

## ORDINANCE NO. 2631

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, ADOPTING THE "STANDARDS FOR ENCROACHMENT OF STRUCTURES INTO THE PUBLIC ROW"; APPROVING THE SITE LICENSE FORM REQUIRED FOR THE USE OF TOWN RIGHT-OF-WAY RELATED TO WIRELESS FACILITIES; AUTHORIZING THE DIRECTOR OF DEVELOPMENT SERVICES OR DESIGNEE TO EXECUTE SAID SITE LICENSES ON BEHALF OF THE TOWN; APPROVING THE "TERMS & CONDITIONS FOR WIRELESS FACILITIES ON, BELOW OR ABOVE TOWN RIGHTS-OF-WAY"; AUTHORIZING THE DIRECTOR OF DEVELOPMENT SERVICES TO MAKE CERTAIN MINOR DEVIATIONS TO THE STANDARDS AND THE TERMS & CONDITIONS; AND AMENDING THE CODE OF GILBERT, ARIZONA, BY AMENDING CHAPTER 10 BUILDINGS AND CONSTRUCTION REGULATIONS, ARTICLE 1 IN GENERAL SECTION 10-5 CONSTRUCTION WITHIN PUBLIC RIGHTS-OF-WAY OR UTILITY EASEMENTS, LOCATION AND RELOCATION OF FACILITIES IN PUBLIC RIGHTS-OF-WAY AND UTILITY EASEMENTS, ARTICLE II TECHNICAL CODES SECTION 10-41 [RESERVED], AND ARTICLE X ENCROACHMENT PERMITS FOR PUBLIC RIGHTS-OF-WAY SECTIONS 10-325 DEFINITIONS, AND BY AMENDING CHAPTER 19 TELECOMMUNICATIONS SERVICE, SECTION 19-1 PURPOSES AND FINDINGS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING PENALTIES.

WHEREAS, H.B. 2365 was recently signed into law, which allows Providers to install and operate small cells and related equipment ("small wireless facilities") on certain public rights-of-way and utility easements.

WHEREAS, the legislation also allows Providers to construct, install, modify, mount, maintain, operate, and replace certain utility poles that are associated with the collocation of small wireless facilities.

WHEREAS, small wireless facilities help Providers add capacity to their networks to provide better cell phone coverage and wireless data services in areas underserved by traditional cell sites.

WHEREAS, said changes in state law necessitate amendments to the Town of Gilbert Town Code and various changes to Town standards, policies, and procedures.

WHEREAS, the Town of Gilbert ("Town") is authorized to grant, renew, deny and terminate licenses and agreements for operation and maintenance of wireless

communications with the Town boundaries pursuant to the Gilbert Town Code, and by virtue of federal and state statutes, by the Town's police powers, by its authority over its public rights-of-way and highways, and by other Town powers and authority; and

WHEREAS, several cable operators, wireless infrastructure providers, and wireless services providers ("Providers") desire to install small wireless facilities on, below or above existing Town property in the right-of-way, including Town streetlight poles, to supplement the coverage of their wireless communication networks and to increase capacity in high demand areas; and

WHEREAS, the Town desires to adopt standards to govern small wireless facilities located on, below or above Town property in the right-of-way titled "Standards for Encroachment of Structures into the Public ROW" ("Standards") and the "Terms & Conditions for Wireless Facilities on, below or above Town Rights-Of-Way" ("Terms & Conditions") both attached hereto and incorporated herein as Exhibit A and Exhibit C respectively; and

WHEREAS, the Town also intends to streamline the Town's process for approving new or amended site licenses in substantially the form attached hereto and incorporated herein as Exhibit B ("Site License") by authorizing the Director of Development Services (or his/her designee) to execute Site Licenses and authorizing said Director to make minor deviations to the Standards and Terms & Conditions, but only upon a showing of good cause by the Provider as may be allowed by the new law or to adapt to changes in technology; and

WHEREAS, each approved Site License shall incorporate by reference the Standards and the Terms & Conditions; and

WHEREAS, the Common Council of the Town of Gilbert, Arizona, finds that the approval of the following is in the best interests of the Town and its residents: (1) amending the Gilbert Town Code to implement various changes to Town standards, policies, and procedures related to small wireless facilities in Town rights-of-way; (2) adopting the Standards; (3) approving the sample Site License, which incorporates by reference the Terms & Conditions and Standards and may be amended by the Town Attorney (or his/her designee) as needed; (4) authorizing the Director of the Development Services (or his/her designee) to execute Site Licenses; (5) adopting the Terms & Conditions; and (6) authorizing the Director of Development Services to make minor deviations to the Standards and Terms & Conditions, but only upon a showing of good cause by the provider as may be allowed by the new law, or to adapt to changes in technology.

