

ORDINANCE NO. 1189

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, ARIZONA DECLARING THE DOCUMENTS ENTITLED "2018 TOWN OF WICKENBURG WIRELESS FACILITIES IN THE RIGHT-OF-WAY STANDARD TERMS AND CONDITIONS" AND "2018 TOWN OF WICKENBURG DESIGN STANDARDS, CONCEPTS AND REQUIREMENTS – WIRELESS FACILITIES IN THE RIGHT-OF-WAY" AS PUBLIC RECORDS; AMENDING THE TOWN OF WICKENBURG CODE CHAPTER 8 BUILDING, ARTICLE 8-3 STREET IMPROVEMENTS, SECTION 8-3-3 CONSTRUCTION IN PUBLIC RIGHTS-OF-WAY; LOCATION & RELOCATION OF FACILITIES IN PUBLIC RIGHTS-OF-WAY, BY AMENDING SUBSECTION A PERMIT REQUIRED; CONTENT OF APPLICATION AND SUBSECTION D LOCATION AND RELOCATION OF FACILITIES IN PUBLIC RIGHTS-OF-WAY, PARAGRAPH 1 GENERAL; AND BY ADDING NEW SUBSECTION E WIRELESS FACILITIES IN THE RIGHT-OF-WAY; AND ADDING NEW PARAGRAPH F MICROCELL EQUIPMENT IN THE RIGHT-OF-WAY ALL RELATED TO THE USE OF THE PUBLIC RIGHT-OF-WAY IN THE TOWN BY WIRELESS PROVIDERS AND TO ENTITIES WITH MICROCELL EQUIPMENT ON STRANDS IN THE TOWN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the Town of Wickenburg, in its governmental capacity, owns or holds a legal interest in public roads, streets and alleys and all other dedicated public rights-of-way, public utility easements and public utilities and facilities easements of the Town, and the Town is responsible for the management of the right-of-way within Town's boundaries. Pursuant to ARS §§ 9-240, 9-276 and 9-582, the Town has exclusive control of the right-of-way.

WHEREAS, as authorized by ARS § 9-591, *et seq.*, Wireless Service Providers will attach Wireless Facilities to Town Utility Poles (as defined in ARS § 9-591) located in the public right-of-way.

WHEREAS, all Town Utility Poles approved for such private uses shall retain their primary governmental purpose, and those entities occupying public property must not interfere with those purposes in any way, nor shall their activities create an unreasonably dangerous condition for the public.

WHEREAS, the primary purpose of this ordinance is to protect the health, safety, and welfare for the public, and to protect the value of and physical integrity of publicly-owned property and assets.

WHEREAS, those documents entitled "2018 Town of Wickenburg Wireless Facilities in the Right-of-Way Standard Terms and Conditions" and "2018 Town of Wickenburg Design Standards, Concepts and Requirements – Wireless Facilities in the Right-of-Way", three paper copies or one paper copy and one electronic copy maintained in compliance with A.R.S. § 44-7401 of which are on file in the office of the Town Clerk, are hereby declared a public record.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Wickenburg, Arizona as follows:

Section 1. In General.

The Code of Wickenburg, Chapter 8 Building, Article 8-3 Street Improvements, is amended by amending Section 3-3-3 Construction in the Public-Rights-of-Way ; Location & Relocation of Facilities in Public Rights-of-Way by amending Subsection A and Subsection D, Paragraph 1 General to read as follows (deleted text appears in ~~strikeout~~; new text in ALL CAPS):

A. Permit Required; Contents of Application

It shall be unlawful for any permittee PERSON OR ENTITY to construct, reconstruct, repair, alter, or grade ON, UPON, BELOW, ABOVE OR within the public rights-of-way without first obtaining a permit from the Public Works Department as provided in this Section and complying with the Zoning and Subdivision Codes of the Town. An applicant for a permit shall file A COMPLETE APPLICATION with the Town ~~an application showing~~ THAT INCLUDES:

1. Name, address and license numbers of the party doing the work.
2. Location of the work area.
3. Plans attached to the application showing details of the proposed construction; such plans shall be prepared and sealed by an engineer registered and licensed in the State, unless the permittee demonstrates to the satisfaction of the Town that the work does not warrant imposing this requirement.
4. A traffic control plan in accordance with Subsection B.
5. Estimated cost of alteration

6. FOR WIRELESS FACILITIES, ALL INFORMATION REQUIRED IN THE STANDARDS TERMS AND CONDITIONS FOR WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

67. Such other information as the town finds reasonably necessary to determine compliance with Town Codes.

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D. Location and Relocation of Facilities in the Public Rights-of-Way

1. General. If the work to be performed in a public right-of-way includes the installation, construction, erection, replacement or relocation of any facilities, a permit must be obtained from the Building Department/Public Works Department. Such permit shall be issued on such conditions as are reasonable and necessary to ensure compliance with the terms and conditions of Town Codes. The application shall include all information required in Subsection B. Each permittee is responsible for ensuring that its facilities are installed, constructed and maintained in strict accordance with Town Codes; that all required licenses, franchises and other permits are applied for and obtained before any work commences; that all required licenses, franchises and other permits are applied for and obtained before any work commences; and that the terms and conditions thereof are strictly followed. IN ADDITION, IF THE FACILITY IS A WIRELESS FACILITY, IT SHALL COMPLY WITH THE REQUIREMENTS OF SUBSECTION E, INCLUDING THE REQUIREMENT TO OBTAIN A MASTER LICENSE PRIOR TO ISSUANCE OF A PERMIT. Where a facility is used by more than one permittee, each permittee is fully responsible for ensuring that all requirements are satisfied. ~~Facilities shall be installed, constructed and maintained so that no additional provision of this Code, the Zoning Code or the Subdivision Code, or the provisions of any license, permit, or franchise issued by Town, shall require, at a minimum, compliance with the provisions of this Subsection.~~

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The Code of Wickenburg, Chapter 8 Building, Article 8-3 Street Improvements, is amended by amending Section 3-3-3 Construction in the Public-Rights-of-Way ; Location & Relocation of Facilities in Public Rights-of-Way by adding new Subsection E Wireless Facilities in the Rights-of-Way to read as follows (deleted text appears in ~~strikeout~~; new text in ALL CAPS):

E. WIRELESS FACILITIES IN THE RIGHT-OF-WAY.

1. THIS PARAGRAPH E APPLIES TO THE USE OF THE PUBLIC RIGHTS-OF-WAY BY WIRELESS PROVIDERS AS THAT TERM IS DEFINED IN A.R.S. SECTION 9-591. IT APPLIES TO TELECOMMUNICATIONS CORPORATIONS AS THAT TERM IS DEFINED

IN A.R.S. SECTION 9-581 ONLY IF AND TO THE EXTENT A TELECOMMUNICATIONS CORPORATION HAS OR INTENDS TO LOCATE WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY AND IS A WIRELESS PROVIDER.

2. THOSE CERTAIN DOCUMENTS, THREE COPIES OF WHICH ARE ON FILE WITH THE TOWN CLERK ENTITLED "WIRELESS FACILITIES IN THE RIGHT-OF-WAY STANDARD TERMS AND CONDITIONS" AND "DESIGN STANDARDS, CONCEPTS AND REQUIREMENTS WIRELESS FACILITIES IN THE RIGHT-OF-WAY" ARE HEREBY DECLARED TO BE PUBLIC RECORDS AND ARE ADOPTED BY REFERENCE TO REGULATE WORK ON, BELOW OR ABOVE A RIGHT-OF-WAY THAT INVOLVES WIRELESS COMMUNICATIONS FACILITIES. IN ADDITION TO OTHER REQUIREMENTS IN THIS SECTION 3-3-3, AN APPLICANT REQUESTING TO LOCATE A WIRELESS COMMUNICATIONS FACILITY IN THE RIGHT-OF-WAY SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THE WIRELESS FACILITIES IN THE RIGHT-OF-WAY STANDARD TERMS AND CONDITIONS AND DESIGN STANDARDS, CONCEPTS AND REQUIREMENTS WIRELESS FACILITIES IN THE RIGHT-OF-WAY.

