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# TELECOMMUNICATIONS AND RIGHTS-OF-WAY ENACTED LEGISLATION HB 2365

CITY ATTORNEY'S OFFICE

October 16, 2017

# HB 2365

## A.R.S. § 9-591, *et seq.*

- Proposed by an industry group led by Verizon and other wireless industry stakeholders.
- Pushed in 18 other states this legislative session.
- Mirrored after similar federal statutory and federal communications regulations codified under 47 U.S.C. § 253(C).
- Substantial Legislative support.
- Governor Ducey signed legislation on March 31, 2017 with an effective date of August 8, 2017. Cities, towns and counties have until February 9, 2018 to adopt regulatory provisions.

# What does this law generally do?

Restricts cities, towns and counties from saying “NO” to small wireless communication facilities in its rights-of-way (“ROW”) and public easements.

# What is a Small Wireless Facility (“SWF”)?

Small cells are low powered wireless base stations that typically provide coverage for targeted indoor or localized outdoor areas including homes, office, stadiums, shopping malls, hospitals and other metropolitan areas.

# Why the need for SWFs?

(according to the wireless industry)

To create technology for smart cars (driverless), internet of things (IoT) and 5G (5<sup>th</sup> generation wireless technology to be implemented nationwide by 2020).

Eliminate municipal regulations.

Have more transmitters where the population is located.

Increase backhauling service (the links between cell sites, controllers & switches).

Increase cell phone coverage and high speed wireless data services.



"I SOUND FUNNY? YEAH, I'M CALLING  
FROM MY CELL PHONE!"

# Industry and League/City & Town Compromise

Work group of three large communities (Mesa, Tempe & Chandler) met with Legislature and wireless industry earlier this year. The compromise was as follows:

- Statute will stay silent about insurance and indemnity.
- Streamlined, less expensive deployment in the ROW only.
- Design standards and stealth and concealment regulations preserved.
- Some size, height and spacing restrictions maintained, and new verticality limited.
- Existing agreements remain in effect, subject to their termination provisions.
- Local governments shall publish rates, fees and terms concerning the use of the ROW within 6 months after legislation is effective (February 9, 2018) or 3 months after a siting request, whichever is later.

# Deadlines

- Prior to February 9, 2018, post on internet, report, fees and charges as required under A.R.S. § 9-499.15 (60 day advance notice prior to public hearing where adoption is recommended) (completed on October 3, 2017. See <http://www.ajcity.net/CivicAlerts.aspx?AID=1263>).
- Need to amend Apache Junction City Code, Vol. I, Chapter 4, Public Works Fees and Chapter 13, Public Works no later than February 9, 2018 with new fees, charges, design standards and details.



# Size of SWF and WF

(See Definitions under A.R.S. § 9-591)

## Small Wireless Facility

A wireless facility that meets both of the following criteria:

- All antennas are located, or could be located, inside an enclosure of not more than 6 cubic feet in volume.
- All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet OR 50 cubic feet in volume if the equipment was ground-mounted before the effective date of this section.

## Other Wireless Facility

Equipment at a fixed location.

Enables wireless communication between user equipment and a communications network, including:

- Equipment for wireless communications
- Radio transceivers, antennas, coaxial or fiber cables, regular and back-up power supplies, etc.

Does not include the structure on which the equipment is located.

Does not include Wi-Fi radio equipment or microcell equipment.

# Statutory SWF Sizes

6 cubic ft.

50 cubic ft.



# Statutory SWF Sizes 28 cubic ft.



# Utility Poles & Monopoles

(See Definitions under A.R.S. § 9-591)

## Utility Poles

**Utility Pole:** A pole or similar structure use in whole or part for communication services, electric distribution, lighting or traffic signals.

**Authority Utility Pole:** A utility pole that is owned or operated by an authority and that is in ROW (does not include a utility pole for electric distribution).

