RESOLUTION NO. 11403

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THE DOCUMENT FILED WITH THE CITY CLERK OF THE CITY OF SCOTTSDALE ENTITLED “AMENDMENTS TO VARIOUS PROVISIONS OF CHAPTER 47 OF THE SCOTTSDALE REVISED CODE REGARDING STREETS, SIDEWALKS AND PUBLIC WORKS INCLUDING AN UPDATE PRIMARILY TO THE TELECOMMUNICATIONS PROVISIONS.”

WHEREAS, the City desires to make changes to the Streets, Sidewalks and Public Works provisions found in Chapter 47 of the Scottsdale City Code;

WHEREAS, State law permits cities to declare documents to be public records and adopt ordinances by reference;

WHEREAS, the City Council is adding various provisions to Chapter 47 of the Scottsdale Revised Code including to address telecommunications facilities in the rights of way; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Those certain documents entitled “Amendments to Various Provisions of Chapter 47 of the Scottsdale Revised Code Regarding Streets, Sidewalks and Public Works Including an Update Primarily to the Telecommunications Provisions,” attached as Exhibit “A”, a paper and electronic copy of which is on file in the office of the City Clerk are, by this Resolution, declared to be a public record, and these copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 11th day of June, 2019.

CITY OF SCOTTSDALE, an Arizona municipal corporation

W. J. “Jim” Lane, Mayor

ATTEST:
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney
AMENDMENTS TO VARIOUS PROVISIONS OF CHAPTER 47 OF THE SCOTTSDALE REVISED CODE REGARDING STREETS, SIDEWALKS AND PUBLIC WORKS INCLUDING AN UPDATE PRIMARILY TO THE TELECOMMUNICATIONS PROVISIONS

Chapter 47 - STREETS, SIDEWALKS AND PUBLIC WORKS GENERALLY[1]

Footnotes:

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Editor's note—Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), adopted December 9, 2013, effective July 1, 2014, amended Ch. 47, Arts. I—V to read as herein set out. See also the Code Comparative Table.

Cross reference—Closing or obstructing alleys, § 19-3; closing or obstructing rights-of-way, § 19-4; street sales and solicitation, § 16-351 et seq.

ARTICLE I. - GENERAL

Sec. 47-1. - Purposes.

The purposes of this ordinance include:

(1) Establishing and protecting the public interest in the right-of-way that promotes the efficient movement of people, goods and services;

(2) Managing the right-of-way to serve multiple transportation modes, other public uses, and permitted private uses of the right-of-way;

(3) Managing the right-of-way to optimize the location, installation and maintenance of public and private utilities for efficient service;

(4) Establishing procedures for the orderly acquisition, improvement, use and disposition of right-of-way;

(5) Providing reasonable access to property, for general use, emergency and other services; and

(6) Supporting the Transportation Master Plan, as amended.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-2. - Definitions.

The following words, terms and phrases, when used in this chapter, have the meanings set forth in this section, except where the context clearly indicates a different meaning:

Barricade plan means a plan showing the temporary traffic control devices used to control pedestrian and vehicular traffic and protect work zones.

Blue Stake means the program operated by Arizona Blue Stake, Inc. (or its successor) for marking utilities.

Clear zone means the area beyond the edge of the through-traveled way available for recovery by an errant vehicle. The clear zone includes sidewalks, bike lanes and turn lanes.

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Design Standards and Policies Manual (DSPM) means the document detailing Scottsdale’s requirements, procedures, policies, forms and document standards to help administer this chapter, among other purposes.

Emergency means a sudden, unexpected event that may create an imminent risk of injury or death to any person, or imminent risk to public health or safety, requiring immediate response.

Encroachment means (1) anything located in, or any use of, any right-of-way, or areas below, or above the right-of-way, and/or (2) anything located in, or any use of, any areas adjacent to the right-of-way that interferes with the public uses of the right-of-way.

Expense means the total cost of:
(1) Construction, maintenance and/or repair of improvements,
(2) Administration, inspection and permit fees,
(3) Engineering fees required for the design and preparation of plans and specifications, and
(4) Contingency and other incidental costs related to the work on the improvements.

Lines means wires, cables, pipes, tubes, conduits or other similar linear conductors of energy, impulses or signals, for water, gas, electricity or communications.

MAG Standards means the Uniform Standard Specifications for Public Works Construction, sponsored and distributed by the Maricopa Association of Governments (MAG), as currently adopted and supplemented by the city.

Owner means a person who owns property.

Permit to work in the right-of-way (PWR) means written authorization from the city to work in or use the right-of-way.

Permit for private improvements in the right-of-way (PIR) means written authorization from the city to construct or install private improvements in the right-of-way.

Planning, Neighborhood and Transportation Administrator means the city department head whose duties include planning and development functions, or successor, or designee.

Private improvements means all privately-owned installations, equipment and facilities, including, but not limited to, private streets, street furniture, covered walkways, landscaping, irrigation, walls, signs, energy facilities, communications equipment and mailboxes.

Public improvements means infrastructure in the right-of-way required or accepted by the city to serve public uses, including, but not limited to streets, curbs, gutters, sidewalks, landscaping, irrigation, trails, paths, signs, signals, pavement markings and facilities for transit, recreation, public safety, and city utilities such as city communications, water, sewer and drainage.

Public uses means all functions serving the public, including, but not limited to transportation, public art, landscaping, and city utilities such as city communications, water, sewer and drainage.

Regularly means routinely, according to usual plans, practices or schedules.

Related facilities means equipment to which lines are attached for distributing water, gas, electricity or communications.

Right-of-way means land which by deed, conveyance, agreement, easement, dedication, patent, reservation, usage or process of law is reserved for or dedicated to the general public for street, highway, alley, city utility, trail-path or sidewalk purposes.

Right-of-Way Supervisor means the person whose duties include regulating the use of the right-of-way, and administering and interpreting this chapter, or successor, or designee.

Traffic control device means any sign, traffic signal, marking, barricade or channeling device used to regulate, warn or guide traffic.
Transportation Department means the city agency responsible for regulating and operating the right-of-way for the safe and efficient movement of people, goods and services.

Transportation Director means the city department head whose duties include transportation functions, or successor, or designee.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-3. - Conformance with other rules.

(a) All persons using the right-of-way shall conform with:
   (1) All applicable statutes, rules and regulations of the United States government, the state of Arizona and Maricopa County;
   (2) The Zoning Ordinance, Design Standards and Policies Manual, General Plan and all other applicable ordinances, regulations, policies and plans of the city; and
   (3) The guidelines and standards of the American Association of State Highway and Transportation Officials.

(b) For each permit issued under this chapter, the owner and the permit holder, not the city, are responsible for conformance with the statutes, rules, regulations, ordinances, plans and policies referred to in this section.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-4. - Interpretation.

The Right of Way Supervisor interprets the Streets Ordinance is authorized to interpret the provisions of this Chapter.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-5. - Scope.

The requirements of this chapter are intended to apply to right-of-way, not to private streets or other forms of private access.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-6—47-9. - Reserved.

ARTICLE II. - ACQUISITION OF RIGHT-OF-WAY

Sec. 47-10. - Streets required.

(a) If the creation of a land division, or the erection or enlargement of a building, structure or use, will change or increase traffic, the owner shall:
   (1) Dedicate or cause to be dedicated, in fee, the right-of-way required to serve the public uses generated by the land division, building, structure or use, and
   (2) To the city's satisfaction:
      (A) Construct the required public improvements to current standards, or

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(B) Assure the construction of the required public improvements.

(b) The form of dedication is subject to city attorney approval.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-11. - Right-of-way alignment.

The Transportation Director shall determines where rights-of-way are located and aligned.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-12—47-19. - Reserved.

ARTICLE III. - IMPROVEMENT OF RIGHT-OF-WAY

Sec. 47-20. - Public improvements—no city obligation.

The city is not obligated to construct public improvements.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-21. - Improvement standards.

(a) All public improvements shall be constructed to the standards adopted by the city.

(b) The following documents, as adopted and amended by the city, are public records, incorporated in this chapter by reference, and contain the details and procedures for public improvements in the city:


(2) The City of Scottsdale 2015 Supplement to MAG Uniform Standard Specifications and Details for Public Works Construction, is on file in the city clerk's office.

(3) The Design Standards and Policies Manual is on file in the Transportation Department.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14; Ord. No. 4209, §§ 1, 2 (Res. No. 10142, §§ 1, 2), 8-25-15)

Sec. 47-22. - Owner's responsibility for public improvements.

