

ORDINANCE NUMBER 2017-05

AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA, AMENDING ARTICLE 2, MAYOR AND COUNCIL; ADDING SECTION 2-5-2(I), SMALL WIRELESS FACILITIES LOCATED IN THE RIGHTS-OF-WAY; AND AMENDING THE ZONING ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARTICLE XII, IN ORDER TO PROVIDE FOR A PROCEDURE FOR THE REVIEW AND APPROVAL OF NON-COMPLIANT OR REJECTED SMALL CELL WIRELESS FACILITY APPLICATIONS WITHIN THE TOWN'S RIGHTS-OF-WAY, ALL AS REQUIRED BY RECENTLY ADOPTED STATE LAW, A.R.S §9-591 ET. SEQ.

BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA:

Section 1. The Town of Paradise Valley's Code is hereby amended by adding a new subsection I to Section 2-5-2, as follows, showing text to be added in **bold** and deleting the text shown by ~~strikeout~~.

Section 2-5-2 Planning Commission

I. SMALL WIRELESS SERVICE FACILITIES LOCATED IN THE RIGHTS-OF-WAY

1. Purpose.

The Council has determined that certain, so-called, small cell antenna applications for small wireless facility sites to be located within the Town's rights-of-way shall, in order to comply with the mandates of state law, particularly A.R.S. §9-592 et. seq., be permitted under the administrative standards set forth in a new Town Code section that provides for such administrative approvals, but further providing that small cell antenna applications that do not meet the new administrative standards shall be processed as new utility poles and subject to the provisions of Article XI of the Zoning Ordinance for special use permits. The purpose of this ordinance is to establish appropriate locations, site development standards, and permit requirements to allow for small wireless facilities to be located in the rights-of-way as required by A.R.S. § 9-591 et. seq., subject to such small wireless facilities meeting the design standards and stealth and concealment requirements provided in this section. The approval and installation of small

wireless facilities are intended to be done in a manner which will facilitate the location of various types of small wireless facilities in sites consistent with the residential character of the Town. The nature of residences, their scale (height and mass), their proximity to each other and the street, and the extensive natural, informal landscaping all contribute to this distinctive character and require design standards and stealth and concealment requirements that will preserve the residential character of the Town while also providing design alternatives that will permit a quick and timely review of small wireless facility applications consistent with the intent of A.R.S. § 9-592. Minimizing the adverse visual impact of these small wireless facilities within the predominately residential areas of the Town is one of the primary objectives of this ordinance. **Limitations on the height of antennas are intended to conform the antennas to the existing limitations on height of residential buildings** in the Town. The ordinance is also intended to allow small wireless facilities which are sufficient in location choices and height to provide adequate personal wireless service to citizens, resort guests, the traveling public, and others within the Town.

2. Definitions.

For the purpose of this Section, the following terms shall have the meanings prescribed herein unless the context clearly requires otherwise:

- a) "Administrative Small Wireless Facility Permit" means the administrative application filed by a Permittee for the approval of a small wireless facility site.
- b) "Antenna" means the surface from which wireless radio signals are sent from and received by a small wireless facility;
- c) "Applicant" means a person or other entity who submits an application with the Town for an Administrative Small Wireless Facility Permit for a small wireless facility in the Town rights-of-way. **A Permittee and the owner of the subject property shall be an applicant(s) or co-applicant(s) on such application; [this is what we do for the CUP sites and what we did for the SUP "utility pole" sites with NewPath—still the best approach?]**
- d) "Application" means a complete submittal for an Administrative Small Wireless Facility Permit on a form or set of forms prescribed by the Town that is deemed complete by the Town staff and contains all of the required submittals, studies, diagrams, photo simulations, and other documentation required pursuant to the checklists on the prescribed form(s) or in this Section.
- e) "Co-location" means the use of a single mount and/or site by more than one small wireless service;
- f) "Design" means the appearance of a small wireless service facility, including but not limited to its material, color or shape;
- g) "Equipment cabinet" means an enclosed box that is either located in a vault or at the base of or near a mount within which are housed, among

other things, batteries and electrical equipment (hereinafter referred to as "equipment"). This equipment is connected to the antenna by cables.