## Monopoles & Wireless Support Structures

**Monopole:** A wireless support structure that is not more than 40 inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole.

**Wireless Support Structure:** A freestanding structure, such as a monopole (does not include a utility pole).

- A guyed or self-supporting tower.
- A sign or billboard.
- Any other existing or proposed structure designed to support, or capable of supporting SWF.

# Utility Pole

Street light



Traffic signal





# City Objective: Maintain control of the ROW

## New, replacement or modified utility poles

### **Stealth & Concealment (A.R.S. § 9-592 (K))**

- An authority shall approve a new, replacement or modified utility pole for collocation of SWF, unless the pole fails to comply with any of the following: applicable codes, local codes or regulations concerning public safety, objective design standards, reasonable stealth & concealment requirements and undergrounding requirements.

### **Valid Reasons for Denial (A.R.S. § 9-592 (K))**

- Does not comply with design standards imposed in a contract between the authority and a private property owner.
- Does not comply with public safety and reasonable spacing requirement.

# City Objective: Maintain control of the ROW

## New, replacement or modified utility poles

### **Timing for Deployment (A.R.S. § 9-592 (M))**

Deployment of an authorized collocation must occur within 180 days of permit issuance, unless the parties agree to a longer period of time or a delay is caused by a lack of commercial power to the deployment site.

### **Duration of Collocation (A.R.S. § 9-592 (M))**

Application approval allows the applicant to operate and maintain the wireless provider's new, modified or replacement pole for 10 years subject to applicable relocation requirements and the authority's terms and conditions.

# City Objective: Maintain control of the ROW

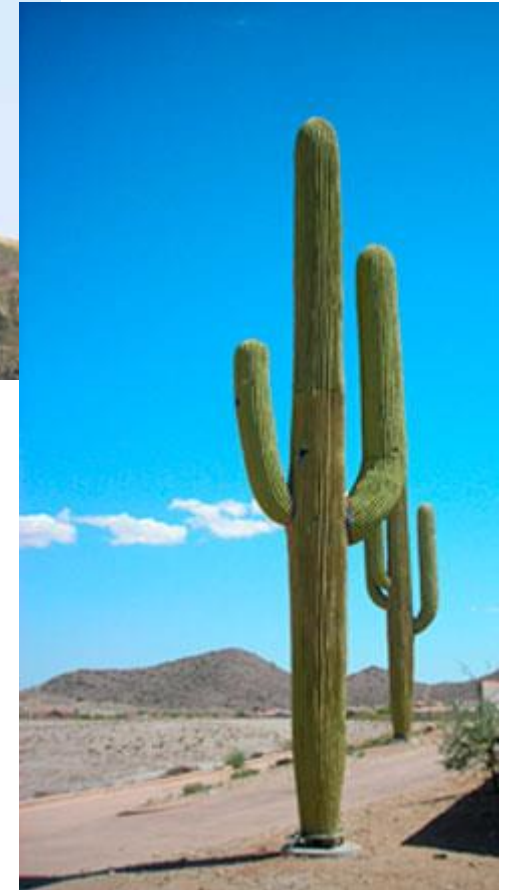
## Collocation of SWF on existing utility poles

