

SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT (EXCERPT)
Act 365 of 2018

460.1313 Activities of wireless provider in public right of way; exclusive arrangement prohibited; rates; ordinance compliance; installation and concealment requirements; waiver of undergrounding requirements; repair damage to right of way.

Sec. 13.

(1) This section applies only to activities of a wireless provider within the public right-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.

(2) An authority shall not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation, or maintenance of utility poles or the collocation of small cell wireless facilities.

(3) An authority shall not charge a wireless provider a rate for each utility pole or wireless support structure in the ROW in the authority's geographic jurisdiction on which the wireless provider has collocated a small cell wireless facility that exceeds the following:

(a) \$20.00 annually, unless subdivision (b) applies.

(b) \$125.00 annually, if the utility pole or wireless support structure was erected by or on behalf of the wireless provider on or after the effective date of this act. This subdivision does not apply to the replacement of a utility pole that was not designed to support small cell wireless facilities.

Every 5 years after the effective date of this act, the maximum rates then authorized under subdivisions (a) and (b) are increased by 10% and rounded to the nearest dollar.

(4) If, on the effective date of this act, an authority has a rate or fee in an ordinance or in an agreement with a wireless provider for the use of the ROW to collocate a small cell wireless facility or to construct, install, mount, maintain, modify, operate, or replace a utility pole, and the rate or fee does not comply with subsection (3), the authority shall, not later than 90 days after the effective date of this act, revise the rate or fee to comply with subsection (3). Both of the following apply:

(a) For installations of utility poles designed to support small cell wireless facilities or collocations of small cell wireless facilities installed and operational in the ROW before the effective date of this act, the fees, rates, and terms of an agreement or ordinance for use of the ROW remain in effect subject to the termination provisions contained in the agreement or ordinance.

(b) For installations of utility poles designed to support small cell wireless facilities or collocations of small cell wireless facilities installed and operational in the ROW after the effective date of this act, the fees, rates, and terms of an agreement or ordinance for use of the ROW shall comply with subsection (3).

(5) A wireless provider may, as a permitted use not subject to zoning review or approval, except that an application for a permitted use is still subject to approval by the authority under section 15, collocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW. Such structures and facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel or public safety on the ROW or obstruct the legal use of the authority's ROW or uses of the ROW by other utilities and communications service providers. Both of the following apply:

(a) A utility pole in the ROW installed or modified on or after the effective date of this act shall not exceed 40 feet above ground level, unless a taller height is agreed to by the authority.

(b) A small cell wireless facility in the ROW installed or modified after the effective date of this act shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is collocated.

(6) Subject to this section, section 17, and applicable zoning regulations, a wireless provider may collocate a small cell wireless facility or install, construct, maintain, modify, operate, or replace a utility pole that exceeds the height limits under subsection (5), or a wireless support structure, in, along, across, upon, and under the ROW.

(7) A wireless provider shall comply with reasonable and nondiscriminatory requirements otherwise provided that prohibit communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities if all of the following apply:

(a) The authority has required all cable and utility facilities, other than authority poles, along with any attachments, or poles used for street lights, traffic signals, or other attachments necessary for public safety, to be placed underground by a date that is not less than 90 days before the submission of the application.

(b) The authority does not prohibit the replacement of authority poles by a wireless provider in the designated area.

(c) The authority allows wireless providers to apply for a waiver of the undergrounding requirements for the placement of a new utility pole to support small cell wireless facilities, and the waiver applications are addressed in a nondiscriminatory manner.

(8) Subject to section 15(2), and except for facilities excluded from evaluation for effects on historic properties

under 47 CFR 1.1307(a)(4)(ii), an authority may adopt written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district, downtown district, or residential zoning district. Any such requirement shall not have the effect of prohibiting any wireless provider's technology. Any such design or concealment measures are not considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility in section 7.

(9) An authority's administration and regulation of activities of wireless providers in the ROW shall be reasonable, nondiscriminatory, and competitively neutral and shall comply with applicable law.

(10) An authority may require a wireless provider to repair all damage to the ROW directly caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and to return the ROW to its functional equivalent before the damage. If the wireless provider fails to make the repairs required by the authority within 60 days after written notice, the authority may make those repairs and charge the wireless provider the reasonable, documented cost of the repairs.

History: 2018, Act 365, Eff. Mar. 12, 2019