Except as provided below, the owner shall construct, at its expense, the public improvements required by the city under this chapter.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-23. - Assurance of construction.

(a) When an owner is responsible for constructing the public improvements, before the city issues any building permit, the owner shall:

(1) Execute an agreement with the city to construct the public improvements, and
(2) Provide the city a cash deposit, letter of credit, or bond for constructing the public improvements.

(b) The requirements for the agreement, cash deposit, letter of credit or bond are set forth in the DSPM.

(c) If the owner fails to timely and properly construct the public improvements as set forth in the agreement, the city may take any one or more of the following actions, at the owner’s expense:

1. Decline to process or issue building permits, occupancy clearances or other regulatory approvals or inspections;
2. Complete, remove and/or modify the public improvements in whole or in part;
3. Restore any disturbed land;
4. Bring action to enforce the owner’s responsibility under this chapter or under the agreement to construct the public improvements;
5. Bring action to enforce the assurance to construct the public improvements; and/or
6. Otherwise mitigate the effects of the owner’s failure to construct the public improvements.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-24. - Payback agreements.

(a) A payback agreement with the city is available for non-residential, multi-family and mixed-use developments, and subdivisions (except minor subdivisions).

(b) Within sixty (60) days after the city has accepted the public improvements to serve any privately-owned property, a person desiring a payback agreement with the city shall submit the following to the Transportation Department:

1. A copy of the city’s letter of acceptance stating that the public improvements conform to the approved plans and specifications.
2. A half-size copy of the approved as-built construction drawings indicating the public improvements installed.
3. Receipts identifying all expenses, and proof that payment was made.
4. A diagram of properties benefiting from the public improvements, including the assessor’s parcel numbers and frontage lengths.

(c) Payback agreements shall:

1. State the expense of public improvements installed;
2. Include a diagram of the properties benefited and reimbursement to be collected from each property;
3. State the reimbursement from each property benefited, including the interest rate and the maximum reimbursement; and
4. State to whom reimbursements shall be made.

(d) All expenses are subject to review for reasonableness based on current circumstances. The Transportation Department’s determination as to the amount to be reimbursed through the payback agreement is final.

(e) The reimbursement from each property shall be based on the expense per linear foot of frontage or such other equitable method of spreading the expenses as the circumstances may dictate, as determined by the Transportation Department. The determination as to each reimbursement is final.
(f) A payback agreement shall run for a payback period of thirty (30) years after the agreement is signed by all parties. At the end of the thirty (30) year period, the agreement shall terminate, including all benefits and rights under the agreement.

(g) Reimbursements shall include a simple interest rate of one-half (½) percent per month, or any portion thereof, from the date the payback agreement is recorded.

(h) Before the city executes the payback agreement, the applicant shall pay the city’s cost of administering the payback agreement. This administrative charge shall be five (5) percent of the total expenses of the public improvements benefiting properties other than the applicant’s property, with a maximum administrative charge of ten thousand dollars ($10,000.00). Administrative charges will be distributed equitably among the properties benefited.

(i) Upon receipt of the administrative charge and execution of the payback agreement, the city shall record the agreement with the Maricopa County Recorder as to each property that is subject to the agreement, together with a notice of payback. Once all reimbursements are made or the payback period has elapsed, the city will record a release with the Maricopa County Recorder.

(j) The city shall establish a separate account for the collection and payment of reimbursements. Reimbursements collected shall be paid in accordance with the terms of the agreement within ninety (90) days of receipt by the city.

(Ord. No. 4113, § 1 (Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-25. - In-lieu payments.

(a) Instead of construction of public improvements, the city may accept a payment in lieu of construction of public improvements when the city determines such action is appropriate, based on the following considerations regarding whether the proposed public improvements:

1. Will connect to existing public improvements,
2. Will be difficult to maintain to city standards,
3. Will match the improvement standards of existing public improvements,
4. Will be too short to be useful, and/or
5. Are timed to discourage orderly, sequential development.

(b) Payment shall be based on the owner’s public improvement plans and current city capital expenses of public improvements, as approved by the Transportation Department. The determinations as to the acceptance and amount of payment are final. The city shall establish a separate account for the in-lieu payments, which payments will be applied to public improvements.

(c) The in-lieu payment is due before any building permit is issued for development of the property.

(Ord. No. 4113, § 1 (Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-26. - In-lieu construction.

(a) Alternatively, the city may accept construction of public improvements for a different portion of right-of-way; when the city Transportation Director determines such action is appropriate. The Transportation Department’s determination of whether to accept in lieu construction shall be based on the following considerations:

1. Existing and planned traffic conditions and volume,
(2) Priorities in strategic planning for orderly, sequential development,
(3) Conformance with the Transportation Master Plan and other applicable plans, and
(4) Benefit to the community balanced against benefit to properties served.

(b) The Transportation Department's determination of in lieu construction is final.

Sec. 47-27. - Improvement districts.

(a) When the Arizona Revised Statutes authorize an improvement district to construct public improvements in the right-of-way, the City Council may take action in conformance with the Arizona Revised Statutes to form an improvement district.

(b) If an improvement district is formed, it shall have the responsibilities and powers set forth in the Arizona Revised Statutes.

Sec. 47-28. - Agreement for city acceleration of infrastructure.

The city may enter into an agreement with a person benefiting from accelerated construction, setting forth a plan to pay the city for the city's accelerated construction of public improvements.

Sec. 47-29. - Street development fees.

(a) The city may assess street development fees for necessary public services only in compliance with the Arizona Revised Statutes.

(b) The owner may be eligible for credit against the street development fee under the Arizona Revised Statutes.

(c) The street development fee and credit calculations, and other details, shall be set forth in a written development fee agreement.

Sec. 47-30. - Voluntary public improvements.

(a) A person may construct public improvements for a single-family dwelling if the person applies for and is granted the applicable permits to construct public improvements.

(b) The city is not obligated to pay for any voluntary public improvements.

Sec. 47-31. - Assurance of completion.

(a) The city shall not issue a certificate of occupancy until an owner completes all dedications required by this chapter, to the satisfaction of the Planning-Neighborhood and Transportation Administrator or Transportation Director.

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(b) The city shall not issue a certificate of occupancy until an owner substantially completes or satisfactorily assures completion of all public improvements required by this chapter, to the satisfaction of the Planning—Neighborhood and Transportation Administrator Transportation Director.

c) The decision of the Planning—Neighborhood and Transportation Administrator Transportation Director is final.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)


ARTICLE IV. - USE OF RIGHT-OF-WAY

DIVISION 1. - GENERAL

Sec. 47-40. - Right-of-way; city authority.

(a) Right-of-way is managed by the city for public uses.

(b) The city may issue, issue with conditions, or deny a permit to work in the right-of-way (PWR) or a permit for private improvements in the right-of-way (PIR).

(c) The city may remove, or direct the removal of, encroachments in the right-of-way to promote the health, safety and general welfare of the public, and to promote the public uses of the right-of-way.

(d) The city is not obligated to remove, replace or restore any private improvements in the right-of-way unless the city has agreed to do so in an encroachment permit or PIR for the private improvements.

(e) The city is not obligated to remove, replace or restore any privately-installed public improvements that are different from city standards.

(f) The city is not obligated to accept any private street that is not constructed or maintained to city standards. Even if a private street is constructed and maintained to city standards, city acceptance of the private street is subject to City Council approval.

(g) The city's issuance of a permit to work in the right-of-way or to place private improvements in the right-of-way does not create exclusive rights.

(h) The city may require inspections of all uses in the right-of-way.

(i) The Right-Of-Way Supervisor administers this article.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-41. - Use of the right-of-way.

(a) Overweight and oversize vehicles and loads operating on city right-of-way are subject to the requirements of the Arizona Revised Statutes and Scottsdale Revised Code.

(b) Transportation-for-hire on city right-of-way is subject to the requirements of the Arizona Revised Statutes and Scottsdale Revised Code.

(c) Persons hauling dirt and debris on city right-of-way are subject to the requirements of the DSPM.

(d) Valet parking operations using city right-of-way are subject to the requirements of the Scottsdale Revised Code.

(e) Special events are subject to the requirements of Chapter 22.

(f) Other uses of the right-of-way may be subject to additional requirements and permits.

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Secs. 47-42—47-44. - Reserved.

DIVISION 2. - ENCROACHMENTS

Sec. 47-45. - Regulation of encroachments.

(a) There are several kinds of encroachments of the right-of-way, representing different uses and risks, and different degrees of permanency and interference with the right-of-way. Different kinds of encroachments warrant different types of government regulation.

