

Zoning Provisions of Arizona House Bill 2365 (2017)

Note: Provisions addressing the co-location of small wireless facilities are omitted because such co-locations are addressed in SB 1282.

I. In general:

A municipality or county may exercise zoning, land use, planning and permitting authority and its police power within its territorial boundaries, including for the installation, modification and replacement of wireless support structures and utility poles. (9-596 A; 11-1808 A)

II. Facilities within a right-of-way:

The installation of new monopoles, utility poles, or wireless facilities, and the collocation of wireless facilities, that take place inside of a right-of-way are subject to all of the municipality's codes and regulations, including the municipality's zoning codes and other regulatory processes governing use of the rights-of-way, unless the activities are exempt from zoning review and approval under:

(i) Section 9-592, subsection I [which provides that, subject to undergrounding provisions, a new, replacement or modified utility pole that is associated with the collocation of small wireless facilities and that is installed in the right-of-way is not subject to zoning review and approval under section 9-594 if the utility pole does not exceed the greater of either:

1. Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the effective date of this section, that is located within 500 feet of the new, replacement or modified utility pole and that is in the same right-of-way within the jurisdictional boundary of the municipality, but not more than 50 feet above ground level.

2. Forty feet above ground level]; or

(ii) Subsection J [which provides that new small wireless facilities collocated on a utility pole or wireless support structure in the right-of-way are not subject to zoning review and approval if they do not extend more than 10 feet above the utility pole or wireless support structure and do not exceed 50 feet above ground level]; or

(iii) Section 9-593, subsection C [which provides that, subject to section 9-593 and section 9-592, subsection J, a small wireless facility is classified as a permitted use and is not subject to zoning review or approval if the small wireless facility is collocated in a right-of-way in any zone]. (9-594 A)

With respect to the zoning approval process for activities inside of a right-of-way:

A. A municipality shall:

1. Accept and process applications for the modification of existing or the installation of new monopoles, utility poles, or wireless facilities and the collocation of wireless facilities.
2. Within 30 days after receiving an application, notify the applicant whether the application is complete. If an application is incomplete, the municipality must specifically identify the missing information.
3. Process each complete application on a nondiscriminatory basis. A complete application is deemed approved if the municipality fails to approve or deny the application within 150 days after receipt of an application for the modification of existing or the installation of new monopoles, utility poles or wireless facilities or within 90 days after receipt of a complete application for the collocation of wireless facilities.
4. If a complete application is denied, notify the applicant in writing and provide substantial supporting evidence of the reason for denial in the written record. There must be a reasonable basis for the denial of an application. A municipality may not deny an application if the denial is discriminatory against the applicant with respect to the placement of the facilities of other wireless providers. (9-594 C)

An applicant's business decisions regarding the type and location of wireless facilities, monopoles or utility poles or the technology shall be presumed to be reasonable. This presumption does not apply to the height or appearance of wireless facilities, monopoles or utility poles. (9-594 F)

B. A municipality may not:

1. Require an applicant to submit information about the applicant's business decisions regarding the need for the monopole, utility pole or wireless facilities.
2. Require an applicant to submit information about, or evaluate an applicant's business decisions regarding, the applicant's service, customer demand for service or quality of service.
3. Institute a moratorium on filing, receiving or processing applications or issuing decisions for modifications or installations. (9-594 D)

C. A municipality may:

1. Adopt reasonable requirements regarding the appearance and concealment of facilities, including those relating to materials used for arranging, screening or landscaping.

2. Adopt setback or fall zone requirements that are substantially similar to setback or fall zone requirements that are imposed on other types of commercial structures of a similar height.
3. Charge an application fee. The total application fee, if allowed, may not exceed \$1,000 for the modification of existing or the installation of new monopoles or utility poles or for the collocation of wireless facilities.
4. Charge a rate or fee for the use of the right-of-way that is limited to not more than the direct and actual costs of managing the right-of-way and that is not in the form of a franchise or other fee based on revenue or customer counts. (9-594 E)

A municipality may consider the height of such structures in the zoning or other regulatory review, provided that the municipality does not unreasonably discriminate between the applicant and other communications service providers that install wireless facilities. (9-594 F)

