

## MARICOPA COUNTY ORDINANCE ADDRESSING REQUIREMENTS FOR PERMITS TO WORK IN RIGHT-OF-WAY WITHIN UNINCORPORATED MARICOPA COUNTY

### ARTICLE I. TITLE, PURPOSE AND AUTHORITY

- A. TITLE. This ordinance shall be referred to and known as the *Maricopa County Right-of-Way Ordinance*.
- B. PURPOSE: The purpose of this ordinance is to set forth the requirements and fees for obtaining a Permit allowing for entry upon any Right-of-Way located within unincorporated Maricopa County for the purpose of occupying, using, or performing Work; authorizing the issuance of Permits for such entry; delegating the task of issuing such Permits to appropriate departments of Maricopa County; and providing for enforcement of this ordinance.
- C. APPLICABILITY: This Ordinance applies to all work performed by an entity other than Maricopa County within County rights of way.
- D. AUTHORITY: This ordinance is adopted by the Maricopa County Board of Supervisors pursuant to the authority granted in A.R.S. §11-251.4 to lay out, maintain, control, and manage public roads.

### ARTICLE II. DEFINITIONS

The following words and phrases shall have the following meanings when used in the Ordinance:

Applicant: A person, partnership, limited liability company, corporation, association, utility, or political subdivision of the State of Arizona who has submitted required information seeking a Right-of-Way Permit.

Application: A form available on the official website of the Maricopa Department of Transportation, approved by the Director, which an Applicant must submit to obtain a Right-of-Way Permit.

Assurance: Cash, letters of credit, bond, or other promise, pledge or guarantee, provided by a third party, as surety, on forms provided by the County, to guaranty performance of the obligations of a Permittee, as principal, in the event of the failure of the Permittee to perform required Work under the Permit and in accordance with the plans upon which the Permit is based. If the Assurance is in the form of cash, a receipt shall be provided.

Board of Supervisors (BOS): The duly elected and constituted governing body of Maricopa County Arizona.

County: Maricopa County, Arizona. The term County shall include all officers, employees, departments, special taxing districts and agents of Maricopa County.

County Engineer: Person appointed by Board of Supervisors to serve in the position as defined by Arizona Revised Statute.

Director: The Director of the Maricopa County Department of Transportation, who may also serve as County Engineer. The term Director shall also include the Director's designees.

Emergency: An unexpected, unplanned or unscheduled interruption of essential services involving facilities located within County Right-of-Way.

Excavation: Any act by which earth, asphalt, concrete, sand, gravel, rock, or any other material comprising the ground is cut into, dug, uncovered, removed or otherwise displaced by means of any tools, equipment, or explosives.

Fee: A one-time charge paid in exchange for services.

MCDOT: Maricopa County Department of Transportation.

Maricopa Association of Governments (MAG): The Council of Governments (COG) that serves as the regional planning agency for the metropolitan Phoenix area.

Maricopa County Right-of-Way: Right-of-Way opened and declared by the Board of Supervisors.

Other Right-of-Way: Right-of-Way not opened and declared by the Board of Supervisors.

Owner: The holder of a recorded property right as shown in the records of the Maricopa County Recorder's Office.

PND; P&D: Maricopa County Planning and Development Department.

Permit: Written authorization issued by Maricopa County to a Permittee to enter upon the Right-of-Way identified in the Application for the purpose of occupying, using, or performing Work, including placement of Traffic Control Devices.

Plans: Drawings and documents that support an Application, which shall provide all details necessary for the design, construction and inspection of the Work for which a permit is being sought.

Permittee: Any Applicant holding a Permit issued by Maricopa County.

Right-of-Way (ROW; R/W): Property right granted for the purpose of constructing, installing, operating and/or maintaining highways, roads, streets, alleys and ways, and bridges.

Small Wireless Facilities and Structures: A qualified wireless facility pursuant to Arizona Revised Statutes, Title 11, Chapter 13, Article 1.