(b) The Right-of-Way Supervisor is responsible for developing any necessary policies and regulations to manage encroachments of the right-of-way.

Sec. 47-46. - Prohibited encroachments; limited encroachments.

(a) For purposes of this section, the owner of property adjacent to the right-of-way includes the occupant of the property.

(b) Except as authorized in writing by the city, no person shall:

(1) Place or maintain any encroachment in the right-of-way.

(2) Place or maintain any tree, hedge, shrub or other plant, or any structure or other encroachment, on property adjacent to the right-of-way, which interferes with public uses of the right-of-way.

(3) Use the right-of-way, or areas below, adjacent to or above the right-of-way, in a manner that interferes with the public uses of the right-of-way.

(c) However, without authorization from the city, an owner of property adjacent to the right-of-way may place and maintain the following private improvements in the area behind the curb, edge of the pavement or edge of the city-maintained dirt road or dirt shoulder. These improvements are not allowed in alleys.

(1) Ground-covers, vines or other plants that do not exceed eighteen (18) inches in height above the adjacent curb or other edge of the right-of-way.

(2) Rocks smaller than six (6) inches in diameter, bricks, pavers, gravel and similar landscape material that does not exceed eighteen (18) inches in height above the adjacent curb or other edge of the right-of-way.

(3) Irrigation conduits two (2) inches or smaller.

(4) A mailbox mounted on a break-away post no larger than four inches by four inches, outside the clear zone.

(d) In addition, persons may perform routine property maintenance as set forth in this division.

(e) Except as authorized in writing by the city, these limitations apply to all private improvements in the right-of-way:

(1) No private improvement shall interfere with public uses of the right-of-way.
(2) The owner of the property adjacent to the right-of-way is responsible for maintaining the owner's private improvements in the right-of-way in an orderly condition.

(3) When the city or designee directs the removal of any private improvement from the right-of-way, it shall be promptly removed.

(4) All improvements in the right-of-way shall comply with all applicable federal, state, county and city laws, ordinances, rules and regulations.

(5) No hedge, shrub, tree or other similar plant shall be allowed to interfere with public uses of the right-of-way.

(6) No structure, such as a wall, fence or sculpture, shall be placed in or maintained in any right-of-way, except for mailboxes allowed above.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-47. - Right-of-way maintenance.

(a) For purposes of this section, the owner of property adjacent to the right-of-way includes the occupant of the property.

(b) Before the city issues a letter of acceptance for public improvements, the owner of property adjacent to the right-of-way shall maintain the adjacent right-of-way to the centerline.

(c) The owner of property adjacent to the right-of-way shall conduct routine property maintenance to keep the property and adjacent right-of-way in an orderly and safe condition, including:

   (1) Mowing and trimming plants and trees,
   (2) Weeding,
   (3) Replacing dead plants,
   (4) Removing litter and debris, and
   (5) Sweeping.

(d) The owner of property adjacent to the right-of-way shall maintain the property so that it does not interfere with public uses of the right-of-way.

(e) Routine property maintenance in the right-of-way using hand tools does not require city authorization. Property maintenance using trucks and large mechanical equipment in the right-of-way requires written city authorization.

(f) Except as authorized in writing by the city, the owner of property adjacent to the right-of-way shall maintain the following:

   (1) The adjacent right-of-way from the back of the curb, edge of the pavement or edge of the city-maintained dirt road or dirt shoulder, to the property line on all street frontages, where the right-of-way has been dedicated in fee to the city; and
   (2) The right-of-way, from the back of the curb, edge of the pavement or edge of the city-maintained dirt road or dirt shoulder to the right-of-way boundary, where the right-of-way has been created by easement.
   (3) The adjacent alley from the edge of the property line to the centerline of the alley.
   (4) The sidewalk.
   (5) The multi-use path and trail.

(g) The city may maintain the right-of-way, or any portion of the right-of-way, specified in (f) above, including contracting with other persons for maintenance. The city's obligation to maintain the right-of-way, or any portion of the right-of-way, specified in (f) above, shall be in writing.

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(h) The city is not obligated to maintain right-of-way that has not been improved to city improvement standards.

(i) The maintenance of drainage easements on private property is controlled by Scottsdale Revised Code, Chapter 37.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-48, 47-49. - Reserved.

DIVISION 3. - USE OF THE RIGHT-OF-WAY—TYPES OF PERMITS

Sec. 47-50. - Use of the right-of-way—PWR.

(a) A person proposing to use the right-of-way other than for its public uses must have a permit to work in the right-of-way (PWR). In addition, some public uses must have a PWR. A person proposing to use the right-of-way regularly other than for its public uses may be issued an annual permit to work in the right-of-way (Annual PWR). If there is a question about whether a PWR or Annual PWR is required, the Right-of-Way Supervisor shall determine whether a PWR or Annual PWR is required. The determination is final.

(b) Examples of uses requiring a PWR include, but are not limited to: working in the right-of-way to construct, install, maintain or modify public or private improvements; using the right-of-way to erect barricades to construct, install, maintain or modify public or private improvements; borings and potholing; curb cuts; special events in the right-of-way (in conjunction with a Special Event Permit); roll-off dumpsters; and testing utilities (including fire hydrants). Examples of uses requiring an Annual PWR include, but are not limited to, utility maintenance and repair and commercial landscape maintenance.

(c) Each holder of a PWR and/or Annual PWR shall operate in conformance with the following provisions:

1. Additional permits. The holder shall obtain any additional permits required to use the right-of-way, including a building permit, barricade plan, PIR, native plant permit, and others.

2. Standards. All work shall be performed safely, attractively and in a workmanlike manner, and pursued diligently to completion. All work shall conform to the improvement standards set forth in article III of this chapter. All use of the right-of-way shall be conducted safely.

3. Applicable laws. All use of or work in the right-of-way shall be conducted and performed in conformance with all applicable federal, state, county and city laws, ordinances, rules and regulations.

4. Conformance to permit and plans. The holder shall comply with the PWR, its attachments and applicable approved plans.

5. Insurance and indemnification. The holder shall obtain and maintain insurance as set forth in the DSPM. The holder shall indemnify, defend and hold harmless the city, its employees, officials and other agents from any loss or liability arising out of the holder's use of or work in the right-of-way including any loss or liability caused in whole or part by the acts, omissions, or negligence of the city, its employees, officials or agents.

6. Change of conditions. The Right-of-Way Supervisor, in an emergency or other circumstance significantly interfering with the public uses of the right-of-way, may change the provisions of a PWR to promote, preserve and protect public health, safety and welfare within the right-of-way. No city attorney approval is required for these changes. If the provisions of a PWR are changed under this subsection, the holder:

(A) Shall comply with the changed conditions.
(B) Has no recourse against the city.

(7) **PWR on site.** The PWR and any applicable barricade plan shall be kept at the site indicated on the PWR when work is performed.

(8) **Removal of property upon request.** After termination or revocation of a PWR, upon the city's request, the holder shall immediately remove all personal property from the right-of-way.

(d) A PWR may be included in another city form, such as a special event permit or Annual PWR. All PWR forms are subject to city attorney approval. Unless the other city form conflicts with this subsection, the provisions below are deemed part of the PWR. In the case of conflict, the provisions providing increased benefits to the city shall control.

(1) **Revocation.** The city may revoke the PWR with cause upon reasonable notice to the holder.

(2) **Warranties.** The holder warrants that all information submitted in applying for the PWR is complete and accurate.

(3) **City cure rights.** If the holder violates the PWR, the city may take whatever action the city deems reasonably necessary to cure the violation, at the expense of the holder. The city may pursue additional legal remedies.

(4) **No changes to city form.** No deletions, additions, or other exceptions to the PWR or other related documents are effective against the city unless the changed PWR is signed by the Right-of-Way Supervisor and approved by the city attorney.

(e) The city may require an applicant for a PWR to provide the city a cash deposit or letter of credit if the following conditions exist:

(1) If the project impairs the function of or destroys the existing public improvements, and/or

(2) If the project is located on right-of-way classified as a collector or higher volume right-of-way, as classified in the Transportation Master Plan.

(f) The requirements for the cash deposit or letter of credit are set forth in the DSPM.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14; Ord. No. 4242, § 1(Res. No. 10381, § 1, Exh. A), 3-15-16)

Sec. 47-51. - Private improvements in the right-of-way—PIR.

(a) No person shall construct or install any private improvement in the right-of-way, except as follows. A person proposing to construct or install any private improvement in the right-of-way must have a permit for private improvements in the right-of-way (PIR). If there is a question about whether a PIR is required, the Right-of-Way Supervisor shall determine if a PIR is required. The determination is final.

