



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: December 12, 2017

Title: Revisions of Pima County Code, Title 10 Traffic and Highways, Chapter 10.50 Regulations for the Use of the Public Right-of-Way

Introduction/Background:

Pima County Department of Transportation provides control, regulation, and use of the public right-of-way. The proposed code revisions will provide clarity to users of public right-of-way as to requirements related to vegetation disturbance, membership to an Arizona one-call notification center, and construction safety.

On March 31, 2017, the legislature enacted legislation (A.R.S. Title 11 Chapter 13) that creates a streamlined process for wireless carriers such as Verizon, AT&T, T-Mobile and Sprint to deploy small cell technology across the state. The new legislation requires revisions to Chapter 10.50 to incorporate state regulations.

Discussion:

Pima County Department of Transportation revisions to Chapter 10.50 are being proposed to ensure that users of the public right-of-way are aware of regulations related to operating within rights-of-way, specifically county regulations for mitigation of disturbance, damage or removal of vegetation; state requirement for locating underground facilities; and county safety requirements for working in the right-of-way.

As part of the legislature's efforts to strengthen the state's existing wireless capabilities and better prepare the state of Arizona for the next generation of wireless technology (5G), legislation was developed to streamline permitting processes and establish a series of standards for cities and counties.

Conclusion:

The requested revisions to Chapter 10.50 will provide users of the right-of-way with a clear understanding of requirements when working in the county right-of-way and bring Pima County into compliance with new wireless small cell law.

Recommendation:

Approve revisions to Pima County Code, Title 10, Chapter 10.50 Regulations for the Use of the Public Right-of-Way.

Fiscal Impact:

As the Right-of-Way Use permit fee for wireless cell providers will be reduced per state legislation from \$285 to \$100, anticipate a \$5,000/year loss in right-of-way permit revenues for the next three to five years.

Board of Supervisor District:

1 2 3 4 5 All

Department: Transportation Telephone: 724-6410

Contact: Robert Johnson, P.E.  Telephone: 724-6461

Department Director Signature/Date: Ann M. Oliver 11/8/17

Deputy County Administrator Signature/Date: [Signature] 11/10/17

County Administrator Signature/Date: C. D. [Signature] 11/16/17

ORDINANCE 2017- _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO TRAFFIC AND HIGHWAYS; AMENDING THE PIMA COUNTY CODE BY AMENDING CHAPTER 10.50.060 (UTILITY CONSTRUCTION IN PUBLIC RIGHT-OF-WAY) TO ADD VEGETATION MITIGATION; CHAPTER 10.50.100 (DESIGN AND LOCATION OF FACILITIES) TO ADD A REQUIREMENT TO BE A MEMBER OF AN ARIZONA ONE-CALL NOTIFICATION CENTER; CHAPTER 10.50.110 (CONSTRUCTION SAFETY) TO ADD A REQUIREMENT FOR A TRAFFIC CONTROL PLAN; AND AMENDING TITLE 10 (TRAFFIC AND HIGHWAYS) TO ADD SECTION 10.50.190 (WIRELESS STRUCTURES AND FACILITIES)

The Board of Supervisors of Pima County Arizona finds that:

1. Pima County Code Chapter 10.50 provides regulations for the use of the public right-of-way.
2. For clarity of regulations governing the use of the right-of-way, it is necessary to amend certain provisions of Pima County Code, Chapter 10.50 to accommodate revisions related to vegetation mitigation, membership with an Arizona one-call notification center, and construction safety.
3. On March 31, 2017 the Arizona State Legislature enacted legislation adding A.R.S. Title 11, Chapter 13. The revised statute allows wireless carriers to install, operate, and maintain small cell equipment in county rights-of-way.
4. In order to comply with state law, it is necessary to amend certain provisions of Pima County Code, Chapter 10.50 to accommodate the new statutory provisions.

BE IT ORDAINED BY THE BOARD OF SUPERVIORS OF PIMA COUNTY, ARIZONA:

SECTION 1. Pima County Code, Section 10.50.060 is amended to add the following:

10.50.060 - Utility construction in public right-of-way.

F. Vegetation Mitigation. Any user of the right-of-way that disturbs, damages or removes vegetation must mitigate such disturbance, damage, or removal in accordance with county standards for planting and restoration within public right-of-way.