Special Events: One-time occupation such as neighborhood block parties, holiday celebrations, fairs, festivals, promotional events, sporting events, and other similar types of events, approved to occur in Maricopa County Right-of-Way.

Traffic Control Device: A sign, signal, marking, or other indicator used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or shared-use path.

Traffic Control Plan (TCP): A proposal that describes traffic controls to be used for facilitating vehicle and pedestrian traffic through a temporary traffic control zone.

Unincorporated Maricopa County: Area that lies within Maricopa County that is not within the jurisdiction of a city, town, or Indian community.

Violation: Any occupation, use or Work that is performed within a Right-of-Way which has not been authorized by a Right-of-Way Permit.

Work: Any type of use, occupation or construction, reconstruction, removal, repair, maintenance, or similar activity conducted within Right-of-Way.

### **ARTICLE III. REGULATING AUTHORITY**

- A. COUNTY RIGHT-OF-WAY PERMITS BY MCDOT: The Board of Supervisors hereby delegates to and authorizes the Director to issue Right-of-Way Permits in Maricopa County Right-of-Way pursuant to this Ordinance.
- B. OTHER COUNTY RIGHT-OF-WAY PERMITS BY PND: The Board of Supervisors hereby delegates to and authorizes the Director of PND or the Director of PND's designees, to issue Right-of-Way Permits in Other Right-of-Way pursuant to this Ordinance and the *Zoning Ordinance for the Unincorporated Area of Maricopa County...*

### **ARTICLE IV. REQUIREMENTS FOR COUNTY RIGHT-OF-WAY PERMITS**

- A. No Work shall occur within a County Right-of-Way unless and until a Permit shall first have been issued.
- B. All Applications for Permits shall:
  - 1) Be submitted either electronically or in writing, in accordance with all forms and requirements published on the official website of MCDOT.
  - 2) Include all required Plan review fees as listed in Exhibit A, except those fees waived under Paragraph G of this Article.
  - 3) Include Plans.

Provide all other items and details required by the County Engineer to demonstrate that the proposed Work may be completed without doing harm to any public road, ferry or bridge under the jurisdiction of Maricopa County.

- C. All Plans submitted in connection with an Application shall:
  - 1) Be prepared by or under the supervision of a civil engineer registered with the Arizona Board of Technical Registration; provided however, plans prepared by public utility

companies, traffic control professionals and residential owners for resident-occupied properties, may be prepared by non-engineers.

- 2) Include a Traffic Impact Study (TIS), unless waived by the County Engineer.
  - a) Include Plans for the improvement to streets as required by the MCDOT approved TIS,
    - i) Consistent with the future functional roadway classification; or
    - ii) As directed by the County Engineer.
  - b) Notwithstanding the TIS, at a minimum, a half street shall be constructed on the development frontage and/or perimeter streets, but in no case shall the total pavement width be less than 28 feet of pavement.
- 3) Clearly illustrate the location, dimension, details, method and purpose of the proposed Work.
- 4) Show survey monuments at roadway angle points, curve points, street intersections, all to be furnished by the Permittee at its sole cost, as directed by the County Engineer.

Show street name sign locations as directed by the County Engineer. Street name signs shall be furnished by the Permittee at permittees sole cost.

Show that any private utility facilities, including irrigation, shall be relocated within private easements at no cost to the County.

Show that any conflicting public utility facilities shall be relocated at no cost to the County.

Show that facilities no longer in service shall be removed.

Contain a specific note detailing who is responsible for maintenance of all items located within Maricopa County Right-of-Way, which are not to be maintained by the County.