(b) Examples of private improvements requiring a PIR include, but are not limited to, everything listed in the definition of private improvements. However, the following private improvements do not require a PIR: (i) the private improvements permitted in section 47-46, and (ii) a pipe or other conduit to transport city water from the water meter to the private use, or waste water from the private use to the city sewer connection.

(c) Each holder of a PIR shall operate in conformance with the following provisions:

(1) **Additional permits.** The holder shall obtain any additional permits required to construct or install any private improvements in the right-of-way, including a building permit, barricade plan, PWR, native plant permit, and others.

(2) **Standards.** The construction and installation of all private improvements shall conform to the improvement standards set forth in article III of this chapter.
(3) **Applicable laws.** The holder shall comply with all federal, state, county, and city laws, ordinances, rules and regulations applicable to the private improvements in the right-of-way.

(4) **Conformance to permit and plans.** The holder shall comply with the PIR, its attachments and applicable approved plans.

(5) **Insurance and indemnification.** The holder shall obtain and maintain insurance as set forth in the DSPM. The holder shall indemnify, defend and hold harmless the city, its employees, officials and other agents from any loss or liability arising out of the holder's private improvements in the right-of-way including any loss or liability caused in whole or part by the acts, omissions, or negligence of the city, its employees, officials or agents.

(6) **Change of conditions.** The Right-of-Way Supervisor, in an emergency or other circumstance significantly interfering with the public uses of the right-of-way, may change the provisions of a PIR to promote, preserve and protect public health, safety and welfare within the right-of-way.

No city attorney approval is required for these changes. If the provisions of a PIR are changed under this subsection, the holder:

(A) Shall comply with the changed conditions.

(B) Has no recourse against the city.

(7) **Removal of property upon request.** After termination or revocation of a PIR, within thirty (30) days, or shorter notice, if safety or the public interest requires, as specified in the notice, the holder shall remove all private improvements permitted under the PIR.

(d) A PIR may be included in another city form, such as a license. All PIR forms may be subject to city attorney approval. Unless the other city form conflicts with this subsection, the provisions below are deemed part of the PIR. In the case of conflict, the provisions providing increased benefits to the city shall control.

(1) **Revocation.** The city may revoke the PIR with cause upon reasonable notice to the holder.

(2) **Warranties.** The holder warrants that:

(A) All information submitted in applying for the PIR is complete and accurate.

(B) The holder is the owner, or the authorized agent of the owner, of the private improvements to be installed in the right-of-way.

(3) **City cure rights.** If the holder violates the PIR the city may take whatever action the city deems reasonably necessary to cure the violation, at the expense of the holder. The city may pursue additional legal remedies.

(4) **Ongoing obligations.** Termination or revocation of the PIR does not terminate the holder's obligations under the PIR. Private improvements in the right-of-way are subject to all applicable ordinance, contract and permit requirements until the private improvements are removed from the right-of-way.

(5) **Not transferable.** The PIR's obligations run with the land in favor of the city and bind future owners of the land adjacent to the right-of-way where the private improvements are located. The PIR is not transferable except when transferred as part of the sale or lien of the land adjacent to the right-of-way where the private improvements are located.

(6) **No changes to city form.** No deletions, additions, or other exceptions to the PIR or other related documents are effective against the city unless the changed PIR is signed by the Right-of-Way Supervisor and approved by the city attorney.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-52. - Permits issued.
The issuance of a PWR or PIR shall not be construed as approving any violation of city codes or policies. A PWR or PIR presuming to give authority to violate any city code or policy is invalid.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-53—47-59. - Reserved.

DIVISION 4. - USE OF THE RIGHT-OF-WAY—GENERAL CONDITIONS

Sec. 47-60. - Permit fees.

(a) The City Council shall establish fees to administer this chapter.

(b) The schedule of fees shall be made available to the public. Other fees required under the Scottsdale Revised Code may apply.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-61. - Preservation of monuments.

(a) Except as specified in (b) below, no monument set to locate or preserve the elevation or boundaries of any right-of-way, property, survey point or reference point shall be disturbed or removed.

(b) If a monument is disturbed or removed, an Arizona-registered land surveyor shall reference and replace the monument, and record a map in conformance with the DSPM, Arizona Boundary Survey Minimum Standards, and Arizona Revised Statutes. The person responsible for disturbing or removing the monument shall be responsible for paying the surveyor's expenses to reference and replace the monument, and record the map.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-62. - Start work.

These requirements apply to PWRs that are not Annual PWRs:

(1) Before beginning any work that requires a PWR, the permit holder shall notify the city as specified in the permit.

(2) Work shall begin under a PWR within thirty (30) days after its issuance, unless the permit provides otherwise. If the work is not begun within thirty (30) days, the permit becomes void, unless the Right-of-Way Supervisor approves an extension.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-63. - Diligent completion of work.

If the permit holder fails to complete the work authorized by the PWR in a reasonable amount of time, as determined by the Right-of-Way Supervisor, the city may enforce the city's rights under this chapter.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-64. - Completion of work.
(a) Upon completion of work under PWR or PIR, the permit holder shall request a final inspection. The permit holder, at the permit holder’s expense and as directed by the Right-of-Way Supervisor, shall:
   (1) Restore the public and private improvements, including landscaping, in the right-of-way;
   (2) Restore natural features, including vegetation, in the right-of-way;
   (3) Remove any encroachments owned by permit holder (that are not permitted), and
   (4) Take other actions to return the right-of-way to its public uses.

(b) No letter of acknowledgement (for private improvements) or letter of acceptance (for public improvements) shall be issued unless the city is satisfied that the terms of the permit and requirements of this chapter have been met. The warranty period required by the MAG Standards begins on the date the city issues a letter of acknowledgement or letter of acceptance.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-65. - Cost of work.

The permit holder is responsible for all expenses of the work authorized by a PWR or PIR.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-66. - Right-of-way excavations and damage; improvements in the right-of-way.

(a) When excavations are made in any paved, resurfaced or sealed right-of-way, the right-of-way shall be reconstructed to the standards set forth in the MAG Standards. Standards are greater for newly constructed or reconstructed structural sections less than four (4) years old or pavement with a rubberized surface course. Temporary pavement sections are not allowed.

(b) Any person who damages right-of-way or public improvements in the right-of-way shall reimburse the city the expense of repairing the damage.

(c) The city is not responsible for damages to private improvements in the right-of-way.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-67—47-79. - Reserved.

DIVISION 5. - USE OF RIGHT-OF-WAY—WATER, GAS, ELECTRIC AND COMMUNICATIONS FACILITIES

Sec. 47-80. - Electric and communications facilities—undergrounding.

(a) All electric and communications lines installed in the right-of-way for property developed after June 26, 1979 shall be installed underground, except electric lines equal to or greater than 12.5 kVA capacity.

(b) If four or more existing sequential electric or communications poles in the right-of-way are to be moved or replaced for development, then the developer shall pay the cost to install the lines attached to those poles underground, except electric lines equal to or greater than 12.5 kVA capacity.

(c) If an electric or communications service provider proposes to move or replace four or more existing sequential electric or communications poles in the right-of-way, then the service provider shall pay the cost to install the lines attached to those poles underground, except electric lines equal to or greater than 12.5 kVA capacity.

(d) All related facilities shall be placed underground to the greatest extent practicable.

Exhibit A to Resolution 11403
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Sec. 47-81. - Water, gas, electric and communications facilities—existing agreements.

In the case of conflict with this ordinance, agreements with the city regarding water, gas, electric and communications facilities, in effect on the effective date of this ordinance shall control over this ordinance.

Sec. 47-82. - Water, gas, electric and communications facilities—encroachments.

(a) Before the city exercises its rights to remove or direct the removal of an encroachment owned by a water, gas, electrical or communications service provider under section 47-40, the city shall notify the service provider of the encroachment; and allow the service provider an opportunity to remedy the encroachment.

(b) Before the city exercises its cure rights under section 47-50 or section 47-51, the city shall notify the water, gas, electrical or communications service provider and allow the service provider an opportunity to cure the violation.

(c) Water, gas, electric or communications service providers having an agreement signed by the city for facilities in the right-of-way, in effect on the effective date of this ordinance, are not required to obtain PIRs (permits for private improvements in the right-of-way), except for substantial structures, such as a substation, switching yard or communications center.

Secs. 47-83, 47-84. - Reserved.

DIVISION 6. - BARRICADE MANAGEMENT

Sec. 47-85. - Authority.