The approval term of an application shall be for a period of not less than 10 years, which must be renewed for equivalent durations unless the municipality makes a finding that the structure or facilities do not comply with the applicable codes or terms of the zoning or other regulatory process approval. Construction of the approved structure or facilities shall be completed within 180 days after the permit issuance date, unless the municipality and the wireless provider agree to extend this period or a delay is caused by the lack of commercial power at the site. (9-594 G)

Utility poles - Municipalities

A wireless provider may construct, install, modify, mount, maintain, operate and replace monopoles (wireless support structures not more than 40 inches in diameter at the ground level and that have all of the wireless facilities mounted on the pole or contained inside of the pole) that are associated with the collocation of wireless facilities along, across, on and under a right-of-way. The installation, modification and replacement of monopoles are subject to review under section 9-594 (zoning) regardless of the height of the monopole. The construction, installation, maintenance, modification, operation or replacement of a monopole or associated wireless facility in a right-of-way is subject to all of the municipality's codes and regulations, including zoning codes and other regulatory processes governing use of the rights-of-way. (9-592 H)

A wireless provider may be required to apply for the installation of new, replacement or modified utility poles associated with the collocation of small

wireless facilities. The municipality shall approve an application unless it finds that the utility pole fails to comply with local code provisions concerning:

- (i) Public safety,
- (ii) Objective design standards and reasonable stealth and concealment requirements, or
- (iii) Undergrounding requirements that prohibit the installation of new or the modification of existing utility poles or monopoles in a right-of-way without prior approval, if such requirements include a waiver, zoning or another process that addresses requests to install or modify such poles or monopoles and do not prohibit their replacement. (9-592 K)

In counties, a wireless provider may construct, install, modify, mount, maintain, operate and replace utility poles along, across, on and under the right-of-way and collocate small wireless facilities on utility poles and wireless support structures. (11-1803 A)

Utility poles - Counties

A. The installation, modification or replacement of an approved utility pole is a permitted use in all zoning districts and subject to only administrative zoning review and approval **unless** the installation, modification or replacement would not comply with:

- (i) Height requirements: A proposed or modified utility pole installed in a county right-of-way may not exceed the greater of 10 feet in height above the tallest utility pole, other than a utility pole supporting only wireless facilities, that is in place on the effective date of this section and that is located within 500 feet of the proposed utility pole in the same right-of-way or 50 feet above ground level. An applicant may apply for an administrative waiver to exceed these height limitations.
- (ii) Undergrounding requirements: Wireless providers must comply with undergrounding requirements that prohibit the installation of new structures in a right-of-way without prior approval if such requirements do not prohibit the replacement of existing structures and facilities.
- (iii) Pole spacing requirements: Wireless providers shall comply with reasonable requirements concerning spacing between utility poles and ground-mounted equipment in the right-of-way. An applicant may apply for an administrative waiver to install a utility pole in closer proximity to another pole or ground-mounted equipment than these spacing requirements would permit. (11-1803 A)

III. Facilities outside of right-of-way:

A. Municipalities: Not addressed

B. Counties:

1. In general:

Except as provided in this section, all zoning requirements of the zoning district in which the applicant seeks to install, modify or replace a utility pole outside the right-of-way that are generally applicable to all applicants within that zoning district apply to the applicant.

The county may adopt reasonable zoning requirements that are applicable only to the installation, modification or replacement of a utility pole and that reflect sound zoning and planning.

A fee for a zoning application and approval required under this section shall conform to the fees applicable to similar applications within the county.

For zoning applications required under this section, a county shall establish an application process and time frames for the installation, modification or replacement of a utility pole or wireless support structures. (11-1805)

2. Zoning for Utility poles

The installation, modification or replacement of a utility pole is a permitted use in every zoning district in the county except for single-family residential zoning districts. (11-1805 B)

The installation, modification or replacement of a utility pole is not a prohibited use in any zoning district in the county. (11-1805 C)

In any zoning district in which the installation, modification or replacement of a utility pole is not a permitted use, the county shall establish a procedure by which an applicant may seek to install, modify or replace a utility pole. (11-1805 D)