SECTION 2. Pima County Code, Section 10.50.100 is amended to add the following:

10.50.100 - Design and location of facilities.

F. Users with underground facilities within right-of-way must be a member of a one-call notification center pursuant to A.R.S. § 40-360.32, subsection B.

SECTION 3. Pima County Code, Section 10.50.110 is revised to read as follows:

10.50.110 - Construction safety.

Any activities that a user or a user's contractor performs within the public right-of-way must occur in the safest manner possible and with the least amount of impediment to the public's continued use of the public right-of-way. A user must guard and protect any hazardous condition it causes during the course of the user's activities in the public right-of-way by erecting safety barriers that clearly designate the hazardous area with warning lights during periods of dusk and darkness. A user must properly sign and mark any work that a user performs in or adjacent to a public right-of-way open for travel with warning and directional devices in accordance with all applicable state and local traffic regulations, and in accordance with the Arizona Department of Transportation's Traffic Control Manual for Highway Construction and Maintenance. Prior to the start of any activity that modifies vehicular, bicycle, or pedestrian traffic patterns, a user or user's contractor must submit to the county a traffic control plan for approval.

SECTION 4. Pima County Code, Chapter 10.50 is amended to add Section 10.50.190 as follows:

10.50.190 – Wireless structures and facilities.

- A. An entity that provides any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities is a “wireless services provider” for purposes of this section. For purposes of this section, “small wireless facilities” has the same definition as in A.R.S. section 11-1801(17).
- B. A proposed or modified utility pole that a wireless services provider installs in a county right-of-way may not exceed the greater of ten feet in height above the tallest utility pole, other than a utility pole supporting only wireless facilities, that is in place and that is located within five hundred (500) feet of the proposed utility pole in the same right-of-way or fifty (50) feet above the ground level.
- C. A wireless services provider must comply with undergrounding requirements that require prior approval for the installation of new structures in a right-of-way if such requirements do not prohibit the replacement of existing structures and facilities.
- D. A wireless services provider must screen or conceal its facilities, as applicable,

including all pole-mounted, pad, and ground-mounted equipment with required aesthetic features, such as canisters, screen walls, and landscaping, as Pima County may approve at each site location. Concealing and screening must blend with or enhance the surrounding area with the use of artistic and architectural detail and will take into account scale, form texture, materials and color and must conceal the equipment. The wireless services provider must note concealing and screening features on the site survey and construction drawings that it submits for each site location. Any new ground mounted equipment or screening must be located outside of the roadway clear zone in a manner that does not block sight visibility at adjacent intersections.

- E. Collocation of a small wireless facility on a utility pole or wireless support structure in the right-of-way that Pima County does not own and that does not include ground-mounted equipment, will not require a permit.
- F. For any installation of a small wireless facility that modifies vehicular, bicycle or pedestrian traffic patterns, prior to the start of any activity, the wireless services provider must submit a traffic control plan to Pima County for approval.
- G. The wireless services provider must coordinate installation of wireless facilities on a county owned traffic signal or street light pole with the Pima County Traffic Signals Shop. All equipment must be attached to the outside of the pole. Access to the interior of the pole and conduit system including pull boxes is reserved exclusively for Pima County use. A County traffic signal inspector must be present during the installation of the equipment.
- H. Installation, modification, or replacement by a wireless services provider of a utility pole located in the right-of-way must be in accordance with chapter 10.44.
- I. A wireless services provider assumes all risk, costs and expenses related to the wireless services provider's facilities and loss of service that may occur due to damage, destruction or collapse of any county utility pole or due to any incompatibility of wireless services provider's use with county use, or another authorized user's use, of county utility poles.
- J. Where the installation of a small wireless facility requires the replacement of a county utility pole with a specialty pole, the wireless provider must replace the county utility pole with a structure meeting all applicable county standards and specifications and return replaced structures to Pima County at a designated location. Specialty poles must fit on a pole foundation that meets or exceeds the foundation requirements for the pole it is replacing. The specialty pole must also fit the standard bolt pattern of the pole it is replacing. The replacement of any traffic signal or street light poles requires prior approval from the Pima County Traffic Signal Shop and a County signal inspector must be present during the pole installation to ensure all work is completed to county specifications. Any pole replacement will be at the sole expense of the wireless service provider, to include payment for sheriff's department point control during any necessary signal shut-

downs.