The Right-of-Way Supervisor is responsible for barricade management, including coordinating rights-of-way restrictions and enforcing barricade plans.

Sec. 47-86. - Barricade plan.

(a) A person must have an approved barricade plan to place any traffic control device in the right-of-way, except:

(1) When an emergency requires traffic control devices to be placed immediately;

(2) When public safety personnel deem it necessary to place or replace traffic control devices to protect public safety;

(3) When the city, or a city contractor under the direction of the city, performs routine right-of-way maintenance;

(4) When a city-sponsored special event requires traffic control devices;

(5) When the traffic control device is placed on a local residential street as designated in the Transportation Master Plan; or
(6) When the traffic control device is placed in conformance with a licensed valet parking operation.

(7) When the traffic control device is placed for less than one hour, but the location, reason and expected duration shall be communicated to Inspection Services before placing the traffic control device.

(b) An application for a barricade plan shall conform to the DSPM.

(c) All traffic control devices shall be placed as close as practical to the approved barricade plan, although minor adjustments may be made to accommodate driveways and other site features.

(d) Any major change to the barricade plan shall be submitted as set forth in the DSPM.

(e) The approved barricade plan shall be kept on the site at all times when work is occurring, including placing and removing barricades.

(f) The fee for reviewing a barricade plan is set forth in the Fee Schedule.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-87. - Emergencies.

An emergency does not require a barricade plan or PWR before responding to the emergency, but the location, type of emergency and expected duration shall be communicated to Inspection Services as soon as possible. When a person does not apply for a barricade plan and PWR before responding to an emergency, the person shall apply for a barricade plan and PWR no later than the next business day after the emergency.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-88, - 47-89. Reserved.

ARTICLE V. - DISPOSITION OF RIGHTS-OF-WAY AND EASEMENTS

Sec. 47-90. - Application for abandonment of right-of-way or easement for public transportation purposes.

(a) To apply for an abandonment under this article, the applicant must be the city or the owner of the parcel adjacent to the right-of-way and from which the right-of-way was created.

(b) Except as provided in section 47-94 below, an applicant may apply to abandon all or a portion of:

(1) A right-of-way, or

(2) An easement dedicated for public transportation purposes, designated as a street, roadway, highway or alley, or other term denoting a public thoroughfare.

(c) Procedures to apply for an abandonment are set forth in the DSPM.

(d) When an application for an abandonment is complete, the city staff shall review the application to determine whether abandonment is in best interest of the city. The city staff shall prepare a report for the City Council.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-91. - Notice of the abandonment application.
(a) The applicant shall provide an open house for citizens to offer input to the abandonment application. Notice of the abandonment application shall be provided as required by the City's Basic Zoning Ordinance (Appendix B).

(b) The city shall provide the following notice of the open house and City Council hearing on the abandonment. At least fifteen (15) days before the open house and at least thirty (30) days before the City Council hearing, the city shall:

1. Send notice by first class mail to each owner of property adjacent to the property subject to the abandonment. The notice shall contain the nature of the request, a description of the property to be abandoned, the date, time and place of the open house and the hearing; and the name and contact information of the city staff responsible for the abandonment.

2. Post one or more signs to inform citizens of the abandonment application. The notice shall be readable from fifty (50) feet away and shall contain the nature of the request, a description of the property to be abandoned, the date, time and place of the open house and City Council hearing; and the name and contact information of the city staff responsible for the abandonment.

(c) The applicant shall send notice of the abandonment application by first class mail, or other means as requested by the service provider, to each service provider of water, gas, electric and communications in the city.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-92. - Abandonment with conditions.

(a) If the City Council proposes to grant an abandonment application with conditions, the applicant shall satisfy those conditions within two (2) years of the period directed by the City Council.

(b) The City Council may grant one (1) extension upon the applicant's written request, if the city clerk receives the request at least thirty (30) days before the expiration of the two (2) year or the City Council-directed period. The City Council shall determine the extension period. If the conditions are not satisfied within the two (2) year or City Council-directed period(s), the proposal to grant the abandonment is void. The city staff determines whether the condition(s) have been met.

(c) The city may request the applicant to enter into a development agreement regarding an abandonment with conditions.

(d) An applicable development agreement shall control if there is any conflict with this section.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-93. - Effect of abandonment of right-of-way.

Right-of-way abandoned by the city shall revert as provided by the Arizona Revised Statutes or other applicable laws.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-94. - Application for release of easement.

(a) The City Council delegates to the city staff the authority to release easements for public uses specified below.

(b) Public uses, for this section only, means:

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(1) Functions serving the public such as ingress/egress, cross-access and emergency access, vehicular non-access and public utilities;

(2) A trail, path, sidewalk, non-motorized public access or similar use outside the right-of-way width.

Public uses do not include other public transportation purposes which are addressed in the abandonment process above.

(c) The city or an owner of property subject to an easement dedicated to public uses may apply to have all or a portion of the easement released by the city. Procedures to apply for a release are set forth in the DSPM.

(d) When an application for a release is complete, the city staff shall review the application. The city staff may impose reasonable conditions for the release. Once all conditions have been satisfied, as determined by city staff, city staff shall grant the release. The city staff may determine that retention of the easement is in best interest of the city, and may not grant the release.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-95. - Consideration for abandoned right-of-way or easement.

Before the abandonment of city property is recorded, the applicant shall provide consideration to the city for the abandoned right-of-way or easement.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-96. - Existing water, gas, electrical and communications facilities.

Easements shall be reserved for existing water, gas, electrical and communications facilities located in the abandoned property.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-97—47-99. - Reserved.

ARTICLE VI. - ENFORCEMENT

DIVISION 1. - APPEAL FROM RIGHT-OF-WAY SUPERVISOR'S INTERPRETATION

Sec. 47-100. - Appeal from Right-of-Way Supervisor's interpretation.

(a) The Transportation Director shall hear and decide appeals from the Right-of-Way Supervisor's interpretation of this chapter upon a claim that the Right-of-Way Supervisor made an error in administering this chapter.

(b) Enforcement disputes are not appealable under this section.

(c) Only a lot owner, or an applicant for or holder of a permit issued under this chapter, directly affected by the Right-of-Way Supervisor's interpretation may appeal the Right-of-Way Supervisor's interpretation of this chapter.

(d) To appeal, the appellant shall file the appeal in writing on the city form with the Right-of-Way Supervisor within thirty (30) days after the date of the Right-of-Way Supervisor's interpretation.
(e) The Transportation Director may resolve an interpretation in favor of an appellant only if the following conditions are met.

(1) The appellant's individual circumstances make the strict application of this chapter impractical;
(2) The public health, safety and general welfare are not adversely affected; and
(3) The intent and purpose of this chapter are met.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

DIVISION 2. - ENFORCEMENT GENERALLY

Sec. 47-101. - Enforcement generally.

(a) A police officer, the city attorney or the city manager or designee, may bring civil complaints to enforce this chapter. A police officer, police aide, fire fighter or the city manager or designee may take additional measures necessary to address emergencies, and promote, preserve and protect public health, safety and welfare within the right-of-way.

(b) Any person authorized to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid a civil complaint.

(Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-102. - Civil fines for encroachments and damage in the right-of-way.

The following violations are civil offenses punishable by the minimum fine set forth below:

<table>
<thead>
<tr>
<th>Section</th>
<th>Violation Description</th>
<th>Minimum Fine Per Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>No person shall place or maintain an encroachment that creates an imminent risk of injury or death to the public within the right-of-way.</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>(b)</td>
<td>No person shall perform any unauthorized paving, construction or drainage changes in the right-of-way or other unauthorized changes to the right-of-way.</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>(c)</td>
<td>No person shall use the right-of-way without a permit to work in the right-of-way when that permit is required.</td>
<td>$400.00</td>
</tr>
<tr>
<td>(d)</td>
<td>No person shall use the right-of-way after a permit to work in the right-of-way has expired.</td>
<td>$400.00</td>
</tr>
<tr>
<td>(e)</td>
<td>No person shall fail to maintain or remove an encroachment as directed by the city.</td>
<td>$400.00</td>
</tr>
<tr>
<td>(f)</td>
<td>No person shall fail to restore the right-of-way as directed by the city.</td>
<td>$400.00</td>
</tr>
<tr>
<td>(g)</td>
<td>Unless otherwise approved in writing by the Transportation Director, no person shall violate the standards in the MAG Standards or Design Standards and Policies Manual regarding use of the right-of-way.</td>
<td>$400.00</td>
</tr>
<tr>
<td>(h)</td>
<td>No person shall commit an act that is prohibited under this chapter.</td>
<td>$400.00</td>
</tr>
<tr>
<td>(i)</td>
<td>No person shall fail to act where an act is required under this chapter.</td>
<td>$400.00</td>
</tr>
</tbody>
</table>

(Ord. No. 4113, §§ 1, 2(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-103. - Criminal fines for damage to right-of-way and public improvements.