- h) "Location" means property(ies) or site(s) where small wireless facilities are located or could be located;
- i) "Modification" means any physical or operational change, alteration, or other modification of any of the following as they relate to a small wireless service facility or the subject property upon which it is located, including but not limited to:
 - 1) The site plan;
 - 2) The sight line representation;
 - 3) The design submittal as required in this Section;
 - 4) The conversion of a single-use small wireless service facility to a co-location is also considered a modification;
- j) "Monopole" means a type of mount that is self-supporting with a single shaft of steel or concrete or other acceptable material that is not more than forty inches in diameter at ground level and that has all of the wireless facilities mounted on the pole or contained inside the pole; [this incorporates parts of the new statute definition for a "monopole"]
- k) "Permittee" means an Applicant who has an approved Administrative Small Wireless Facility Permit;
- l) "Small wireless facility" or "SWF" means any of several technologies using radio signals at various frequencies to send and receive voice, data or video to and from mobile transceivers; which are composed of two (2) or more of the following components:
 - 1) Antennas that are no more than six cubic feet in volume
 - 2) Mount or pole
 - 3) Faux Cactus or replacement Utility Pole
 - 4) Equipment less than twenty-eight feet in volume
 - 5) Underground vault for equipment
 - 6) Electric meter (where required by law)
 - 7) Grounding Equipment and a power transfer switch
- m) "Small wireless services" means commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996, and any amendments thereto, and any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile and that use small wireless facilities;
- n) "Sight line representation" means a drawing in which a sight line is drawn from a street level view (viewpoint) within five hundred (500) feet of the SWF to the highest point (visible point) of the SWF. Each sight line shall be depicted in profile, drawn at one inch equals forty (40) feet unless otherwise specified by the Town. The profiles shall show all intervening trees and structures;

- o) "Site" means the subject property where a small wireless service facility is located or proposed to be located and includes any contiguous property(ies) under the same ownership as the subject property;
- p) "Siting" means the method and form of placement of a small wireless service facility on a specific area of a subject property pursuant to the provisions of this Section;
- q) "Subject property" means all the specific right-of-way upon which a small wireless service facility is either proposed to be, or already is, developed, located, constructed or operated.
- r) "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, but excludes a monopole.

3. General Requirements.

- a) The determination of where a SWF site shall be located is subject to the following:
 - 1) After an Applicant identifies an area where the Applicant desires to site a small wireless facility, Town staff shall evaluate the area near the site with the Applicant to find the optimal location for the small wireless facility(said area to include the total area within a one hundred foot radius of the Applicant's preferred site), with initial siting to be objectively chosen based on the following criteria:
 - i. Safety- sites should preferably be located outside of the fifty by fifty foot view triangle near street or driveway intersections and so as to not be in areas where car accidents are more frequent, that is, near the intersection of streets; and sites should be spaced as far back from the sidewalk or street curb so as to not pose a hazard to bicyclists, pedestrians or vehicular traffic.
 - ii. Design Standards and Aesthetics Mandate the Use of "Faux Cactus" SWFs – to maximize the concealment of SWFs, the first type of antenna and support structure to be considered shall be a faux cactus installation designed as follows:
 - A. All sites shall utilize the Larson model A25 fiberglass antenna structure, maximum twenty four foot tall from the ground or base;
 - B. All sites shall contain standard details the same as those used for the existing faux cactus installation built as part of the existing approved distributed antenna system installation located just west of southwest intersection corner at 56th Street & McDonald Drive (please refer to standard engineering detail #*****, available from the Town Engineering Department);
 - C. All faux cactus antennas shall be located in areas where they can blend into the existing built and natural environment, that is , in areas where existing trees and shrubs of size similar to the antenna height already exist (or where additional trees and

shrubs of similar size and height can be installed by the Applicant) and where the addition of the antenna to the built environment will least affect the viewsheds from neighboring properties;

- D. All faux cactus sites shall be designed to the greatest extent possible to look like part of the natural environment, thus they shall not be placed in existing cement such as a sidewalk nor shall cement be placed around the base of the facility except as needed to anchor and support the structural elements of the SWF, with such cement anchor to be hidden by earth, rocks, decomposed granite or planting of shrubs near the base.

iii. Alternative Design Utilizing a Utility Pole – in the event that technical justifications prohibit the use of a SWF described in 2-5-2(I)(3)(a.(ii)) , an Applicant may propose the use of a Utility Pole SWF installation, for which the following design and concealment criteria shall be used:

- A. If the selected Utility Pole is a traffic signal or street light, the existing traffic signal or street light shall be replaced with new street light or traffic signal that has the appropriate load-bearing a sheer strength to support the height and weight of the antenna and equipment located with the replacement pole;
- B. All antennas shall be contained within a cylinder that is the same width or diameter as the replacement pole, preferably in a pole that is the same diameter from base to the top of the pole, with said diameter not to exceed twenty inches;
- C. The maximum height of the replacement pole shall not be more than six feet above the pre-existing height of the street light vertical pole or traffic signal vertical pole that it replaced (not including the mast arm);
- D. All antennas and “pole-mounted” equipment shall be contained in a cylinder the same size as the supporting replacement pole (or within the replacement pole) such that the only vertical protrusions or extensions from the pole shall be those that existed before the replacement pole, that is, in the case of street lights and traffic signals the mast arms or other supports for street lights, street name signs, and traffic signals;
- E. All wiring associated with the PWSF shall be contained within the replacement pole;
- F. All ground mounted equipment shall be buried with the exception of the utility meter and the power transfer switch; [Need to check on this, but I think these had to be above-ground for Newpath]
- G. Other standard details shall be the same as those used for the existing replacement pole built as part of the existing approved distributed antenna system pole located at the southwest corner

of 56th Street & Lincoln Drive (please refer to standard engineering detail #****, available from the Town Engineering Department).

- iv. After the Applicant and Town staff have completed the site specific safety and design steps above, the application shall be forwarded to the Planning Commission for a review of the siting and the site specific design; the Commission shall then hold a public meeting to take input from property owners within one thousand feet of the selected site on matters pertaining to viewsheds, sightlines, blending of the site with existing built or natural environment, and any aesthetic concerns not otherwise addressed in the site specific design.
 - v. The Commission shall either approve or deny an application within seventy-five days of an Applicant having submitted a complete Application for a specific site; with any denials to specify the basis for the denial and specific parts of the Application that do not comply with the provisions of this Section. The Applicant may then seek to cure the deficiencies in the Application and resubmit the Application within thirty days of the denial. The Commission shall then meet and review the resubmittal within thirty days after having received the resubmittal to determine whether the deficiencies have been cured or not. If cured, the Commission shall approve the Application.
 - vi. An Applicant who chooses not to comply with the reasonable design and concealment standards provided for herein may apply for an alternative design that meets the core principals of the faux cactus design standards by filing an application for a special use permit for a new utility pole under the provisions of Article XI of the Town Zoning Ordinance. All applications for monopoles within the Town rights-of-way shall be excluded from the Application process for SWFs and shall instead be subject to Article XI of the Town Zoning Ordinance.
- 2) Any subject property that meets the requirements of this Article may be eligible for consideration for a SWF, or modification thereof, pursuant to an Administrative Small Wireless Facility Permit, in accordance with the standards in this article.
- b) A SWF or modification thereof is permitted only with an Administrative Small Wireless Facility Permit, granted pursuant to this section. No SWF may be developed, located, constructed or operated without an Administrative Small Wireless Facility Permit. An Administrative Small Wireless Facility Permit is required for any modification to a SWF.

4. Siting Standards.

The following additional siting criteria apply to consideration of an Administrative Small Wireless Facility Permit for a SWF:

- a) A SWF shall be first processed through the Siting process specified in subsection 3 above.
- b) In order to maintain a safe “fall zone” a SWF shall be set back from existing structures on private property by a distance equal to the height of the top of the antenna structure, plus an additional ten feet.

5. Design Standards.

In addition to those standards previously specified in Section 3, the following design criteria apply to consideration of an Administrative Small Wireless Facility Permit for a SWF, in addition to others which may be identified and utilized by the Planning Commission in its consideration of the Administrative Small Wireless Facility Permit:

- a) **Appearance.** The degree to which the SWF "blends with" or "disturbs" the setting, the subject property and its character and use, or neighboring properties and their character and use, thus, the Commission may request that additional landscaping be installed as part of the approval of a specific Application so that the SWF can be screened from public view by trees, mature vegetation, natural features or structures on the subject property; and all equipment shall be located within the faux cactus structure to the greatest extent possible, and all “ground-mounted” equipment shall be located underground or within a faux rock to the greatest extent possible and if site conditions permit; provided, however, that if underground installation of equipment is not technically feasible. No signage shall be placed on a faux cactus. If equipment cabinets are deemed necessary by the Town, they shall be completely screened from view by a compatible wall, fence or landscaping consistent with Town landscaping guidelines; and any utility meter associated with the facility shall be faced away from the street or center of the ROW or camouflaged in some manner.
- b) **Form.** The degree to which the shape of the SWF and any equipment cabinet relates to its surroundings.
- c) **Color.** A SWF shall be in natural tones and a non-reflective color or color scheme appropriate to the background against which the SWF would be viewed from a majority of points within its viewshed. "Natural" tones are those reflected in the natural features and structural background against which the SWF is viewed from a majority of points within its viewshed. Final colors and color scheme must be approved by the Planning Commission.
- d) **Size.** The silhouette of the SWF shall be reduced to minimize visual impact.

To the extent allowed by law, the Commission shall consider the cumulative visual effects of SWFs and any mount, specifically their appearance or domination of the skyline, natural and structural features or terrain, in

determining whether to approve an Administrative Small Wireless Facility Permit.

6. Radiofrequency (RF) Performance and Interference Standards and Monitoring.

a) To the extent allowed by law, the following radiofrequency (RF) performance standards apply to consideration of an Administrative Small Wireless Facility Permit for a SWF, in addition to monitoring requirements as required in this Article:

1) All equipment proposed for a SWF shall meet the current FCC RF Guidelines and any amendments thereto (hereafter "FCC Guidelines");

2) Any side-mounted or roof-mounted equipment shall meet FCC Guidelines, including but not limited to the following:

i) At the roof-mount or at the side-mount, the equipment shall meet the FCC Guidelines for occupational/controlled conditions;

ii) At ground level at the point of the structure closest to the antenna, the equipment shall meet FCC Guidelines for general population/uncontrolled conditions.

b) Within ninety (90) days after FCC issuance of an operational permit for the SWF, **and annually thereafter**, the Permittee shall submit a written report providing existing and maximum future projected measurements of RF radiation from the SWF for: **[Do we get annual reports for any of the existing approved macro sites today? Seems like this should be every five years or so.]**

1) Existing SWF: Maximum RF radiation from the SWF RF radiation environment. These measurements shall be for the measurement conditions specified in Subsection A of this Section;

2) Existing SWF plus cumulative: Maximum estimate of RF radiation from the existing SWF plus the maximum estimate of RF radiation from the total addition of co-located SWFs. These measurements shall be for the measurement conditions in Subsection A of this Section;

3) Certification signed by an RF engineer, stating that RF radiation measurements are accurate and meet FCC Guidelines as specified in Subsection A of this Section.

c) If FCC Guidelines are changed during the period of any Administrative Small Wireless Facility Permit for a SWF use, then the SWF shall be brought into compliance with such revised guidelines within the time period

provided by the FCC or if no time period is stated, then within sixty (60) days of the effective date of such guidelines.

- d) If at any time during the term of the permit the Town has reasonable evidence that the Permittee is not in compliance with FCC Guidelines, and the Town provides notice of such, the Permittee so notified shall provide to the Town, within thirty (30) days after such notice, an analysis and determination of its compliance with FCC guidelines showing the data collected and status pursuant to FCC Guidelines. If on review, the Town finds that the SWF does not meet FCC Guidelines, the Permittee shall have sixty (60) days from the date of the Town's finding of noncompliance to bring the SWF into compliance. If compliance is not achieved in the sixty-day period, the Administrative Small Wireless Facility Permit may be revoked or modified by the Town.**
- e) The Permittee shall ensure that the SWF does not cause localized interference with the reception of area television or radio broadcasts or other small wireless services. If on review the Town finds that the SWF interferes with such reception, and if such interference is not cured by the Permittee within sixty (60) days after notice from the Town, the Town may revoke or modify the Administrative Small Wireless Facility Permit.**