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

Section I.     In General.

That certain document, three copies of which are on file in the office of the town clerk, marked and designated as the "Standards for Encroachment of Structures into the Public ROW" in Exhibit A together with all appendices thereto as may be amended from time to time by the Director of Development Services to address changes in technology ("Standards"), are hereby adopted as the design standards of the Town of Gilbert for small wireless facilities within public rights-of-way (including on streetlight poles and traffic signal poles of the Town) and is hereby referred to and made a part hereof as though fully set forth herein.

The Gilbert Town Council hereby approves of the form of the Site License between the Town of Gilbert and Providers, which shall be in the form provided by the Town Attorney.

The Gilbert Town Council hereby authorizes the Director of the Development Services Department of the Town of Gilbert (or his or her designee) to execute Site Licenses on behalf of the Town. A sample Site License is attached hereto as Exhibit B.

That certain document, three copies of which are on file in the office of the town clerk, marked and designated as the "Terms & Conditions for Wireless Facilities on, below or above Town Rights-of-Way," together with all appendices thereto, attached hereto as Exhibit C and incorporated herein by this reference ("Terms & Conditions"), is hereby adopted as the town's regulations regarding the use of Town property (including Town streetlight poles) in the right-of-way related to small wireless facilities, and is hereby referred to and made a part hereof as though fully set forth herein.

The Gilbert Town Council hereby authorizes the Director of the Development Services Department of the Town of Gilbert to make minor deviations to the Standards and Terms & Conditions, but only upon a showing of good cause by the provider as may be allowed by the new law or to adapt to changes in technology.

The Code of Gilbert, Arizona, Chapter 10 Buildings and Construction Regulations, Article I In General, Section 10-5 Construction within Public Rights-of-Way or Utility Easements; Location and Relocation of Facilities in Public Rights-of-Way and Utility Easements, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 10-5. - Construction within public rights-of-way or utility easements OF THE TOWN; location and relocation of facilities in public rights-of-way and utility easements OF THE TOWN.**

- (a) *SCOPE; Permit required; contents of application.* It shall be unlawful for any ~~permittee~~ PERSON OR ENTITY TO CONDUCT WORK ~~within the public rights-of-way or within~~ ON, UPON, BELOW OR ABOVE A PUBLIC ROADWAY, PUBLIC STREET, PUBLIC SIDEWALK,

PUBLIC ALLEY OR public utility easement of the town without first obtaining a permit from the ~~engineering division of the public works department~~ THE TOWN as provided in this section and WITHOUT complying with the ~~Unified~~ Land Development Code. ANY UNAUTHORIZED WORK OR FACILITY SHALL CONSTITUTE TRESPASS.

(B) **COMPLETE APPLICATION REQUIRED.** NO PERMIT SHALL BE ISSUED WITHOUT A COMPLETE APPLICATION AS DETERMINED BY TOWN. NO APPLICATION SHALL BE DEEMED COMPLETE UNLESS AND UNTIL THE TOWN DETERMINES THE APPLICATION MEETS ALL OF THE FOLLOWING REQUIREMENTS:

- (1) ~~Name~~ THE APPLICATION FORM DESCRIBES THE NAME, address, and license number of the party doing the work;
- (2) THE APPLICATION DESCRIBES THE location of the work area;
- (3) Plans ARE attached to the application showing details of the proposed ~~construction~~ WORK. 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 engineer that the work does not warrant imposing this requirement;
- (4) A traffic control plan IS ATTACHED in accordance with subsection ~~(b)~~ (D);
- (5) ~~Estimated~~ THE APPLICATION PROVIDES THE ESTIMATED cost of the work ~~alteration~~;
- (6) ~~Such~~ THE APPLICATION CONTAINS SUCH OTHER information as the town engineer finds reasonably necessary to determine compliance with this Code ~~or~~ AND the ~~Unified~~ Land Development Code;
- (7) ~~Plan checking fees and inspection~~ THE fees as established by the council by resolution shall be are paid IN FULL ~~prior to issuance of a permit~~. THE FEES ARE NON-REFUNDABLE AND SHALL BE PAID TO TOWN WITHOUT PRIOR DEMAND AND WITHOUT ANY DEDUCTION OR OFFSET WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOWN COUNCIL RESERVES THE RIGHT TO ADJUST THE FEES TO REFLECT THE DIRECT AND ACTUAL COSTS OF MANAGING TOWN RIGHTS-OF-WAY AND PUBLIC UTILITY EASEMENTS OF THE TOWN.