The following violation is a class 1 misdemeanor punishable by a minimum fine of five hundred dollars ($500.00): No person shall intentionally, knowingly or recklessly remove or cause damage to the natural features, landscaping or public improvements in the right-of-way.

(Ord. No. 4113, §§ 1, 2(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-104. - Additional remedies for encroachments and damage in the right-of-way.

(a) If an encroachment is placed or maintained in violation of this chapter, the city may, in addition to fines for encroachments and damage in the right-of-way, take the following actions at the expense of the person responsible for the encroachment, including the owner and occupant of the property adjacent to the right-of-way:

1. Immediately stop any work;
2. Require the person responsible for the encroachment to seek the applicable permits;
3. Direct the removal or maintenance of the encroachment;
4. Direct the restoration of the right-of-way to its condition before the encroachment; and
5. Remove or maintain the encroachment, and restore the right-of-way, and any public improvements in the right-of-way.

(b) The city may also exercise the remedies under subsection (a) above after the city revokes a permit to work in the right-of-way or a permit to place private improvements in the right-of-way.

(c) If a person fails to take the actions directed by the city, within the time required, the city may take the actions at the expense of the person(s) responsible for the encroachment or damage. The expense for the city actions shall become due and payable when a statement of the expenses is mailed to the person responsible for the encroachment or damage; and shall become delinquent thirty (30) days after being mailed. A late charge shall be assessed for delinquent payments.

(d) The city's remedies to enforce this chapter also include, but are not limited to:

1. Declaring an encroachment a nuisance and abating the nuisance;
2. Suspending or revoking any applicable permit;

Exhibit A to Resolution 11403
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(3) Seeking reimbursement for any damages suffered by the city resulting from the violation;
(4) Pursuing remedies specified in any PWR, PIR or other applicable permit or city document; and
(5) Seeking any other legal or equitable remedy.

(Ord. No. 4113, §§ 1, 2(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

DIVISION 3. - BARRICADE MANAGEMENT ENFORCEMENT

Sec. 47-105. - Civil fines for barricade management violations.

The following violations are civil offenses punishable by the minimum fine set forth below:

<table>
<thead>
<tr>
<th>Section</th>
<th>Violation Description</th>
<th>Minimum Fine Per Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>No person shall place or maintain a traffic control device that creates an imminent risk of injury or death to the public within the right-of-way.</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>(b)</td>
<td>No person shall place or maintain any traffic control device within the right-of-way without an approved barricade plan when a barricade plan is required.</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>(c)</td>
<td>No person shall place or maintain any traffic control device within the right-of-way without an immediate need for the traffic control device, such as work occurring within or adjacent to the right-of-way or hazardous conditions affecting the public safety.</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>(d)</td>
<td>No person shall violate the conditions of any permit required to work in the right-of-way.</td>
<td>$500.00</td>
</tr>
<tr>
<td>(e)</td>
<td>No person shall violate the conditions of the approved barricade plan, including, but not limited to, the hours of operation.</td>
<td>$500.00</td>
</tr>
<tr>
<td>(f)</td>
<td>No person without traffic control device certification, as set forth in the Design Standards and Policies Manual, shall place, adjust or remove any traffic control device.</td>
<td>$500.00</td>
</tr>
<tr>
<td>(g)</td>
<td>Any person authorized to place traffic control devices must use traffic control devices as specified in the Design Standards and Policies Manual.</td>
<td>$250.00</td>
</tr>
<tr>
<td>(h)</td>
<td>No person shall leave or store any traffic control device in the right-of-way for more than four (4) hours after: (i) the work warranting the traffic control device is</td>
<td>$250.00</td>
</tr>
</tbody>
</table>
(Ord. No. 4113, §§ 1, 2(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Sec. 47-106. - Additional remedies for barricade management violations.

In addition to fines for barricade management violations, the city may:

(1) Suspend or revoke the applicable permit, including PWR, PIR, special event permit and/or barricade plan approval;

(2) Impound and store traffic control devices left in the right-of-way in violation of this chapter, and charge a reasonable fee for impoundment and storage; and

(3) Charge a reasonable fee for actions taken by the city to correct violations of this chapter.

(Ord. No. 4113, §§ 1, 2(Res. No. 9551, Exh. A, § 1), 12-9-13, eff. 7-1-14)

Secs. 47-107—47-160. - Reserved.

ARTICLE VII. - TELECOMMUNICATIONS SERVICE PROVIDERS[21]

Footnotes:

—(2)—

Editor's note—Ord. No. 3368, §§ 1—7, adopted July 2, 2001, did not specifically amend the Code; hence, inclusion as §§ 47-161—47-167 was at the discretion of the editor. Subsequently, Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), adopted December 9, 2013, effective July 1, 2014, renumbered former Art. VI as Art. VII.

Sec. 47-161. - Purpose and findings.

(a) The purpose of this chapter is to establish a policy governing the management of public highways for the provision of telecommunications services to enable the city to:

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(1) Issue licenses to telecommunications corporations who use the public highways to provide telecommunications services providers on a competitively neutral and nondiscriminatory basis, except in cases where state law forbids establishment of a license requirement;

(2) Manage the public highways in order to minimize the impact and cost to Scottsdale citizens of the placement of telecommunications facilities within public highways;

(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;

(4) Promote competition among telecommunications service providers and encourage the universal availability of advanced telecommunications services to all residents and businesses of the city; and

(5) Minimize congestion, inconvenience, visual impact, and other adverse effects on the city's public highways.

(b) Therefore, in this chapter the city council intends to:

(1) Ensure compliance with public health, safety and welfare measures for public highways;

(2) Conserve the limited physical capacity of the public highways held in public trust by the city; and

(3) Assure that the city's current and ongoing costs of granting and regulating public service corporation access and private corporation access to and use of the public highways rights of way are fully paid by the persons seeking such access and causing such costs.

(Ord. No. 3368, § 1, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13, eff. 7-1-14)

Sec. 47-162. - Definitions.

For the purpose of this chapter, unless the context otherwise requires, the following terms, phrases, words and their derivatives shall have the meanings given herein.

Arterial streets are streets or highways used primarily for through traffic in such a manner that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.

Cable services and cable system shall have the same meaning as defined in chapter 7 of the Scottsdale Revised Code.

City manager means the city manager or the city manager's designee.


Facilities means the plant, equipment and property used in the provision of telecommunications services and not owned by the city, including but not limited to poles, wires, pipe, conduits, pedestals, antenna and other appurtenances placed in, on or under public highways.

Provider means a telecommunications person, corporation, or any other public or private entity who constructs, installs, operates or maintains telecommunications facilities in the city public highways rights-of-way.

Public highway or highway means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the city.

Rights-of-way shall have the same meaning as public highway or highway means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the city.
Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. Telecommunications shall include information services, cable services, VOIP services, and advanced communication services as each is defined in 47 U.S.C. § 153 and video service as defined in A.R.S. § 9-1401. The term does not include commercial-mobile radio services, pay phone services, interstate services or cable services.

Telecommunications corporation means any public service corporation or private corporation to the extent that it provides telecommunications services in this state.

Telecommunications facilities means the plant, equipment and property used in the provision of telecommunications and not owned by the city, including but not limited to poles, wires, pipe, conduits, pedestals, and other appurtenances placed in, on or under public highways but does not include wireless communication facilities.

Telecommunications services means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

Wireless communications facility (WCF) means a facility for the transmission and/or reception of radio frequency signals, including over-the-air broadcasting signals, usually consisting of antennas, equipment cabinet, a support structure, and/or other transmission and reception devices.

(Ord. No. 3368, § 2, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13; eff. 7-1-14)

Sec. 47-163. - Telecommunications license.

(a) No telecommunications corporation provider shall construct, install, maintain or operate telecommunications facilities in any public-highway right of way in the city unless a license to use the highways to provide telecommunications services has first been granted by the city council under this chapter (hereinafter "license") to such telecommunications corporation provider.

(b) Unless otherwise exempted by law, no telecommunications corporation provider shall install or construct telecommunications facilities in any public highway in the city unless a ROW encroachment permit (hereinafter "permit") allowing work or construction within the public highway has first been granted under this chapter to such telecommunications corporation provider.

