

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

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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. §9-591 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 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 objective 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 and has been~~ a successful design standard ~~that has been~~ in place since 2010. 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. The Town, its residents and some providing utilities have made significant investment in eliminating overhead utility lines in Paradise Valley. Protecting that investment is also consistent with 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.

Comment [Burke1]: While verbose, the remaining text establishes legislative intent that is in line with the negotiations for the bill that staff participated in. This is valuable stuff for defending a challenge.

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 permit approved by the Town for a small wireless facility site.
- b) "Antenna" means communication equipment that transmits or receives electromagnetic radio frequency signals and that is used as part of a small wireless facility;
- c) "Applicant" means a person or other entity who submits an application to 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 (which may be through a master license agreement), and/or utility pole shall be an Applicant(s) or co-Applicant(s) on such application;

- 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 provider;
 - f) "Design" means the appearance of a small wireless 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 at or near the base of the SWF which contains, among other things, batteries and electrical equipment (hereinafter referred to as "equipment"). This equipment is connected to the antenna by underground 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 facility or the subject property upon which it is located, including but not limited to:
 - i. The site plan;
 - ii. The sight line representation;
 - iii. The design submittal as required in this Section;
- The conversion of a single-use small wireless 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 small wireless facilities mounted on the pole or contained inside the pole;
 - 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:

- i. Antennas that are no more than six cubic feet in volume;
 - ii. Faux Cactus or replacement Utility Pole;
 - iii. Equipment cabinet less than twenty-eight cubic feet in volume;
 - iv. Underground vault for equipment;
 - v. Electric meter (where required by law);
 - vi. 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 shall be approximately 4 feet above grade) 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 facility is located or proposed to be located.
 - p) "Siting" means the method and form of placement of a small wireless facility on a specific area of a subject property pursuant to the provisions of this Section;
 - q) "Subject property" means all the specific rights-of-way upon which a small wireless facility is either proposed to be, or already is, developed, located, constructed or operated; and
 - 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) In order to locate a SWF in the Town's rights-of-way, a Permittee must obtain or hold a Master License Agreement.
- b) No SWF may be developed, located, constructed or operated without an Administrative Small Wireless Facility Permit. An Administrative Small Wireless Facility Permit is also required for any modification to a SWF. The requirements to obtain an Administrative Small Wireless Facility Permit are more fully described in subsection 9 below.
- c) The process for an Administrative Small Wireless Facility Permit shall be:
 - i. Determination of a complete application by the Zoning Administrator or designee.

- ii. Review of the proposed site by staff with a staff recommendation to Planning Commission regarding the proposed site or an alternate site within one hundred (100) feet that maintains the technical needs of the Applicant and blends with the existing built and natural environment.
 - iii. Review of the application by the staff to determine if the applicant is applying for compliance with the objective design standard, the alternate objective design standard or neither. An Applicant who chooses not to comply with the objective design and concealment standards or the alternative provided for herein shall follow the requirements for a special use permit for a new utility pole under the provisions of Article XI of the Town Zoning Ordinance which shall be processed within one hundred eighty (180) days after the filing of a complete application for a special use permit. 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.
 - iv. The Administrative Small Wireless Facility Permit 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 five hundred feet of the selected site on matters pertaining to view-sheds, sightlines, blending of the site with existing built or natural environment, and compliance with the objective design standards or alternative objective design standard 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 (75) 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.
- d) The objective design standards for the Town that achieve reasonable stealth and concealment are:
- i. Generally described as a twenty-four foot faux cactus.
 - ii. If an Applicant can demonstrate a technical reason why the specified faux cactus SWF will not provide coverage/capacity consistent with small wireless facility industry standards, an Applicant may request to locate on an alternative site of an existing or replaced traffic signal pole or street light pole consistent with the specification noted below;

- iii. If no existing or replacement utility pole exists, the Applicant may request a new SWF through the Town's Special Use Permit process outlined in Article XI of the Town's Zoning Ordinance.

4. **Siting Standards.** The following siting criteria apply to consideration of an Administrative Small Wireless Facility Permit for a SWF:

- a) After an Applicant identifies an area 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.**

- A. Sites should preferably be located outside of the Town's corner vision view triangle near street or driveway intersections so as to not be in areas where car accidents are more frequent, that is, near the intersection of streets;
- B. 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; and
- C. In order to maintain a safe "fall zone" a SWF shall be set back from existing habitable structures on private property by a distance equal to the height of the top of the antenna structure, plus an additional ten feet.

- ii. **Appearance.**

- A. New SWFs 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 and where the addition of the antenna to the built environment will least affect the view sheds from neighboring properties.
- B. Depending upon 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, the Commission may request that additional landscaping be installed as part of the approval. The SWF landscaping may include trees, mature vegetation, natural features or hardscaping on the subject property.
- C. All equipment shall be located within the faux cactus structure to the greatest extent possible, and all other equipment shall be located underground or within a faux rock to the greatest extent possible.
- D. No signage shall be placed on a faux cactus.