- D. All design, construction and materials for the Application shall comply with the most current applicable standards and regulations including, but not limited to the following list shown in order of hierarchy:

- This Ordinance
- The MCDOT Roadway Design Manual
- Maricopa County Drainage Policies and Standards
- The MCDOT Traffic Control Manual: Work Zone and Special Events
- MCDOT Sampling and Testing Guide for Permitted Work
- The Maricopa County Zoning Ordinance
- The Maricopa County Subdivision Regulations
- The approved Plans, including the MCDOT General Notes
- The Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction as modified by the Maricopa County Department of Transportation Supplement (MCDOT Supplement to MAG)

- E. Unless specified in approved plans or other regulatory requirements:
- 1) Trenches across streets shall be completely backfilled within three (3) working days after pipe has been laid. In the instance of an unforeseen or changed condition the permittee must contact MCDOT prior to the three (3) day deadline to request an extension.
  - 2) Site batch concrete shall only be permitted with prior approval from the MCDOT Engineer and must meet specifications identified in the MCDOT Supplement to MAG.
  - 3) All roadway crossings of utility conduits four (4) inches in diameter or less shall be bored or pushed under pavement. Upon application and approval, this requirement may be waived by the County Engineer.
- F. No Permit shall be issued unless and until the Plans are approved, all applicable Fees listed in Exhibits B and C have been paid, except those fees waived pursuant to this paragraph, the required Assurance is posted, and insurance in the required amount, naming Maricopa County as Additional Insured, is provided. All occupation, use, or Work shall be completed in accordance with the Permit and applicable standards and requirements. The Board of Supervisors may enter into reciprocal agreements for the waiver of the payment of Plan Review Fees and Permit Fees for municipalities, special districts and Indian Communities.
- G. The Permittee shall obtain and comply with any and all approval and Permits that may be required from any and all entities with jurisdiction over the project. Compliance with all Permit requirements and coordination of any conflicts between or among Permits is the responsibility of the Permittee.
- H. Staking and the certification of as-built plans may be performed under the supervision of either a civil engineer or a land surveyor, registered with the Arizona Board of Technical Registration.
- I. It shall be the obligation of the Permittee to ensure that each and every aspect and condition of the approved Plan upon which the Permit is based is completed as required.
- J. A Permit shall be issued for a period of six (6) months, or until the insurance expiration date, whichever is shorter. As long as Work is proceeding, and valid insurance exists, an otherwise valid Permit may be extended in six (6) months increments, without additional Fee.
- K. If a Permit expires before the project is complete, a new Permit, with all associated Fees, must be obtained for the remaining Work.
- L. If no Work has occurred after a Permit is obtained, the Permittee may apply in writing for cancellation of the Permit, provided the Permit has not expired. Upon cancellation, eighty percent (80%) of Fees paid, other than Plan Review and Processing Fees, shall be refunded to the Permittee.

- M. No modification or relocation of any facility located within Right-of-Way shall occur without the prior authorization of the facility's owner.
- N. Active Maricopa County construction projects shall take priority over Permitted Work. Permitted Work may only proceed with written consent of MCDOT.

#### **ARTICLE V. ADDITIONAL REGULATIONS APPLICABLE TO RESIDENTIAL SUBDIVISIONS**

- 1. The Application shall demonstrate proper access to the subdivision including surfacing as per the Pavement Design section of the MCDOT RDM, between the nearest paved road and the subdivision. A public subdivision shall have public access. A subdivision shall have a minimum of two (2) points of access regardless of the number of lots
- 2. Subdivision perimeter streets shall be constructed to their ultimate half-width, but in no case shall the street improvement contain less than 28 feet of pavement. Subdivision interior streets shall be constructed to their ultimate improvement. Any street not located within the subdivision plat but required to gain access to the subdivision, shall be improved as required by a MCDOT approved Traffic Impact Study (TIS), but in no case shall be less than 28 feet of pavement in width.
- 3. All urban subdivisions shall provide sidewalks.
- 4. All utility installations within a subdivision shall be underground.