(c) Notwithstanding subsection (a), any telecommunications corporation that was providing telecommunications service within the State of Arizona on November 1, 1997, pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that state grant, until and unless the state grant is lawfully repealed, revoked or amended, and need not obtain any further authorization from the city to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations, as provided in title 9, chapter 6, article 7, Arizona Revised Statutes.

(d) Nothing in this chapter shall be deemed to affect the terms or conditions of any license or permit issued by the city prior to the effective date of this chapter or to release any party from its obligations thereunder. Those licenses or permits shall remain fully enforceable in accordance with their terms. Provided, however, any renewal, extension, amendment or other modification of such license or permit shall be subject to the provisions of this article as they exist at the time of such renewal, extension, amendment or other modification. The city manager, with consent of the city council, may enter into agreements with licensees to modify or terminate an existing license or agreement.

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(e) A license to any telecommunications corporation provider to use the highways rights of way to construct, install, maintain or operate telecommunications facilities under this chapter shall not authorize the use of the highways to provide any other service unless expressly stated therein; nor shall the issuance of the same invalidate any license or permit that authorizes the use of the highways for such other service; nor shall the fact that an entity holds a license, or permit to make any other use of the highway or to provide any other service, authorize installation, maintenance, construction or operation of telecommunications facilities in any highway rights of way in the city without obtaining a license and permit hereunder.

(f) Any license granted shall not be exclusive.

(g) A telecommunications licensee provider may enter into contracts for use of its facilities within the public highways rights of way to provide telecommunications services. The licensee must disclose all persons with whom it contracts to use its facilities in the public highways rights of way within the city to provide telecommunications services. Persons using such licensee's facilities must themselves obtain a telecommunications license if such person constructs, installs, operates or maintains telecommunication facilities within the public highway of the city.

(h) The issuance of a license by the city is not a representation or warranty that such license is a legally sufficient substitute for a franchise and is not a representation or warranty that a franchise is not required.

(Ord. No. 3368, § 3, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13, eff. 7-1-14)

Sec. 47-164. - License application.

(a) A telecommunications corporation provider desiring a license under this chapter to operate and maintain telecommunication facilities in streets and other highways rights of way in the city shall file an application with the city manager or designee requesting a license in the form prescribed by the city manager and shall pay a fee in the amount of two thousand dollars ($2,000.00). The amount of the fee is reasonably related to the cost directly incurred by the city to review and process the application.

(b) At the discretion of the city manager, an application for a telecommunications license may be processed simultaneously with the same applicant's application for a permit to install the applicant's telecommunication system facilities.

Each application for a license shall include a project narrative describing the types of services that will be offered and the benefit that these services will bring to the community, and the following information:

1. The names, addresses, and telephone numbers of the applicant, including those for responsible parties during the application, construction and implementation process. This includes a 24-hour emergency telephone contact;

2. A copy of the applicant's valid certificate of public convenience and necessity which has been issued by the Arizona Corporation Commission; except that this requirement shall not apply to a telecommunication corporation that provides solely interstate telecommunications within the state as demonstrated to the city's satisfaction;

3. A statement identifying by place and date any other telecommunications or cable licenses awarded to the applicant, its parent or subsidiary; and the status of said licenses;

4. Specific route maps for the applicant's infrastructure in Scottsdale including all areas proposed to be served for both (1) initial construction and (2) full project build-out. The initial construction map shall serve as Exhibit "A" as indicated in subsection 47-165(b)(5) below;
(5) A proposed time schedule for the installation of all facilities necessary to become operational throughout the entire service area together with a document comparing the schedule with the city's proposed street maintenance schedule and the city's five year capital improvement plan;

(6) A copy or abstract of any agreement covering the license area, if existing, between the applicant and the local telephone and/or other utilities providing for the use of any facilities of the utility including but not limited to poles, lines or conduits; and

(7) A statement or description of any exemptions from this article claimed pursuant to state or federal law and the basis therefore; and

(78) Any other details, statements, information or references, pertinent to the subject matter of such application which shall be required or requested by the city manager and/or city council, or by any other provision of law.

c) Upon receiving an application for a license that satisfies the conditions of subsection 47-164(b), the city manager may inquire into matters relevant to the issuance of the license and, if the city manager determines all matters therein are satisfactory, shall proffer a telecommunications license to the applicant within a reasonable time for its review. If the applicant agrees to the terms and conditions of the license, and otherwise satisfies the conditions set forth herein, the request shall be submitted to city council for consideration. Notwithstanding the foregoing, the city need not issue or renew a license for any reason permitted under Arizona or federal law or if the applicant has previously had its telecommunications services license revoked.

d) The city may retain outside experts to assist in the review and processing of complex telecommunications license applications and all costs for such experts in excess of the application processing fee shall be disclosed to the applicant and recovered by the city through mutual agreement.

(Ord. No. 3368, § 4, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13, eff. 7-1-14)

Sec. 47-165. - License terms.

(a) Length of license. Any license granted by the city pursuant to this chapter shall commence upon adoption of the license and acceptance of the license by the provider. The license shall be effective for a period of up to ten (10) years, and subject to the conditions and restrictions provided in the instrument and this chapter. Additionally, the license may provide for a renewal period of up to ten (10) years upon substantially the same terms and conditions; provided, however, that the renewed license shall be updated to reflect any substantive changes in this Chapter.

(b) Every license shall be subject to the following provisions:

(1) Licenses shall be personal to the licensee. Except as provided in the license, no transfer of a license or licensee, or change of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the city and prior consent is obtained by the city council, which consent will not be unreasonably withheld or delayed. In making a determination as to whether to approve a transfer, the city may consider the same information and qualifications required of an original application for a license; whether the licensee is in compliance with its license and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transfer would result in an evasion of other applicable provisions of law, or impair lawful contracts; and the effect of the transfer on the city's interests. No application for a transfer of a license shall be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of this chapter and the license, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee under this chapter and the license for all purposes, including renewal. Approval by the city of a transfer of a license does not constitute a waiver or release of
any of the rights of the city under this chapter or the license, whether arising before or after the
date of the transfer.

(2) Notwithstanding the foregoing, prior consent shall not be required for one transfer to any
company which is owned or controlled or under common control and with the same direct
parent as licensee, and which is intended after such transfer to remain under the ownership or
control of that parent or an entity under common control or with the same direct parent, provided
that, no such transfer shall be valid unless licensee and the proposed transferee submit a
binding agreement and warranty to the city stating that:

a. The proposed transferee has read, accepts, and agrees to be bound by the license;
b. The proposed transferee assumes all obligations, liabilities and responsibility under the
license for the acts and omissions of licensee, known and unknown, for all purposes, and
agrees that the transfer shall not permit it to take any position or exercise any right which
licensee could not have exercised; and
c. The transfer will not substantially diminish the financial resources available to the licensee.

Prior to completing such transfer described in this subsection 47-165(b)(2), licensee and
the proposed transferee shall submit to the city a description of the nature of the transfer,
and submit complete information regarding the effect of the transfer on the direct and
indirect ownership and control of the license.

(3) Every licensee shall obtain the insurance, and provide proof of insurance as required by the
city; post the performance bonds and security fund required by the city; and agree to fully
indemnify the city, its officers, agents, boards and commissions, in a form satisfactory to the
city; and agree that it shall have no recourse whatsoever against the city or its officials, boards,
commissions, agents or employees for any loss, costs, expense or damages arising out of any
provision or requirement of the city because of the enforcement of the license or because of
defects in this chapter or the license issued;

(4) The city shall have continuing jurisdiction and supervision over any facilities located within or
on city rights-of-way. Daily administrative, supervisory and enforcement responsibilities of the
provisions of this chapter shall be delegated and entrusted to the city manager to interpret,
administer and enforce the provisions of this chapter, and to promulgate standards regarding
the construction, reconstruction, relocation, maintenance, dismantling, abandonment or use of
the facilities within the city rights-of-way. Every licensee shall comply with and be bound by the
administrative and enforcement provisions as may be prescribed from time to time by the city.

(5) Every license will be a nonexclusive, revocable license, right and privilege to construct, install,
operate, and maintain the facilities along certain streets and public ways in the city as
specifically identified on a map to be attached to the license as Exhibit "A".

