



Legislation Text

File #: 18-050, Version: 1

TO: Mayor Collins and Town Council Members

**FROM: Kevin Burke, Town Manager
Andrew Miller, Town Attorney**

DATE: February 2, 2018

DEPARTMENT: Town Manager

AGENDA TITLE:

Adoption of Ordinance Number 2018-01: Amending Town Code Section 2-5-2 Regarding Small Wireless Service Facilities Located in the Rights-of-Way

Town Value(s):

- Primarily one-acre, residential community
- Limited government
- Creating a sense of community
- Partnerships with existing schools and resorts to enhance recreational opportunities
- Improving aesthetics/creating a brand
- Preserving natural open space

Paradise Valley is primarily a one-acre residential community. Enabling cell service while preserving that residential feel is a core value of the Town.

Council Goals or Statutory Requirements:

Responsiveness to Residents - Identify and consider resident concerns in a timely manner and seek solutions to the best of the Town's ability. Cell Service

RECOMMENDATION:

Adopt Ordinance Number 2018-01.

SUMMARY STATEMENT:

In 2017, the Arizona State Legislature adopted a new statute governing the placement of small cell antenna facilities in public rights-of-ways (ROW). The Town heavily lobbied against this bill from inception right up until final adoption. At final adoption the Town gained concessions that made the statute workable within Town values. Council, Planning Commission and staff worked diligently from adoption until the effective date in early August to revise the Town's ordinance governing these facilities. This process included seven different public meetings. Unfortunately, industry lobbyists and attorneys (excluding Cox) did not participate until the final public meeting. At which time they

expressed numerous concerns about the Town's ordinance and asserted that it was not compliant with the new State Statute. Staff fervently disagrees, but acknowledges some changes that are inconsequential to the Town's approach and others that makes the ordinance more resilient under the 2017 State law governing these facilities.

These changes include, treating the faux cactus and 56th and Lincoln objective design standards as "either/or" rather than a first and second preference. Both Planning Commission and Council expressed that either design standard was satisfactory during the development of this ordinance. Staff originally prioritized the faux cactus to reflect the historical emphasis on camouflaged utility infrastructure. The 56th and Lincoln design criteria is applicable only when a carrier seeks to place the antenna on an existing traffic or light pole. Therefore, the two design standards are not in competition and serve different circumstances. Further, there is clarifying language regarding the placement of the faux cactus. These amendments are inconsequential to the Town but important to industry.

Second, the current ordinance requires an illustration depicting the RF on a small cell antenna. While industry has always maintained that they are not required to provide them under federal and now state law, they have generally done so voluntarily. This removes that requirement from the ordinance with the exception of plans associated with the safe maintenance of facilities on third party utility poles.

Lastly, the current ordinance re-states noise and environmental laws that may be applicable to the placement of a small cell facility. This amendment simply makes these a cross-reference to avoid confusion that the language in this ordinance is new or additionally imposed conditions. This further provides the benefit of not having to make sure this ordinance is updated when those noise and environmental regulations are updated independently.

This ordinance amendment was reviewed in study session on January 11. Council asked for two alterations. The first reworded the fall zone in Section 4(a)(i)(C.) to eliminate the "additional 10 feet" and the second add language to Section 7(a)(ii) that the RF safety illustration would be kept on file in Public Works.

BUDGETARY IMPACT:

No budgetary impact from the proposed changes.

ATTACHMENT(S):

Proposed Ordinance 2018-01