- (8) IN ADDITION TO THE REQUIREMENTS CONTAINED HEREIN, AN APPLICATION TO CONDUCT WORK ON, BELOW OR ABOVE A TOWN RIGHT-OF-WAY OR PUBLIC UTILITY EASEMENT OF THE TOWN RELATED TO WIRELESS COMMUNICATIONS FACILITIES SHALL ALSO MEET THE ADDITIONAL REQUIREMENTS IN SUBSECTION (E). IN ADDITION, FOR ANY WORK ON OR BELOW A UTILITY POLE THAT IS NOT OWNED OR OPERATED BY THE TOWN, NO APPLICATION SHALL BE DEEMED COMPLETE WITHOUT WRITTEN CONSENT(S) SIGNED BY EACH OWNER OF THE UTILITY POLE.
- (9) ANY WORK ON, BELOW OR ABOVE A TOWN RIGHT-OF-WAY OR PUBLIC UTILITY EASEMENT OF THE TOWN RELATED TO FACILITIES OTHER THAN WIRELESS FACILITIES MUST COMPLY WITH THE ADDITIONAL REQUIREMENTS IN SUBSECTION (F).
- (C) FOR THE PURPOSE OF THIS SECTION, "WORK" INCLUDES BUT IS NOT LIMITED TO INSTALLATION, MOUNTING, CONSTRUCTION, RECONSTRUCTION, ALTERATION, OPERATION, COLLOCATION, REMOVAL, AND RELOCATION.

**(b)(D) Traffic control.**

- (1) Traffic control plans. A permittee shall submit a traffic control plan application to the town's development services at least two business days prior to the proposed start date of construction activities. The traffic control plan application must include a traffic control plan. The traffic control plan must be designed and submitted by an individual who is currently certified as a "traffic control technician" by the American Traffic Safety Services Association (ATSSA).
- (2) Traffic control manual. That certain document, three copies of which are on file in the office of the town clerk, marked and designated as "Manual on Uniform Traffic Control Devices (LATEST Edition), published by the United States Department of Transportation Federal Highway Administration, together with all appendices thereto, as amended herein is hereby adopted as the town's official traffic control manual for construction work zones and is hereby referred to and made a part hereof as though fully set forth in this section, with the following changes:
- a. Arrowboards are required for all lane closures on arterial streets. Et. seq.

- b. Lane closure on arterial streets are not permitted between 5:30 a.m. and 8:30 a.m. or between 3:30 p.m. and 7:00 p.m. unless previously approved by the traffic engineer.
- c. Road closures on arterial streets shall require notification at the road closure location using variable message signs (VMS) at least ten days prior to the road closure date, unless the road is closed due to an emergency, as determined by the traffic engineer.
- d. A uniformed town police officer shall be present in accordance with the Town of Gilbert Technical Manual Number 1. That certain document on file with the town clerk marked, known, and designated as "Town of Gilbert Technical Manual Number 1", August 2015 Edition, is hereby adopted by reference and made a part hereof as though set forth at length herein.
- e. Flaggers used within the town's jurisdiction shall be either currently certified as flaggers through the American Traffic Safety Services Association (ATSSA), or prior approved equivalent, or be off-duty sworn police officers.