(6) Upon written consent of the city manager or his—designee, which consent shall not
unreasonably be withheld or delayed, the licensee may expand or extend the system to streets
and public ways not currently identified on the map attached hereto included as Exhibit "A" an
exhibit to the license. The licensee agrees that any such expansions or extensions shall be
governed by the terms and conditions of this license and such conditions and/or stipulations that
the city may require to minimize specific traffic impacts in all or part of the requested extension
area. The licensee shall annually prepare an updated Exhibit "A" map that shows the
expansions and extensions, which shall be attached to this license to replace the existing
Exhibit "A" exhibit upon the city's granting of consent for the expansion or extension.

(7) The licensee agrees to provide and maintain accurate digital maps in an electronic format
specified by the city that shows the location of all facilities it will use in the highways within the
city; and comply with such other mapping requirements as the city may establish from time to
time.

(c) Penalties for violation of license terms.

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(1) Every provider shall be subject to the city’s exercise of such police, regulatory and other powers as the city now has or may later obtain, and a provider may not waive the application of the same, and the license must be exercised in strict conformity therewith. Every license shall be subject to revocation if the provider fails to comply with the terms and conditions of the license or applicable law. A license shall not be revoked unless the provider is given written notice of the defect in performance and fails to cure the defect within sixty (60) days of the notice, except where the city finds that the defect in performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the provider has already had notice and an opportunity to cure. A hearing shall be held before a license is revoked or not renewed if the provider requests a hearing. In the event of a conflict between this chapter and other provisions of the Code, the stricter requirement shall apply.

(2) Any remedies available to the city are cumulative, and are not limited by the recovery of any amounts pursuant to the insurance provisions of the license, or pursuant to any indemnity clause.

(3) If the licensee fails to pay amounts owed to the city by the time prescribed for payment, the licensee shall pay interest on the amounts owed, at the rate of one percent per month.

(4) If licensee fails or refuses to meet any requirement of the license or this chapter and fails or refuses to remedy or perform any requirement after receiving written notice of violation, the city, at its sole discretion may elect to terminate the license.

(d) Renewal. A licensee that receives a telecommunications service license pursuant to this chapter may apply for a renewal of its license, which renewal shall be reviewed in accordance with the requirements of law.

(e) Termination or revocation. Upon termination or revocation in accordance with subsections 47-165(c)(1), and (4), or through failure to renew, the licensee shall have two years to obtain a permit and remove its facilities from the public highway. In the event a licensee’s facilities are not removed from the public highway within two years of termination the facilities shall be deemed abandoned and shall become the property of the city without further notice or compensation.

(Ord. No. 3368, § 5, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13, eff. 7-1-14)

Sec. 47-166. - Compensation.

(a) The city shall not levy a tax, rent, fee or charge on a telecommunications corporation for the use of a public highway to provide telecommunications services, or levy a tax, fee or charge upon the privilege of engaging in the business of providing telecommunications services, except that, in connection with its provisions of telecommunications services and its use of the highways to provide the same, eEach telecommunications corporation provider shall:

(1) Pay any applicable transaction privilege tax on the business of providing intrastate telecommunications services or applicable use tax, as may be specified from time to time in the Scottsdale City Code;

(2) Pay an annual fee based on the number of linear feet of trench conduit, not to exceed an aggregate of four inches in diameter, in the public highways rights of way in which facilities are placed carry interstate traffic between and among the telecommunications corporation's interstate points of presence exclusive of facilities used by the local network and the portion of the interstate network that carries interstate calls. The rate per linear foot shall not be increased in any calendar year by more than the increase in the average consumer price index as published by the U.S. Department of Labor, Bureau of Labor Statistics. For the fiscal calendar year 2019-20 and continuing each successive year thereafter until changed by the City Council, the rate per linear foot shall be as follows: one dollar and fifty-two cents ($1.52);
<table>
<thead>
<tr>
<th>Network Mileage Range</th>
<th>Per Foot Annual Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-75 miles</td>
<td>$0.31</td>
</tr>
<tr>
<td>76 miles to 150 miles</td>
<td>$0.21</td>
</tr>
<tr>
<td>Above 150 miles</td>
<td>$0.11</td>
</tr>
</tbody>
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**All miles for the Provider’s Network shall be paid at the applicable rate for the total number of miles**

(3) Pay public highway rights of way construction permit fees established from time to time by the city;

(4) Pay all costs associated with the construction, installation, maintenance and operation of its facilities in the public highways used to provide telecommunications services, including reasonable costs associated with damage caused to the public highways by the licensee;

(5) Pay a license application processing fee of two thousand dollars ($2,000.00) to cover the cost of reviewing and processing the application;

(6) Pay the inspection fee to cover the cost of inspection of the construction, work or installation to insure it meets all city requirements; and

(7) Pay a one-time pavement damage fee to be established by the City Manager or designee for each linear foot of cuts to pavement in the rights of way and pay any and all additional reasonable costs for any other damage, including but not limited to, loss of utility, reduced life, and other proportionate and attributable costs and damages caused to the public highways by the licensee, the licensee’s facilities, or the licensee’s use of the public highways.

(8) Pay an additional linear foot fee to be established by the City Manager or designee to the extent that the conduit to be installed exceeds an aggregate of four inches in diameter.

(b) The city manager is authorized to review the costs associated with construction, maintenance and operation of facilities in the public highways to provide telecommunications services and to establish any fee required to recover those costs. Nothing in this section is intended to limit the obligation of any person to pay amounts owed under any license. Provided that, for licenses issued after the effective date of this chapter, payments required under such license for the provision of telecommunications services shall comply with the provisions of applicable state and federal laws.

(Ord. No. 3368, § 6, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13, eff. 7-1-14)Sec. 47-166a. – Credit for Amounts Paid; In-Kind Exchange.

(a) Any telecommunications provider who is required to pay an annual fee to the city, other than a transaction privilege or use tax, for use of the rights of way pursuant to a franchise agreement or license with the city issued pursuant to another provision of this code, the city charter, or state or federal law shall be entitled to a credit in such amount against any fees due under sec. 47-166(a)2).
(b) If the city manager or designee determines that it is in the best interests of the city, a license issued pursuant to this article may provide for a corresponding credit against the fees due under sec. 47- 166(a)(2) if the telecommunications provider agrees to provide either facilities or services for the city as part of the license.

Sec. 47-167. - Coordination to minimize disruption to the city's public highways.

(a) The city has the duty to regulate and oversee the use of the city's public highways, subterranean spaces and air rights. The city finds that the management of the public ways has been made more complex because of the increase in building construction and influx of seasonal visitors, and a corresponding increase in vehicular traffic, along the city's major arterial streets.

(b) In order to minimize the number of street cuts, to preserve and prolong the integrity of the public highways, the City of Scottsdale requires that all telecommunications applicants will comply with all city right-of-way construction and management policies, including participation in joint trench projects as designated by the city.

(Ord. No. 3368, § 7, 7-2-01; Ord. No. 4113, § 1(Res. No. 9551, Exh. A, § 2), 12-9-13, eff. 7-1-14)

Sec. 47-168. - Exemptions; Issuance of Exempt License.

(a) Any telecommunications provider that claims that it is exempt from some or all of the provisions of this chapter pursuant to state or federal law shall notify the city of its claim and the nature and basis thereof. If the city is satisfied that an exemption applies, the city may issue a license to use the rights of way pursuant to such state or federal law. Provided, however, any such license issued will be strictly limited to allowing the provision of those services that are exempted by law and if the telecommunications provider desires to provide additional services that are not exempt from this chapter, the telecommunications provider must obtain an additional license in accordance with this article.

(b) If feasible, the grant of authority pursuant to state or federal law as set forth in subsection (a) and a grant of authority pursuant to this article may be combined into a single license.

(c) If any telecommunications provider claims that it is entitled to use the rights of way without necessity of obtaining a license from the city pursuant to a provision of state or federal law, such provider shall only use the rights of way to provide such services as may be exempted under state or federal law and shall not provide any additional services not exempted by law without first obtaining a license pursuant to the provisions of this article.

(d) The provisions of this Article shall not apply to any entity holding a utility franchise agreement with the city or any governmental or quasi-governmental entity providing utility service in the city to the extent that such entity installs telecommunications facilities solely for the purpose of monitoring, coordinating, or otherwise improving the delivery of such utility service.
(e) The provisions of this Article shall not apply to the installation of up to twenty-five (25) linear feet of conduit in the rights of way that is directly associated with a wireless communication facility which is separately licensed by the City in accordance with section 47-169.

47-169 Wireless Communication Facilities.

(a) The city manager or designee may issue separate licenses for wireless communication facilities in the rights of way in accordance with the basic zoning ordinance, any standard terms and conditions adopted by the City Council through resolution, and any other applicable law.