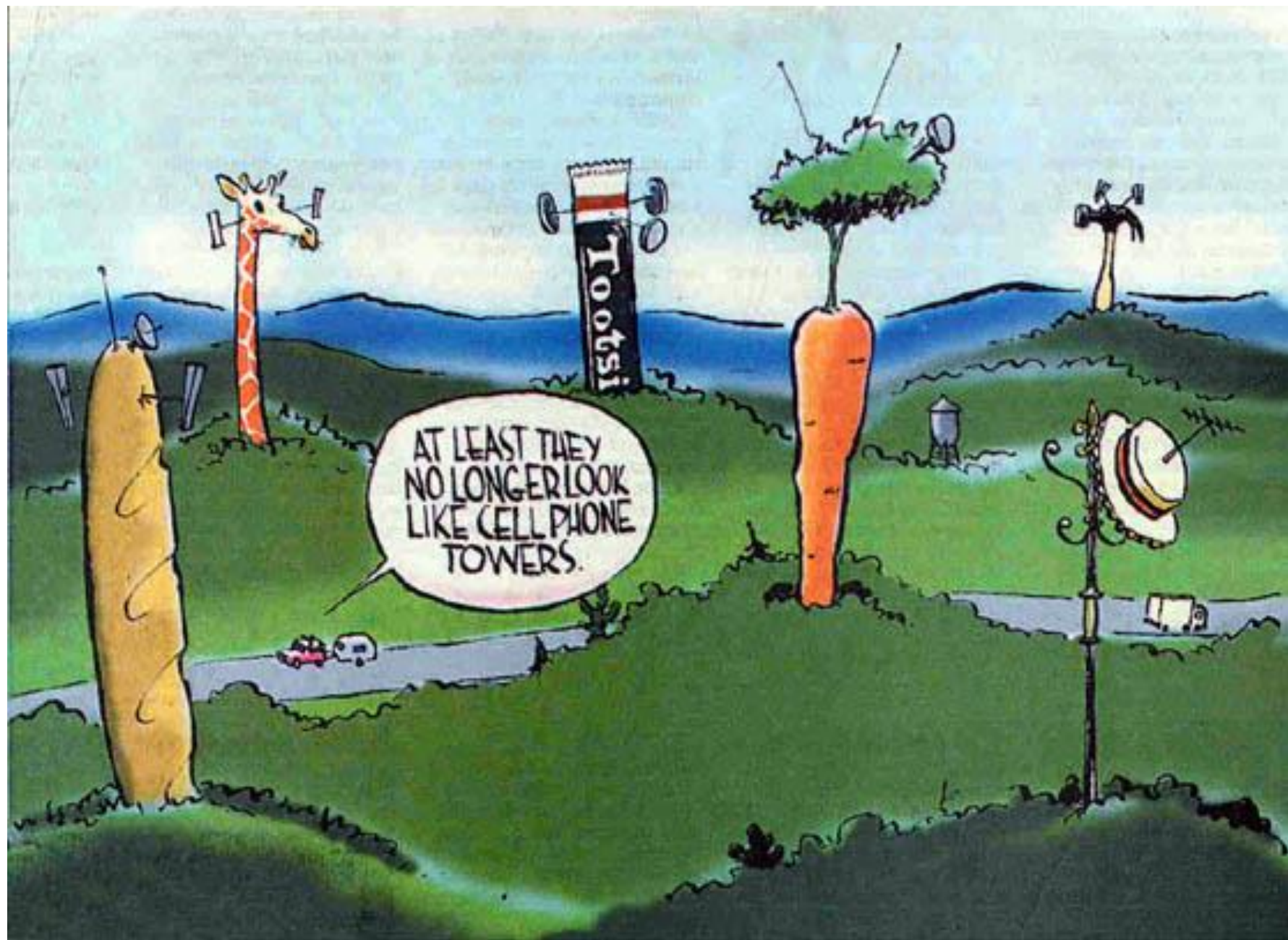
### **Stealth, Concealment & Aesthetics (A.R.S. § 9-593 (F)(4))**

- An authority SHALL approve an application for a permit, unless the application does not meet: applicable codes, regulations that concern public safety, objective design standards for decorative utility poles and reasonable stealth and concealment requirements.
- Valid reasons for denial include public safety and reasonable spacing requirements concerning the location of ground-mounted equipment.
- Approval can be conditioned upon the replacement of the utility pole if an authority determines that local codes or regulations require it.



# Ways to Disguise Cell Towers





# Processing Applications:

## Batching

### **Batching (A.R.S. § 9-593 (D))**

Consolidated application for up to 25 SWF collocations, if the collocations involve the same type of SWF and the same type of structure.