- E. 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. Any utility meter associated with the SWF shall face away from the street or shall be camouflaged in some manner.
- iii. **Form.** The degree to which the shape of the SWF and any equipment shall relate to its surroundings.
- iv. **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.
- v. **Strength.** Any SWF shall be designed to withstand the requirements related to wind loads in the most currently adopted International Building Code adopted by the Town (IBC) provisions on wind 115 mph winds (at least IBC standard) without sustaining any permanent damage.
- vi. **Cumulative Visual Effect.** 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.
- b) Subsequent to staff review and recommendation of a selected site, said site, along with the original proposed site by the Applicant if said site differs from staff recommendation, shall be forwarded to Planning Commission as part of the Commission's review of the Administrative Small Wireless Facility Permit.
5. **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) Shall utilize the Larson Camouflage model NP-CAC-24 LCA-0-24-24 fiberglass antenna structure or equivalent, maximum twenty four foot tall from the ground or base;
- b) Shall contain standard details, such as dimensions, colors and materials, the same as those used for the existing faux cactus installation throughout the Town (please refer to standard details provided in the application);

Comment [Burke2]: See attached provisions of the IBC on this topic.

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- c) Shall be designed to the greatest extent possible to look like part of the natural environment, thus they shall not be placed in existing concrete such as a sidewalk nor shall concrete be placed around the base of the facility except as needed to anchor and support the structural elements of the SWF, with such concrete anchor to be hidden by earth, rocks, decomposed granite and the planting of two (2) trees and three (3) shrubs near the base or alternate landscape as approved by the Town.
 - d) All ground mounted equipment and connections shall be buried with the exception of the utility meter which shall face away from the street and the disconnect switch; [Need to check on this, but I think these had to be above-ground for Newpath]
6. Alternative Design Standards Utilizing an Existing Utility Pole – in the event that technical justifications regarding coverage/capacity as measured by Reference Signal Received Power (RSRP), Reference Signal Received Quality (RSRQ), Carrier Interference plus Noise Ratio (CINR), or equivalent prohibit the use of a SWF described in 2-5-2(I)(5) , 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 a new street light or traffic signal pole that has the appropriate structural support strength to accommodate the height and weight of the antenna and equipment located within the replacement pole;
 - b) 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);
 - c) All antennas and “pole-mounted” equipment shall be within a cylinder or container (or within the replacement pole) that is within two (2) inches of the width or diameter of the adjoining utility pole, with said container width or diameter not to exceed twenty inches. The only 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;
 - d) All wiring associated with the SWF shall be contained within the replacement pole or underground;
 - e) All ground mounted equipment and connections shall be buried with the exception of the utility meter and the disconnect switch; [Need to check on this, but I think these had to be above-ground for Newpath]
 - f) Shall contain standard details, such as dimensions, colors and materials, the same as those used for the existing 56th Street and Lincoln traffic signal installation. (refer to standard detail in application)

Comment [Burke3]: Illustration to be included with the application.

7. **Radiofrequency (RF) Performance and Interference Standards and Monitoring.**

Comment [Burke4]: Comment from DMB: New statute more restrictive on requiring provision of RF information, but does allow "an authority may require the applicant to certify that the small wireless facilities to be collocated comply with the federal communications commission's regulations concerning radio frequency emissions referenced in 47 united states code section 332©(7)(B)(iv)"

a) To the extent allowed by law, the following radiofrequency (RF) **maximum permissible exposure** ~~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:

- i. All equipment proposed for a SWF shall meet the current FCC RF Guidelines and any amendments thereto (hereafter "FCC Guidelines");
- ii. Applicant shall provide ~~two~~ graphics to illustrate RF radiation level in terms of percent of FCC **Public and Occupational** limits.

A. **For all applications, One** graphic shall illustrate RF **exposure levels that may exceed the FCC limits in all areas that are readily accessible to the public, including habitable structures from the SWF to the nearest pedestrian path, bicycle lane, or travel lane until RF strength is less than one percent of the FCC regulated limit.**

B. **For SWFs attached to utility poles or any other structures not owned by the Applicant, graphically shall illustrate in three dimensions the worst case exposure levels that exceed FCC limits for service personnel accessing the area near the SWF exposure zones. If the graphic illustration exceeds the FCC exposure limit in any area accessible to workers who would work on maintenance or repair to the traffic signals, lights, or utility wiring on the utility pole, a narrative must be supplied containing all the information required to provide an RF Safety plan to protect workers from RF exposure above the FCC limits** ~~One graphic shall illustrate RF levels from the SWF to the nearest habitable structure until RF strength is less than one percent of the FCC regulated limit.~~

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b) Within ninety (90) days after FCC issuance of an operational permit for the SWF the Permittee shall submit a written report providing existing ~~and maximum future projected~~ measurements **and worst case predictions** of RF **power density levels** ~~radiation~~ from the SWF for:

- i. Existing SWF: **Report the M** ~~maximum RF radiation~~ **power density levels (spatially averaged per FCC Guidelines) measured in the areas identified as readily accessible to the public or workers from the SWF RF radiation environment. These measurements shall be for the measurement conditions specified in Subsection A of this Section;**
- ii. Existing SWF plus cumulative: Maximum estimate of RF **power density levels** ~~radiation~~ **(spatially averaged per FCC Guidelines) measured in the SWF RF environment to be inclusive of any other significant contributors to the RF environment (i.e. co-located SWF). Definition of**

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~~“Significant Contributors” to be any contributor >5% of the FCC Public limit at any measurement location 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. Cumulative measure shall also include any SWF within one hundred (100) feet;~~

- iii. Certification signed by ~~an RF engineer~~ a competent person stating that RF radiation measurements are ~~accurate~~ performed with properly calibrated test equipment 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 immediately turn off the SWF and 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 other FCC licensed 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.

Comment [Burke5]: Check with expert about how real this is.

8. 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:
 - i. 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;
 - ii. 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:

- A. Wilderness area;
 - B. Wildlife preserve;
 - C. Endangered species;
 - D. Historical site;
 - E. Indian religious site;
 - F. FEMA designated flood plain;
- iii. 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.

- b) Within ninety (90) days ~~from the date of approval of the permit after the approval of the Administrative Small Wireless Facility Permit 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:
- i. Existing SWF: Maximum noise level from the SWF. These measurements shall be for the type of mounts specified in Subsection A of this section;
 - ii. Existing SWF plus cumulative: Maximum estimate of noise level from the existing SWF plus the maximum estimate of noise level from the total addition of co-located SWFs;
 - iii. Certification signed by an acoustical engineer stating that noise measurements are accurate and meet Subsection (b) of this section.

9. Co-Location and Limitations. Co-location of antennas and equipment is permitted and encouraged on approved SWFs. All proposed co-locators must also receive an Administrative Small Wireless Facility Permit for the use at such site from the Town.

10. 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:
- i. A master site plan showing the subject property and adjoining properties within one hundred (100) feet of the proposed SWF site including roads, sidewalks and driveways;; all existing and proposed structures on the subject property and their purpose; the specific placement of the SWF antenna and equipment; fall zone; and all proposed changes to the existing site;
 - ii. A landscape plan showing the location of existing and proposed vegetation, trees and shrubs, identified by species and size of specimen in accordance with Town Landscape Guidelines. Said landscape plan shall be approved by the Planning Commission to ensure appropriate blending with the site;
 - iii. Photographs(or digital images), diagrams, photo simulations and sight line representations as listed below:
 - A. Aerial photograph showing SWF location ;
 - B. Elevations of antenna and associated equipment;
 - C. Sight line representation;
 - D. Existing (before condition) photographs of what can currently be seen from any adjacent residential buildings or properties, private roads and rights-of-way adjacent to the site;
 - E. 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;
 - iv. Design submittals as follows:
 - A. Equipment brochures for the SWF such as manufacturer's specifications or trade journal reprints;
 - B. 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.;
 - C. Colors represented by samples or a color board showing actual colors proposed;
 - D. Dimensions of all equipment specified for all three dimensions: height, width and breadth;
 - v. Evidence of permission to use utility pole by owner if SWF is to be located on an existing or replacement utility pole;

vi. To the extent allowed by law, radiofrequency (RF) radiation performance submittals shall include reports and graphics as required by Subsection 7, Radiofrequency (RF) Performance and Interference Standards and Monitoring;

~~A. Existing or ambient: measurement of existing RF radiation at the proposed site and within a twenty-five (25) foot radius of the proposed site;~~

~~B. 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;~~

~~C. 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;~~

~~D. 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;~~

vii. 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:

A. Existing or ambient: the measurement of existing noise at the proposed site;

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

C. 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;

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

viii. 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.

b) The Town shall have twenty (20) days to deem the application complete. A complete application will have all submittals listed in this subsection and each submittal shall fulfill the stated requirements.

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11. Permit Limitations and General Conditions. ⁵⁶⁴

- a) An Administrative Small Wireless Facility Permit shall expire ten (10) years after the date of approval. A Permittee desiring to continue the use at the end of the ten-year period must apply for a renewal 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 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 and all associated equipment and wiring and restore the site to its original condition leaving the approved landscaping 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 by the terms of the License agreement between the Town and the Permittee. For purposes of this subsection, abandoned shall mean not in use for SWF functions for ninety (90) days.
- 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 through Town Manager or designee the Administrative Small Wireless Facility Permit and Master License Agreement within ninety (90) days of the effective date of the assignment or the permit shall automatically expire.

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- 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 all current applicable its FCC Form 600 licenses by call sign prior to the Town's approval of final inspection of a building permit for the SWF or portion thereof.

Comment [KB6]: Check with the expert

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