(E) **WORK ON, BELOW OR ABOVE A TOWN RIGHT-OF-WAY OR PUBLIC UTILITY EASEMENT OF THE TOWN THAT INVOLVES WIRELESS COMMUNICATIONS FACILITIES AS SET FORTH IN A.R.S. 9-591 ET SEQ.** IN ADDITION TO THE REQUIREMENTS CONTAINED IN THIS SECTION 10-5 AND 10-41, THOSE CERTAIN DOCUMENTS, THREE COPIES OF WHICH ARE ON FILE WITH THE TOWN CLERK BEING MARKED AND DESIGNATED AS THE "SITE LICENSE" AND "TERMS & CONDITIONS FOR WIRELESS FACILITIES ON, BELOW OR ABOVE TOWN RIGHTS-OF-WAY" ("TERMS & CONDITIONS"), ARE HEREBY ADOPTED TO REGULATE WORK ON, BELOW OR ABOVE TOWN RIGHTS-OF-WAY OR PUBLIC UTILITY EASEMENTS OF THE TOWN RELATED TO WIRELESS COMMUNICATIONS FACILITIES. THE DIRECTOR OF DEVELOPMENT SERVICES SHALL HAVE THE AUTHORITY TO MAKE MINOR DEVIATIONS TO THE TERMS & CONDITIONS, BUT ONLY UPON A SHOWING OF GOOD CAUSE BY THE APPLICANT AS ALLOWED BY LAW, OR TO ADAPT TO CHANGES IN TECHNOLOGY. AN APPLICATION TO CONDUCT WORK ON, BELOW OR ABOVE A TOWN RIGHT-OF-WAY OR PUBLIC UTILITY EASEMENT OF THE TOWN THAT INVOLVES WIRELESS COMMUNICATIONS FACILITIES SHALL NOT BE DEEMED COMPLETE UNLESS IT CONTAINS ALL THE INFORMATION AND

DOCUMENTS REQUIRED BY SAID TERMS & CONDITIONS, INCLUDING A SITE LICENSE EXECUTED BY DIRECTOR OF DEVELOPMENT SERVICES (OR HIS/HER DESIGNEE) AND THE APPLICANT. NO APPLICATION TO CONDUCT WORK ON, BELOW OR ABOVE A TOWN RIGHT-OF-WAY OR PUBLIC UTILITY EASEMENT OF THE TOWN RELATED TO WIRELESS COMMUNICATIONS FACILITIES SHALL BE DEEMED COMPLETE WITHOUT AN EXECUTED SITE LICENSE. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS & CONDITIONS AND THIS CHAPTER 10 (INCLUDING 10-5(F)), THE TERMS & CONDITIONS SHALL GOVERN.

(F) **GENERAL PERMIT CONDITIONS.**

- (2)(1) **Joint use of trenches.** In order to minimize degradation of streets, traffic impacts and other interference with the use of rights-of-way or utility easements OF THE TOWN, work shall be coordinated so that to the greatest extent possible, consistent with economic feasibility, joint trenching is utilized. The department of public works shall adopt rules to facilitate joint trenching in the public rights-of-ways and utility easements OF THE TOWN.
- (3)(2) **Traffic safety.** The facilities to be constructed, installed, operated, and maintained by the permittee shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses over, under, or through the rights-of-way. Those phases of construction relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of said facilities shall be subject to regulation by the council.
- (4)(3) **Records.** The permittee shall keep accurate installation records of the location of all the facilities in the rights-of-way or utility easement OF THE TOWN and furnish them to the town upon request or at such periodic intervals as the town may require. Upon completion of new or relocation construction of underground facilities in the rights-of-way or utility easement OF THE TOWN, the permittee shall provide the to town with THE installation records in a format compatible with the current town mapping format showing the locationS of the ALL underground and above ground facilities. IN THE EVENT PERMITTEE FAILS TO PROVIDE THE RECORDS AS REQUIRED HEREIN, THE TOWN SHALL HAVE THE RIGHT TO RECOVER ALL COSTS INCURRED BY THE TOWN IN CREATING OR OBTAINING SAID RECORDS. IF FACILITIES ARE NOT LOCATED IN THE PRECISE LOCATION DEPICTED IN THE RECORDS AND THE PERMITTEE FAILS TO CORRECT SAID DEFICIENCY IN RECORDS WITHIN THIRTY (30) CALENDAR DAYS TO THE SATISFACTION OF THE TOWN, PERMITTEE SHALL REIMBURSE TOWN FOR ALL COSTS AND DAMAGES THE

TOWN INCURS ASSOCIATED WITH LOCATING SAID FACILITIES (AND, IF DEEMED NECESSARY BY TOWN, TO RELOCATE), INCLUDING ALL DELAY COSTS. IN THE EVENT THE TOWN DETERMINES THAT FACILITIES NEED TO BE RELOCATED AS PROVIDED HEREIN, THE PERMITTEE SHALL ALSO REIMBURSE TOWN FOR THE COSTS ASSOCIATED WITH LOCATING AND POTHOLING PERMITTEE'S FACILITIES.