- K. In addition to other applicable county standards, any utility pole that requires replacement must include overbuild per county overbuild design capacity standards: no structural member, foundation component, fastener, weldment or discreet section may be stressed to more than ninety-five percent (95%) of the design capacity.
- L. Pima County will allow collocation of a small wireless facility on a county-owned utility pole if all of the following apply:
1. The utility pole is structurally sound and able to support the proposed wireless facility as evidenced by a sealed statement of a registered structural engineer.
 2. The facility owner's name and contact information is clearly displayed on associated ground-mounted equipment. When ground-mounted equipment is not required, facility owner name and contact information must be placed directly on the pole-mounted wireless facility.
 3. Wireless ground-mounted equipment is a minimum of ten (10) feet from county-owned ground-mounted equipment.
 4. Pole-mounted wireless facility attachments must be a minimum of five (5) feet from county pole-mounted attachments such as signal heads, lighting, signage, and communications equipment. Wireless facilities must be located in such that they do not interfere with the operation, visibility, or intent of the signal and street lighting equipment.
- M. Operations, Interference.
1. A wireless services provider must not use a county utility pole or the right-of-way in any way which interferes with the use of any portion of the county property by the county. In the event county determines that a wireless provider's use of a county utility pole or right-of-way interferes with the county's use of the county property, county will notify the wireless provider of such interference and the wireless provider will have fifteen (15) days to remedy the interference. If a wireless provider does not remedy the interference, county will have the right to take steps to mitigate the interference at the wireless service provider's expense.
 2. A wireless services provider must not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of county's existing or future law enforcement, public safety, transportation, information technology, engineering, emergency or other communication equipment, methodology, or technology. If such interference occurs, the wireless services provider must immediately discontinue using the equipment,

methodology or technology that causes the interference until the interference has been eliminated to the satisfaction of and at no cost to the county.

3. In the event of an emergency or accident that causes the county to replace or remove a county utility pole with collocated small wireless facilities, the wireless services provider must remove the equipment within two (2) hours of notice by the county. The service provider will need to keep an emergency contact on file with the Pima County traffic signal shop for 24-hour per day, 365-day per year response in case of emergencies. If the wireless services provider fails to so remove the equipment, the county will remove the equipment at the wireless services provider's expense if necessary for public safety.
4. Wireless services providers must have the ability to make traffic signal replacement pole installations in the event of emergency or routine replacement of such county utility poles utilized by wireless services provider or county. In the case of an emergency, the county will install a standard traffic signal or street light pole unless the wireless service provider can make a new specialty pole immediately available. Reinstallation of the specialty pole will be at the expense of the wireless service provider and must be coordinated with the Pima County Traffic Signal Shop. County must approve all replacement poles before installation. The replacement pole must meet the identical structural specifications of the sealed statement in accordance with requirements of Section 10.50.190 (L) (1).
5. Wireless services providers must provide access to a kill switch for each wireless site that county employees, agents, or representatives may use to turn off all power to the wireless facilities when determined necessary by the county for safe maintenance and operation of right-of-way. Each kill switch must be clearly identified on project plans and accessible at ground level. Wireless services providers must provide entry and access requirements to the county and must provide a key to the Pima County Traffic Signal Shop supervisor if the kill switch is located within a locked enclosure. Except in case of an emergency or accident, the county will notify the wireless services provider a minimum of twenty-four (24) hours in advance of a required shut down. The wireless service provider is responsible for keeping up to date contact information on file with the Pima County Traffic Signal Shop for notification purposes.
6. Pole-mounted wireless facilities on county utility poles not in compliance with Federal radio frequency exposure limit rules, 47 C.F.R. Section 1.1310, or subsequent Federal rules as amended from time to time, must be shut down (except for work necessary to bring it into compliance) until such time that evidence of compliance has been submitted to and accepted by the county.

SECTION 5. This Ordinance becomes effective 30 days from the date of the Board's approval.

SECTION 6. The various County officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this _____ day of _____, 2017.

Chair, Pima County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Julie Castañeda, Clerk of the Board

 11/6/17

Tobin Rosen, Deputy County Attorney