7. Noise and Environmental Standards.

- a) To the extent allowed by law, the following noise and environmental standards apply to consideration of an Administrative Small Wireless Facility Permit for a SWF in addition to the monitoring requirements of this Article:**
- b) A SWF shall not generate noise in excess of fifty (50) decibels (dba) at ground level at the base of the facility closest to the antenna;**
- c) An environmental assessment is required by the National Environmental Policy Act (NEPA) for any SWF prior to commencing operations where any of the following exist:**
 - 1) Wilderness area;**
 - 2) Wildlife preserve;**
 - 3) Endangered species;**
 - 4) Historical site;**
 - 5) Indian religious site;**
 - 6) FEMA Designated Flood plain;**
 - 7) High intensity white lights in residential neighborhoods;**
 - 8) Excessive radiofrequency radiation exposure.**
- d) An environmental assessment which, at a minimum, conforms to FCC requirements shall be submitted to the Town for each SWF where any of the above exists, and when the FCC requires such an environmental**

assessment to be submitted to the FCC. If the applicant has determined that an environmental assessment is not required pursuant to FCC rules, this Article and applicable state law and Town Code, a written certification to that effect must be submitted to the Town. If an applicant has not included an environmental assessment that the Town finds to be necessary under the National Environmental Policy Act, the Town may prepare, or cause to be prepared, such an environmental assessment at the applicant's expense or reject the application as incomplete. The environmental assessment shall be amended or revised by the applicant within thirty (30) days after notice to do so from the Town when modifications are made or occur on the SWF. Failure to amend or revise shall constitute grounds for revocation of the Administrative Small Wireless Facility Permit.

- e) Within ninety (90) days after the approval of the Administrative Small Wireless Facility Permit and **annually** from the date of approval of the permit, the Permittee shall submit existing and maximum future projected measurements of noise from the SWF for the following: **[Do we get annual reports for any of the existing approved macro sites today? Seems like this should be every five years or so.]**

- 1) Existing SWF: Maximum noise radiation from the SWF. These measurements shall be for the type of mounts specified in Subsection A of this section;
- 2) Existing SWF plus cumulative: Maximum estimate of noise from the existing SWF plus the maximum estimate of noise from the total addition of co-located SWFs. These measurements shall be for the type of mounts specified in Subsection A of this section;
- 3) Certification signed by an acoustical engineer, stating that noise measurements are accurate and meet Subsection A of this section.

8. **Co-Location and Limitations.** A Permittee shall cooperate with other small wireless service providers in co-locating antennas and mounts provided the Permittee first desires to have a collocation on an approved SWF. All proposed co-locators must also receive an Administrative Small Wireless Facility Permit for the use at such site from the Town, particularly for the appropriate siting of any “ground-mounted” equipment.

9. **Submittal Requirements.**

- a) In addition to the information requested in the Town's Administrative Small Wireless Facility Permit application, the following items shall be required for a SWF application:

- 1) A master site plan in accordance with Planning Commission rules and regulations showing the subject property and adjacent properties; all existing and proposed structures on the subject property and their purpose; the specific placement of the SWF antenna, mount and

equipment cabinet; fall zone; all proposed changes to the existing site, including grading, vegetation, roads, sidewalks and driveways;

2) A landscape plan showing specific placement of existing and proposed vegetation, trees, shrubs, identified by species and size of specimen at installation in accordance with Town landscape guidelines;

3) Photographs, diagrams, photo simulations and sight line representations as listed below:

- i. A diagram or map showing the viewshed of the proposed facility;
- ii. Sight line representation;
- iii. Existing (before condition) photographs illustrated by four (4) by six (6) inch color photograph(s) of what can currently be seen from any adjacent residential buildings or properties, private roads and rights of way adjacent to the site;
- iv. Photo simulations of the proposed facility from each adjacent residential properties or buildings, private roads and public rights-of-way adjacent to the site (after condition photographs). Such photo simulations shall include, but not be limited to, each of the existing condition photographs with the proposed SWF superimposed on it to show what will be seen from residential buildings, properties, private roads and rights of way adjacent to the site;
- v. Aerial photograph as required by the Planning Commission rules and regulations;

4) Siting elevations, or views at natural grade, from all directions (north, south, east, west) for a **fifty-foot radius** around the proposed SWF from all existing rights of way adjoining the subject property. Elevations shall be at one-quarter inch equals one foot scale and show the following:

- i. Antenna, mount, underground equipment cabinet;
- ii. Any and all structures on the subject property, existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation;
- iii. Grade changes or cuts and fills to be shown at original grade and new grade line;

5) Design submittals as follows:

- i. Equipment brochures for the SWF such as manufacturer's specifications or trade journal reprints;
- ii. Materials of the SWF and faux cacti, replacement pole, faux rock, and camouflaged equipment shelter, if any, specified by generic type and specific treatment, such as painted fiberglass, anodized aluminum, stained wood, etc.;

iii. Colors represented by samples or a color board showing actual colors proposed;

iv. Dimensions of all equipment specified for all three dimensions: height, width and breadth;

v. Appearance shown by at least two (2) photographic superimpositions of the SWF within the site. The photographic superimpositions shall include the antenna, mount, faux rock, and camouflaged equipment cabinet, if any, for the total height, width and breadth;