- (5)(4) **REMOVAL AND Restoration OBLIGATIONS.** Whenever the permittee shall cause any opening or alteration whatever to be made for any purpose in any rights-of-way or utility easement OF THE TOWN, the work shall be completed within a reasonable time, and the permittee shall, without expense to the town and upon completion of such work, restore the property disturbed in a manner consistent with the town's duly adopted standards, ~~or~~ AND as required by its permit, license, or franchise which may incorporate special standards when required for town purposes. Landscaping, whether in the right-of-way or on private property, which is damaged by a permittee shall be restored to its condition as it existed prior to the work. A permittee shall exercise special care when working near established trees or shrubs. If established trees or shrubs die within six months of completion of work by a permittee, it is presumed that the permittee caused such damage if the work performed was in the location of the roots of such tree or shrub.
- (6)(5) **Town's facilities.** The installation, use, and maintenance of the permittee's facilities within the rights-of-way or utility easement OF THE TOWN authorized herein shall be in such a manner as not to interfere with the town's placement, construction, use, and maintenance of its rights-of-way, street lighting, water pipes, drains, sewers, traffic signal systems, or other town systems that have been, or may be, installed, maintained, used or authorized by the town.
- (7)(6) **Interference.** The permittee shall not install, maintain, or use any of its facilities in such a manner as to damage or interfere with facilities of another located within the rights-of-way or utility easement of the town.
- (8)(7) **Location and maintenance of ~~above-ground~~ facilities.** The location of above-ground facilities, such as boxes, cabinets and similar equipment or appurtenances, shall be approved by the town engineer. The permit shall set forth the location of such above-ground facilities. If the town engineer determines that a proposed location would impair traffic visibility or visibility of existing signage or would substantially harm existing landscaping, or that similar conditions exist which would justify a denial of a permit in that location, the permit shall be denied. ~~Above-ground~~ ALL facilities shall be maintained in good condition. If the town finds any of permittee's ~~above-ground~~ facilities are not maintained in good condition,



including any pedestals or cabinets in their appropriate or upright position, permittee shall correct such condition within three business days of receiving notice from town.

(9)(8) **Plans.** Unless waived by the town engineer pursuant to subsection 10-5(a)(3), all facilities shall be installed per plans prepared by a registered professional engineer. All plans shall be approved by the town before the work commences. A permittee may install facilities on existing utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit, and such permission is verified by the town except where those same poles are scheduled to be replaced with buried facilities. The town may require the permittee to prove that it has such permission from the owner to use the owner's facilities. ~~NO TO THE EXTENT PERMITTED BY LAW,~~ no new poles, or longer poles, will be permitted in the rights-of-way or utility easement ~~OF THE TOWN~~ for any new facilities. If permittee installs facilities on existing poles as provided herein, the permittee shall bury its facilities if such poles are removed and not replaced in kind for any reason. If the permittee makes use of existing conduit of another person, the permittee shall be subject to the provisions of this section in the use of such conduit in the rights-of-way. As used herein, a pole installed to replace a damaged pole and which is the same weight and size of the pole being replaced shall not be considered to be a new pole.

(10)(9) **Insurance; bonding.** Each permittee must obtain and maintain such insurance, bonding, and security fund requirements as specified by the town, or if no specific requirements are specified, as are required by the town for similar facilities. No work shall commence unless these requirements have been satisfied, and the town may require the permittee to remove or stop work on facilities or require a permittee to cease using the facility, when any insurance, bonding, and security fund requirements are not satisfied.

(11)(10) **Repairs.** A permit shall be obtained from the ~~public works department~~ TOWN prior to a person removing, abandoning, relocating, or reconstructing, if necessary, any portion of a person's facilities. Notwithstanding the foregoing, the town understands and acknowledges there may be instances when a person is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. The permittee will notify the town prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.