The Code of Wickenburg, Chapter 8 Building, Article 8-3 Street Improvements, is amended by amending Section 3-3-3 Construction in the Public-Rights-of-Way ; Location & Relocation of Facilities in Public Rights-of-Way by adding new Subsection F Microcell Equipment in Rights-of-Way to read as follows (deleted text appears in ~~strikeout~~; new text in ALL CAPS):

F. MICROCELL EQUIPMENT IN THE RIGHT-OF-WAY.

1. *APPLICABILITY.* NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION TO THE CONTRARY, THE PROVISIONS OF THIS PARAGRAPH F SHALL APPLY TO THE INSTALLATION, OPERATION AND MAINTENANCE OF MICROCELL EQUIPMENT MOUNTED ON STRANDS IN THE TOWN BY TELECOMMUNICATIONS CORPORATIONS AND CABLE OPERATORS. A PERSON THAT HAS ALL APPLICABLE AUTHORIZATIONS REQUIRED TO PROVIDE COMMERCIAL MOBILE RADIO SERVICE USING MICROCELL EQUIPMENT MAY USE MICROCELL EQUIPMENT TO PROVIDE COMMERCIAL MOBILE RADIO SERVICE.

2. *APPLICATIONS.* APPLICATIONS FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF MICROCELL EQUIPMENT ON

STRANDS WITHIN THE TOWN SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

3. *FEES.* THE COUNCIL SHALL ESTABLISH FEES FOR MICROCELL EQUIPMENT MOUNTED ON STRANDS BY RESOLUTION.

4. *LIMITATIONS.* AT EACH SITE WHERE MICROCELL EQUIPMENT IS INSTALLED, SUCH INSTALLATION IS LIMITED TO:

a. NOT MORE THAN TWO STRAND-MOUNTED ANTENNAS AND RADIO PAIRS THAT ARE OWNED BY A PERSON DESCRIBED IN PARAGRAPH 1 OF THIS SECTION.

b. RELATED DEVICES OWNED BY THE APPLICANT THAT ARE MOUNTED ON A STRAND BETWEEN THE MICROCELL POLES ON WHICH THE STRANDS ARE MOUNTED, INCLUDING POWER SUPPLIES, HOUSINGS, CABLES AND SIMILAR SUPPORTING FURNISHINGS AND IMPROVEMENTS.

5. *DEFINITIONS.* AS USED IN THIS SUBSECTION:

a. *MICROCELL EQUIPMENT* MEANS DEVICES THAT ARE CONNECTED TO AERIAL FACILITIES THAT ARE USED SOLELY FOR TRANSMITTING, PROCESSING AND RECEIVING VOICE AND DATA WIRELESS TELECOMMUNICATIONS SERVICES. MICROCELL EQUIPMENT DOES NOT INCLUDE ANY GROUND-BASED EQUIPMENT.

b. *MICROCELL POLE* MEANS A POLE OR SIMILAR STRUCTURE AND ATTACHED APPURTENANCES, INCLUDING STRANDS, THAT IS DESIGNED FOR TELECOMMUNICATIONS, CABLE, DATA OR ELECTRIC FUNCTIONS.

Section II. Repeal of Conflicting Ordinance.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the 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 IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be guilty of a class one misdemeanor and shall be subject to the violation and penalty provisions of Section 1-8 of the Wickenburg Town Code.

PASSED AND ADOPTED by the Town Council of the Town of Wickenburg, Arizona, this 19th day of November, 2018.

By: Everett Sickles
Everett Sickles, Mayor

ATTEST:

By: Amy Brown
Amy Brown, Town Clerk

APPROVED AS TO FORM:

By: Trish Stuhan
Trish Stuhan, Town Attorney
Gust Rosenfeld, PLC

Number of Councilmembers Present: 5
Number of Votes For: 5
Number of Votes Against: 0
Number of Abstentions: 0

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance Number 1189 was duly passed and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 19th day of November, 2018, and that a quorum was present at the meeting.

Amy Brown
Amy Brown, Town Clerk