6) An executed license agreement with the Town that grants the rights to the use of the Town right-of-way and has the Town's permission for the filing of the Application;

7) To the extent allowed by law, radiofrequency (RF) radiation performance submittals shall include in a form or study acceptable to Town staff and the applicant's written statement of the existing and maximum future projected measurements of RF radiation from the proposed SWF:

i. Existing or ambient: measurement of existing RF radiation;

ii. Existing plus proposed SWF: maximum estimate of RF radiation from the proposed SWF plus the existing RF radiation environment. These measurements shall be for the conditions specified in the RF performance standards in this Article;

iii. Existing plus proposed SWF plus cumulative: maximum estimate of RF radiation from the proposed SWF plus the maximum estimate of RF radiation from the total addition of co-located SWF plus the existing RF radiation environment. These measurements shall be for the conditions specified in the RF performance standards in this Article;

iv. Certification, signed by an RF engineer, stating that RF radiation measurements are accurate and meet FCC Guidelines as specified in the RF performance standards in this Article;

8) To the extent allowed by law, noise performance submittals shall include a statement of the existing and maximum future projected measurements of noise from the proposed SWF measured in decibels (logarithmic scale, accounting for greater sensitivity at night) for the following:

i. Existing or ambient: the measurement of existing noise;

ii. Existing plus proposed SWF: maximum estimate of noise from the proposed SWF plus the existing noise environment;

iii. Existing plus proposed SWF plus cumulative: maximum estimate of noise from the proposed SWF plus the maximum estimate of noise from the total addition of co-located SWFs plus the existing noise environment;

iv. Certification signed by an acoustical engineer stating that noise measurements are accurate and meet the noise performance standards section of this Article;

9) To the extent allowed by law, environmental submittals shall include an environmental assessment if required in the environmental standards section of this ordinance. If the applicant determines that the environmental assessment is not required, certification to that effect shall be provided. The applicant shall also list location, type and amount of any materials proposed for use within the SWF that are considered hazardous by the federal, state or town government.

10. Permit Limitations and General Conditions. ⁵⁶⁴

- a) An Administrative Small Wireless Facility Permit shall expire ten (10) years after the date of the permit approval. A Permittee wishing to continue the use at the end of the ten-year period must apply for an Administrative Small Wireless Facility Permit renewal application to continue that use at least six months prior to its expiration. In ruling on the renewal the Planning Commission shall apply all then-existing regulations affecting the application.
- b) The Administrative Small Wireless Facility Permit shall become null, void and non-renewable if the permitted facility is not constructed and placed into use within one hundred eighty days after the permit issuance date unless extended by agreement of the Town and the Applicant or a delay is caused by a lack of commercial power at the Site.
- c) The permit shall expire and the Permittee must remove the SWF if the license agreement with the Town expires or is void due to breach or other cause. A Permittee shall notify the Town in writing at least thirty (30) days prior to abandonment or discontinuance of operation of the SWF.
- d) If the Administrative Small Wireless Facility Permit expires, terminates, is abandoned or revoked for any reason pursuant to this Article or the Town Code, if removal of the SWF is required in this Article, or if the use is discontinued pursuant to this Article, the SWF shall be removed as required the terms of the License agreement between the Town and the Permittee.
- e) The Permittee shall maintain the SWF to standards that are imposed by the Town at the time of granting of a permit. Such maintenance shall include, but shall not be limited to, maintenance of the paint, structural integrity and landscaping. If the Permittee fails to maintain the facility, the Town may undertake the maintenance at the expense of the Permittee or terminate or revoke the permit, at its sole option. If such maintenance expense is not paid by the Permittee within thirty (30) days of notice by the Town, the Permittee agrees that the Town's costs shall constitute a lien upon any personal property of the Permittee installed with the Town's rights-of-way.

