this subsection or
10 a pole spacing requirement described in paragraph 7 of this subsection.

11 5. A proposed or modified utility pole installed in a county
12 right-of-way may not exceed the greater of ten feet in height above the
13 tallest utility pole, other than a utility pole supporting only wireless
14 facilities, that is in place on August 9, 2017 and that is located within
15 five hundred feet of the proposed utility pole in the same right-of-way or
16 fifty feet above ground level. An applicant may apply for an
17 administrative waiver to exceed these height limitations.

18 6. Wireless providers must comply with undergrounding requirements
19 that prohibit the installation of new structures in a right-of-way without
20 prior approval if such requirements do not prohibit the replacement of
21 existing structures and facilities. An applicant may apply for an
22 administrative waiver to install a utility pole in a right-of-way where
23 such undergrounding requirements apply.

24 7. Wireless providers shall comply with reasonable requirements
25 concerning spacing between utility poles and ground-mounted equipment in
26 the right-of-way. An applicant may apply for an administrative waiver to
27 install a utility pole in closer proximity to another pole or
28 ground-mounted equipment than these spacing requirements would permit.

29 C. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL
30 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL
31 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE
32 SINGLE-FAMILY HOMEOWNERS AND EVERY EDUCATIONAL INSTITUTION WITHIN A
33 ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS
34 FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE COUNTY WITH
35 ANY APPLICATION THAT IS REQUIRED UNDER THIS ARTICLE.

36 D. A WIRELESS PROVIDER THAT COLLOCATES A SMALL WIRELESS FACILITY IN
37 A RESIDENTIAL AREA SHALL CONDUCT A LONG-TERM STUDY ON THE IMPACT TO
38 PERSONS IN THE AREA OF THE COLLOCATION.

39 ~~E.~~ E. A county shall adopt an administrative waiver process for
40 subsection B, paragraphs 5, 6 and 7 of this section that complies with
41 section 11-1605. The application process and time frames shall be adopted
42 within the time period beginning on August 9, 2017 and ending after the
43 time allowed under the county's procedures adopted pursuant to section
44 11-1605 for the adoption of an ordinance, or ninety days after receiving a
45 request by a wireless provider, whichever is later. An applicant is

1 entitled to all of the rights granted in chapter 11, article 1 of this
2 title.

3 Sec. 6. Section 11-1804, Arizona Revised Statutes, is amended to
4 read:

5 11-1804. Collocation of small wireless facilities; permits

6 A. Except as provided in this section and sections 11-1802,
7 11-1803, 11-1806, 11-1807, 11-1809 and 11-1810, a county may not prohibit,
8 regulate or charge for the collocation of small wireless facilities inside
9 a right-of-way.

10 B. For collocations for which an application is required, an
11 applicant seeking to collocate multiple small wireless facilities within
12 the jurisdiction of a single county may file a consolidated application
13 for the collocation of up to thirty-five small wireless facilities within
14 a right-of-way if the collocations each involve substantially the same
15 type of small wireless facilities and substantially the same type of
16 utility pole or wireless support structure. The county may remove from
17 the consolidated application and treat separately small wireless facility
18 collocations for which incomplete information has been provided, that do
19 not qualify for consolidated treatment or that are denied. The county may
20 issue separate permits for each collocation that is approved in a
21 consolidated application. Application fees, if required, shall be capped
22 at ~~one hundred dollars~~ \$100 for each small wireless facility for up to
23 five small wireless facilities addressed in a single application and
24 ~~sixty-five dollars~~ \$65 for each additional small wireless facility
25 addressed in the application.

26 C. An application shall include an attestation that the small
27 wireless facilities will be collocated on the utility pole or wireless
28 support structure and that the small wireless facilities will be
29 operational for use by a wireless services provider to provide service
30 within one year after the date on which the permit is issued.

31 D. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL
32 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL
33 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE
34 SINGLE-FAMILY HOMEOWNERS AND EVERY EDUCATIONAL INSTITUTION WITHIN A
35 ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS
36 FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE COUNTY WITH
37 ANY APPLICATION THAT IS REQUIRED UNDER THIS SECTION.

38 E. A WIRELESS PROVIDER THAT COLLOCATES A SMALL WIRELESS FACILITY IN
39 A RESIDENTIAL AREA SHALL CONDUCT A LONG-TERM STUDY ON THE IMPACT TO
40 PERSONS IN THE AREA OF THE COLLOCATION.

1 Sec. 7. Section 11-1805, Arizona Revised Statutes, is amended to
2 read:

3 11-1805. Applicability; location outside of a county-owned
4 right-of-way

5 A. This section applies to the installation, modification or
6 replacement by a wireless provider of a utility pole or the collocation by
7 a wireless provider of a small wireless facility on a utility pole or a
8 wireless support structure outside of the right-of-way.

9 B. The installation, modification or replacement of a utility pole
10 or the collocation of a small wireless facility on a utility pole or a
11 wireless support structure is a permitted use in every zoning district in
12 the county except for single-family residential zoning districts.

13 C. The installation, modification or replacement of a utility pole
14 or the collocation of a small wireless facility on a utility pole or a
15 wireless support structure is not a prohibited use in any zoning district
16 in the county.

17 D. In any zoning district in which the installation, modification
18 or replacement of a utility pole or the collocation of a small wireless
19 facility on a utility pole or a wireless support structure is not a
20 permitted use, the county shall establish a procedure by which an
21 applicant may seek to install, modify or replace a utility pole or
22 collocate a small wireless facility on a utility pole or a wireless
23 support structure.

24 E. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL
25 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL
26 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE
27 SINGLE-FAMILY HOMEOWNERS AND EVERY EDUCATIONAL INSTITUTION WITHIN A
28 ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS
29 FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE COUNTY WITH
30 ANY APPLICATION THAT IS REQUIRED UNDER THIS ARTICLE.

31 F. A WIRELESS PROVIDER THAT COLLOCATES A SMALL WIRELESS FACILITY IN
32 A RESIDENTIAL AREA SHALL CONDUCT A LONG-TERM STUDY ON THE IMPACT TO
33 PERSONS IN THE AREA OF THE COLLOCATION.

34 ~~F.~~ G. Except as provided in this section, all zoning requirements
35 of the zoning district in which the applicant seeks to install, modify or
36 replace a utility pole or collocate a small wireless facility on a utility
37 pole or a wireless support structure outside the right-of-way that are
38 generally applicable to all applicants within that zoning district apply
39 to the applicant.

40 ~~F.~~ H. The county may adopt reasonable zoning requirements that are
41 applicable only to the installation, modification or replacement of a
42 utility pole or the collocation of a small wireless facility on a utility
43 pole or a wireless support structure and that reflect sound zoning and
44 planning.

1 ~~G.~~ I. A fee for a zoning application and approval required under
2 this section shall conform to the fees applicable to similar applications
3 within the county.
4 ~~H.~~ J. For zoning applications required under this section, a
5 county shall either:
6 1. Incorporate the application process and time frames for the
7 installation, modification or replacement of a utility pole or wireless
8 support structures, or for the collocation of small wireless facilities,
9 into processes and time frames previously adopted by the county pursuant
10 to section 11-1605.
11 2. Adopt an application process and time frames for the
12 installation, modification or replacement of utility poles or wireless
13 support structures, or for the collocation of small wireless facilities,
14 that comply with section 11-1605. The application process and time frames
15 shall be adopted within the period beginning on August 9, 2017 and ending
16 after the time allowed under the county's procedures adopted under section
17 11-1605 for the adoption of an ordinance, or ninety days after receiving a
18 request by a wireless provider, whichever is later.