(12)(11) **Conflict with town projects AND PUBLIC IMPROVEMENTS.**

- a. **Identification of conflict.** If, during the design process for public improvements, the town discovers a potential conflict with proposed construction, the permittee shall either:
  1. Locate and, if necessary, expose its facilities in conflict; or
  2. Use a location service under contract with the town to locate or expose its facilities. The permittee shall reimburse the town for the cost resulting from the use of such location service. The town shall make reasonable efforts to design and construct projects pursuant to this section so as to avoid relocation expense to the permittee. Permittee shall furnish the location information in a timely manner, but in no case longer than ten calendar days from the town's request.
- b. **Priority right.** The town reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain ~~and~~ rights-of-way, aerial, surface, or subsurface improvements, including, but not limited to, water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the rights-of-way and utility easements of the town.
- c. **Relocation.** When the town invokes its prior superior right to the rights-of-way, the permittee shall move its facilities located in the rights-of-way and utility easements OF THE TOWN, at its own cost, to such a location as the town directs.
- d. **Procedures.** If, during the course of a project, the town determines permittee's facilities are in conflict, the following shall apply:
  1. Prior to the town notice to proceed to contractor: The permittee shall, within a reasonable time, but in no event exceeding one month, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the permittee of written notice from the town. However, if both the town and the permittee agree, the time frame may be extended based on the requirements of the project.
  2. Subsequent to town notice to proceed to contractor: The town and the permittee will immediately begin the coordination necessary to remove or relocate the facility. Actual construction of such removal or relocation is to

begin no later than 72 hours, if practicable, after written notification from the town of the conflict.

**(13)(12) Damage to town rights-of-way and facilities.**

- a. If, in the installation, use, or maintenance of its facilities, the permittee damages or disturbs the surface of subsurface of any rights-of-way or adjoining public property, or the public improvement located thereon, therein, or thereunder, the permittee shall promptly, at its own expense, and in a manner acceptable to the town, restore the surface or subsurface of the rights-of-way or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance. If such restoration, repair or replacement of the surface, subsurface, or any structure located thereon, therein, or thereunder is not completed within a reasonable time, or such repair or replacement does not meet town standards, the town shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces, or through a hired contractor, and the occupant agrees to reimburse the town for its expense in so doing within 30 CALENDAR days after receipt of the invoice therefor.
- b. The permittee shall reimburse the town for all costs arising from the reduction in the service life of any public road or pavement damage, to the extent required by any other town ordinances, resulting from pavement cuts of permittee. Permittee agrees to pay such costs within 30 CALENDAR days from the date of issuance of an invoice from town.

**(14)(13) Relocation of facilities.**

- a. General. The town shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the town facilities or other facilities occupying the rights-of-way or utility easement OF THE TOWN under authority of a town permit, license, or franchise which must be relocated, are already located in the rights-of-way and the conflict between the permittee's potential facilities and existing facilities can only be resolved expeditiously as determined by the town by the movement of the existing town or other approved facilities.
- b. Delay. If permittee's relocation effort so delays construction of a public project causing the town to be liable for delay damages, the permittee shall reimburse the town for those damages attributable to the delay created by the permittee.

- c. Town costs. Except as otherwise provided in a license, franchise, or permit, or by other provision of law, the entire cost of relocation shall be borne by the town if the permittee is required by the town to relocate facilities which are located in private easements obtained by the permittee prior to the dedication of the public street or easement from which the facilities must be relocated. These prior rights of the permittee would also be unaffected by any subsequent relocation. "Prior rights" as used in this subsection means private easement rights obtained by the permittee prior to the dedication of the streets or public ways from which the facilities are requested by the town to be relocated. In the case of a facility that serves multiple purposes, the prior rights must extend to all uses for this exception to apply.

**(15)(14) Conflict with designated future freeway corridors.**

- a. The town engineer shall maintain in his office a map depicting the boundaries of designated future freeway corridors within the town.
- b. Any permittee proposing to install, construct, erect, replace, or relocate facilities within the boundaries of a designated future freeway corridor shall comply with the provisions of this paragraph.
- c. The town engineer shall establish the locations of rights-of-way within future freeway corridors in the town in which facilities shall be permitted to be installed, constructed, erected, replaced, or relocated ("permitted crossings"). The town engineer shall maintain in his office a description of permitted crossings as a permanent record in a document entitled "Permitted Crossings of Designated Future Freeway Corridors." This document shall be updated at least every six months.
- d. A permittee proposing to install, construct, erect, replace, or relocate facilities in a public right-of-way or utility easement OF THE TOWN, which is within a designated future freeway crossing shall place such facilities only in permitted crossings, unless the Arizona Department of Transportation authorizes a different location for the facilities. Other than in permitted crossings, all applications to install, construct, erect, replace, or relocate facilities in a public right-of-way or utility easement OF THE TOWN within a designated future freeway corridor must be reviewed and approved by the town engineer and the Arizona Department of Transportation.