- f) **An Administrative Small Wireless Facility Permit granted to a Permittee is specific to the Permittee and may not be assigned, provided, however, that the Permittee may assign its interest in the permit to any subsidiary or other affiliate of the Permittee. In the event of such assignment, the assignee shall re-execute the Administrative Small Wireless Facility Permit within thirty (30) days of the effective date of the assignment or the permit shall automatically expire. Permittee shall notify the Town of any change in ownership or operation of the SWF at least ninety (90) days prior to such change taking place for approval by the Town, which approval shall not be unreasonably withheld.**
- g) **Any violation of the terms of this Article or the Administrative Small Wireless Facility Permit may result in revocation by the Town of the Administrative Small Wireless Facility Permit. Acceptance of any portion of the Administrative Small Wireless Facility Permit is acceptance of the entire Administrative Small Wireless Facility Permit and the terms of this Article.**
- h) **Within ninety (90) days after issuance of the FCC operational permit, the Permittee shall provide a copy of such permit to the Town and register the SWF, providing information and data as may be requested by the Town. Any change in the permit or registration data shall be filed with the Town within thirty (30) days after the change is made. The Permittee shall submit to the Town a copy of is FCC Form 600 prior to the Town's approval of final inspection of a building permit for the SWF or portion thereof.**
- i) **The Town and its agents are authorized to enter on the subject property and SWF site for the purpose of inspection and determining compliance with this Article and the provisions of the Administrative Small Wireless Facility Permit or amendment thereto.**

12. Applicability.

The requirements of this ordinance apply to all new SWFs in the rights-of-way and modification of any existing SWFs.

Section 2. Article XI, Section 1102.2(E) is hereby amended as follows, showing text to be added in **bold** and deleting the text shown by ~~strikeout~~.

E. Utility Poles and Wires

1. Definitions

- a. Utility poles and wires - shall mean poles, structures, wires, cable, conduit, transformers, **communications equipment**, and related facilities used in or as a part of the transportation or distribution of electricity or power or in the transmission of telephone, telegraph, radio or television

communications **or for the transmission or reception of electromagnetic radio frequency signals used in providing wireless services;**

- b. Existing utility poles and wires - shall mean such utility poles and wires as are in place and in operation as of the effective date of this ordinance; and
 - c. New utility poles and wires - shall mean such utility poles and wires as are not existing utility poles and wires and shall include such utility poles and wires as in the future may constitute replacements for, or repairs to, existing utility poles and wires, but shall not include replacements involving less than one-quarter (1/4) mile of contiguous poles and wires on any transmission or distribution line in any twelve (12) month period where the remainder of such transmission or distribution line is not also being replaced within said period; such replacements excluded from being new utility poles under the latter clause must be poles of the same or lesser size, diameter, and height, and in the same location as the pole or poles being replaced, and in addition, must be of the same class or classification as to strength and purpose within the utility industry as the pole or poles being replaced.
2. The erection of new utility poles and wires within the Town is discouraged, and, **with the exception of small wireless facilities meeting the administrative approval standards specified in Article II, Section 2-5-2(I),** may only be permitted by the issuance of a Special Use Permit, further provided that a Special Use Permit for erection of new utility poles and wires shall be granted only in the event the applicant makes an affirmative showing that the public's general health, safety and welfare will not be impaired or endangered or jeopardized by the erection of same as proposed. In deciding such matter, the following factors shall be considered:
- a. the location and heights of such poles and wires and their relation to present or potential future roads;
 - b. the crossing of such lines over much traveled highways or streets;
 - c. the proximity of such lines to schools, churches or other places where people congregate;
 - d. the probability of extensive flying in the area where such poles and wires are proposed to be located and the proximity to existing or proposed airfields;
 - e. fire or other accident hazards from the presence of such poles and wires and the effect, if any, of same upon the effectiveness of firefighting equipment;
 - f. the aesthetics involved;
 - g. the availability of suitable right-of-way for the installation;

- h. the future conditions that may be reasonably anticipated in the area in view of a normal course of development;
- i. the type of terrain;
- j. the practicality and feasibility of underground installation of such poles and wires with due regard for the comparative costs between underground and overground installations (provided, however, that a mere showing that an underground installation shall cost more than an overground installation shall not in itself necessarily require issuance of a permit); and
- k. in the event such poles and wires are for the sole purpose of carrying electricity or power or transmitting telephone, telegraph, radio or television communication through or beyond the Town's boundaries, or from one major facility to another, the practicality and feasibility of alternative or other routes.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the Town Code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4. This ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise Valley, Arizona, this ____ day of August 2017.

Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew M. Miller, Town Attorney