### **Batching (A.R.S. § 9-593 (F)(4))**

Authority may remove specific site applications from the batch if they are: incomplete, subject to denial or do not qualify for consolidated treatment.

# Processing Applications:

## Shot Clock

### **Shot clock (A.R.S. § 9-593 (F))**

Deemed complete 20 days after application receipt (if incomplete, public agency shall specify information needed).

Deemed approved 75 days after application receipt (if denied, public agency shall document the basis for denial).

- Provider may correct deficiencies and re-submit within 30 calendar days after denial.
- Authority must approve or deny a re-submitted application within 30 calendar days after receipt.



# Terms and Conditions

## Terms and Conditions

- Publish rates, fees and terms within 6 months of the statute's effective date (August 8, 2017).
- Include terms that are generally applicable to ROW users.
- Prepare acceptable design standards and details.



# Fees

## A.R.S. §§ 9-592 (C) & (D) and A.R.S. § 9-592 (I)

### **A.R.S. §§ 9-592 (C) & (D)**

Fee for use of the ROW may not do any of the following:

- Result in a double recovery
- Be in the form of a franchise
- Be unreasonable or discriminatory
- Exceed \$50 times the number of SWF in the jurisdiction

### **A.R.S. § 9-592 (I)**

Application fee for new modified or replacement poles may not exceed \$750.

# Fees (ct'd)

A.R.S. § 9-594 (E)(3) and A.R.S. § 9-595 (C)

## **A.R.S. § 9-594 (E)(3)**

Application fee for new or modified monopoles or utility poles subject to the collocation of wireless facilities, may not exceed \$1,000.

## **A.R.S. § 9-595 (C)**

Collocation fee for existing authority utility poles, may not exceed \$50 per pole per year.



# Fees included in Proposed Chapter 4 Amendment

## Use Fees

- ROW Use Fee - \$50/year x number of SWFs
- ROW Use Fee (monopoles & assoc. wireless facilities) – the actual cost of managing the ROW as determined by the Public Works Dept.
- Authority Utility Pole Attachment - \$50/year

## Applications submitted from July 1 – December 31

- Annual Use Fee (City ROW) - \$25
- Annual Use Fee (City Pole in ROW) - \$25

## Ordinary Permit Use Fees

- SWF per A.R.S. § 9-591 (19) - \$750
- SWF per A.R.S. § 9-594 - \$1,000

## Utility and Monopole Applications

- New, replacement or modified utility poles - \$750

## Violation Fee \*

- Failure to restore ROW or correct violations of specs, code, ordinance or standards within 10 business days - \$600/day
- Failure to make books and records available - \$250/day
- Any action or non-action by provider contrary to standard terms that causes inconvenience costs and is not cured after 3 days notice - \$500/occurrence

\*In addition to any cost City incurs to restore ROW or correct the violation.

**Assignment Fee** - \$500

**Late Fees** – 10% or \$100 (whichever is greater) plus interest at 1.5% per month.

# Recap on Scope, Applicability & Relocation Costs

## **Where does the statute apply?**

In the ROWs and public easements.

## **Where does the statutes not apply?**

- On electric distribution poles regardless of ownership.
- Outside the ROW.
- Private easements.

## **What about relocation costs?**

If relocation is required for a public project, all poles and wireless facilities will be relocated at no cost to the authority (A.R.S. § 9-596 (D)).

# Next Steps

## Local Legislative Process

Recommendation is to pass and adopt ordinance and resolution adopting by reference and declaring a public record for Chapter 13 Standards and an ordinance for Chapter 4 Fees.

Work Session Discussion today and November 6, 2017

- Amendments to A.J.C.C., Vol. I, Chapters 4 & 13
- Terms and Standards
- Fees

Public Hearing and anticipated vote: Tuesday, December 5, 2017



*That's all Folks!*