~~(16)~~(15) **Rights reserved to town.** Without limiting the rights that the town might otherwise have, the town hereby expressly reserves the following rights, powers and authorities:

- a. To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the town.
- b. To determine any question of fact relating to the meaning, terms, obligations, or other aspects of this chapter and the instruments issued under this chapter.
- c. To grant multiple, nonexclusive licenses, franchises, licenses, or permits within the town to other persons.

~~(17)~~(16) **Town police power; continuing jurisdiction.**

- a. Police power. The permittee shall at all times be subject to all lawful exercise of the police power by the town, including any and all ordinances, rules, or regulations which the town has adopted or may adopt, and all laws, rules, regulations, order, and policies of the state and the United States government. Any conflict between the provisions of this section and other provisions of the Town Code, the stricter requirement shall apply.
- b. Continuing jurisdiction. The town shall have continuing jurisdiction and supervision over any facilities located within or on town rights-of-way or utility easements OF THE TOWN. However, it is recognized that the daily administrative, supervisory, and enforcement responsibilities of the provisions of this section and any license or franchise shall be delegated and entrusted to the town manager or director of public works to interpret, administer, and enforce the provisions of this section, and to promulgate standards regarding the construction, reconstruction, relocation, maintenance, dismantling, abandonment, or use of the facilities within the town rights-of-way.

(18)(17) **Violation.** From and after the effective date of this section, it shall be unlawful for any person to occupy the streets and public ways unless the person is in compliance with the provisions of this section and any other applicable ordinance, license, franchise or requirement.

(Code 1984, § 7-8-1; Ord. No. 1143, § I, 1-19-99; Ord. No. 1798, § I, 7-11-06; Ord. No. 2553, § I, 8-27-15)

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The Code of Gilbert, Arizona, Chapter 10 Buildings and Construction Regulations, Article II Technical Codes, Section 10-41 Reserved, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 10-41. – ~~Reserved~~ ADOPTION OF THE STANDARDS FOR ENCROACHMENT OF STRUCTURES INTO THE PUBLIC RIGHT-OF-WAY.**

THAT CERTAIN DOCUMENT, THREE COPIES OF WHICH ARE ON FILE IN THE OFFICE OF THE TOWN CLERK BEING MARKED AND DESIGNATED AS THE "STANDARDS FOR ENCROACHMENT OF STRUCTURES INTO THE PUBLIC ROW" AS MAY BE AMENDED FROM TIME TO TIME IS HEREBY ADOPTED AS A CODE OF THE TOWN AND IS HEREBY REFERRED TO AND MADE A PART HEREOF AS THOUGH FULLY SET FORTH IN THIS SECTION. THE DIRECTOR OF DEVELOPMENT SERVICES SHALL HAVE THE AUTHORITY TO MAKE MINOR DEVIATIONS TO SAID STANDARDS, BUT ONLY UPON A SHOWING OF GOOD CAUSE BY THE PROVIDER AS MAY BE ALLOWED BY LAW. OR TO ADAPT TO CHANGES IN TECHNOLOGY

The Code of Gilbert, Arizona, Chapter 10 Buildings and Construction Regulations, Article X Encroachment Permits for Public Rights-of-Way, Section 10-325 Definitions, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 10-325. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Encroachment* AS USED IN THIS ARTICLE means construction, reconstruction, repair, alteration, or grading within the public rights-of-way. An application for a permit shall be filed with the town engineer and shall include an object, structure or other thing in the public right-of-way of the town. "Encroachment" AS USED IN THIS ARTICLE does not include the use of the public rights-of-way by vehicles, bicycles or other means of transport governed by Title 28, Arizona Revised Statutes.

*Public right-of-way* AS USED IN THIS ARTICLE means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, pedestrian walkway or landscape purposes.

The Code of Gilbert, Arizona, Chapter 19 Telecommunications Service,  
Section 19-1 Purposes and Findings, is hereby amended to read as follows (additions in ALL  
CAPS; deletions in ~~strikeout~~):

**Sec. 19-1. - Purposes, and findings, INTENT, AND APPLICABILITY.**

- (a) **PURPOSE.** The purpose of this chapter is to establish policy governing the management of public highways for the provision of telecommunications services to enable the town to:
- (1) Issue licenses and franchises to telecommunications corporations who use the public highways to provide telecommunications services on a competitively neutral and nondiscriminatory basis, except in cases where state law forbids establishment of a license or franchise requirement; and
  - (2) Manage the public highways in order to minimize the impact and cost to town citizens of the placement of telecommunications facilities within public highways; and
  - (3) Manage the public highways so as to maximize their efficient use, thereby minimizing the foreclosure of future additional uses of such rights-of-way; and
  - (4) Provide for the compensation for the commercial use of public highways to provide telecommunications services; and
  - (5) Minimize congestion, inconvenience, visual impact, and other adverse effects from such use on the town's public highways.
- (b) **FINDINGS.** The town council finds that the town's public highways constitute a valuable public asset:
- (1) Having been acquired and maintained by the town over many years at great taxpayer expense;
  - (2) Providing uniquely valuable property that private telecommunications providers may wish to use for profit-making purposes that may not necessarily benefit all the residents of the town;
  - (3) Representing public investments for which the taxpayers are entitled to a fair monetary return on the town's past and future investment in the town's infrastructure; and
  - (4) Comprising significant assets, which the town must manage as a public fiduciary trust to enhance the public health, safety, and welfare.
- (c) **INTENT.** Therefore, the town council intends:

- (1) To ensure that locally elected officials manage local public highways consistent with their fiduciary trust obligations;
  - (2) To ensure compliance with public health, safety, and welfare measures for public highways;
  - (3) To encourage public-private partnerships to provide telecommunications facilities needed for the most cost-effective delivery of public services, including schools, libraries, police and fire protection, as well as private services;
  - (4) To conserve the limited physical capacity of the public highways held in public trust by the town; and
  - (5) To assure that the town's current and ongoing costs of granting and regulating private access to and use of the public highways are fully paid by the persons seeking such access and causing such costs.
- (D) APPLICABILITY. CHAPTER 19 OF THE GILBERT TOWN CODE AND THE LAND DEVELOPMENT CODE SHALL GOVERN THE MANAGEMENT AND USE OF PUBLIC HIGHWAYS WITHIN THE TOWN OF GILBERT FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES EXCEPT THAT THE USE OF TOWN RIGHTS-OF-WAY AND PUBLIC UTILITY EASEMENTS OF THE TOWN RELATED TO SMALL WIRELESS FACILITIES SHALL BE GOVERNED BY CHAPTER 10 OF THE GILBERT TOWN CODE.

Section II. Providing for Repeal of Conflicting Ordinances.

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 Civil Sanctions.

Any person found responsible for violating this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Section 1-5 of the Gilbert Municipal Code. Each day a violation continues, or the failure to perform any act



or duty required by the Municipal Code or by the Town of Gilbert Municipal Court continues, shall constitute a separate civil offense.

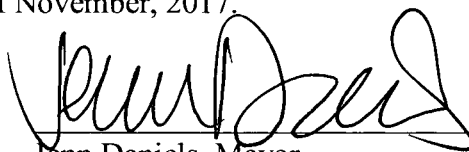
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 2<sup>nd</sup> day of November, 2017, by the following vote:

AYES: S. Anderson, J. Daniels, B. Peterson, J. Ray, J. Taylor

NAYES: E. Cook ABSENT: V. Petersen

EXCUSED: NONE ABSTAINED: NONE

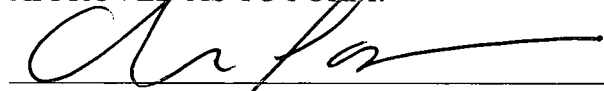
APPROVED this 2<sup>nd</sup> day of November, 2017.

  
\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

  
\_\_\_\_\_  
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Christopher W. Payne, Town Attorney

I, LISA MAXWELL, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2631 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 2<sup>ND</sup> DAY OF NOVEMBER, 2017, WAS POSTED IN FOUR PLACES ON THE 22 DAY OF NOVEMBER, 2017.

  
\_\_\_\_\_  
Lisa Maxwell, Town Clerk