#### **ARTICLE VI. INSPECTION**

- 1. The Permittee shall provide continuous field inspection, under the supervision of a civil engineer registered in the State of Arizona, during Work activities. MCDOT shall provide engineering inspections necessary to determine if the Work is in accordance with the Permit; however, ultimate responsibility for ensuring that all Work is done in accordance with the issued Permit is that of the Permittee.
- 2. The Work, covered by the Permit, will not be considered ready for final inspection until all drainage items, grading, and backfill are complete, and pavement, curbs and sidewalks are swept clean of all dirt and debris. The area behind curbs shall be backfilled to one (1) inch below top of curb, compacted and neatly dressed to a maximum 4:1 slope within the Right-of-Way. The Permittee shall furnish a water truck at the time of final inspection for water testing street drainage. "As-built" plans and all required test reports must be submitted prior to the scheduling of the final inspection.

#### **ARTICLE VII. REQUIREMENTS FOR OTHER RIGHT-OF-WAY PERMITS**

Applications for Permits shall be submitted to the Maricopa Planning and Development Department, either in writing or electronically, on such forms and in accordance with the requirements as published by PND on its official website. Applications shall satisfy all

requirements, including required Fees, as set forth in the *Zoning Ordinance for the Unincorporated Area of Maricopa County (MCZO)*.

Permit extensions or renewals shall be processed in accordance with the policies/requirements of PND which are available on its official website.

Permit(s) shall not be issued until all Fees are paid.

Violation: Any Violation of this Article VII of this Ordinance shall be prosecuted pursuant to A.R.S. § 11-815 and MCZO Chapter 15.

#### **ARTICLE VIII. EMERGENCY REPAIRS**

This ordinance shall not prevent any person, partnership, limited liability company, corporation, association, utility or political subdivision from maintaining any roadway, pipe or conduit lawfully on or under any Right-of-Way, or from making Excavation as may be necessary for the preservation of life or property during an Emergency. Disturbed areas shall be restored to their original condition. Those acting during an Emergency shall apply for all Permits within one (1) business day after such action. Traffic control to ensure the safety of the motoring public shall be provided during the Emergency.

#### **ARTICLE IX. PRIOR RIGHTS**

Any utility or improvement installed within County Right-of-Way via Permit is subject to the prior rights of the County. If such utility or improvement must be removed or relocated due to a conflict with a public improvement project authorized by the County, the removal or relocation of such utility or improvement must be accomplished via a new Permit at no cost or expense to the County. .

#### **ARTICLE X. ASSURANCE**

Except as provided hereinafter, no Permit shall be issued unless and until an Assurance in an amount not less than 100% of an engineer's construction cost estimate to complete the Work, for which the Permit is to be issued, which estimate shall be acceptable to the County Engineer, has been provided to the County. No Assurance shall be for an amount less than \$250. No Assurance shall be required if any of the following shall apply:

- 1) The Applicant is a federal, state, county or municipal agency or political subdivision of the State of Arizona; or
- 2) The Applicant is a public service corporation with a net worth of more than \$1,000,000 as reflected by its most current balance sheet; or
- 3) The resident Owner of a residential property where all construction is to be performed by the Owner, all construction shall occur in front of the Owner's property and which construction does not obstruct traffic; or
- 4) An Assurance has been provided as required by A.R.S. §11-822; or

- 5) The proposed project is for a driveway and/or other Work related to an issued Building Permit where (i) the estimated value of all Work within the Right-of-Way is \$5,000, or less, and (ii) in lieu of an Assurance, a prospective Permittee shall agree by signing the Permit, that no final drainage clearance for, or occupancy of, any structure which is subject to the Building Permit(s) may occur unless and until all Work pursuant to said ROW Permit(s) has been determined by the County to be complete in accordance with the issued Permit(s) and all applicable County standards and requirements.

In the event an Assurance shall for any reason cease to be effective prior to the approval by MCDOT of all Work required under the Permit(s), a Cease Work Order may be issued by Maricopa County, in which case all Work shall stop until such time as a replacement Assurance that complies with the requirements of this Ordinance becomes effective.

The Assurance shall be released upon completion and approval by MCDOT of all Work pursuant to the issued Permit(s) for which any Assurance has been provided. However, for any Assurance required by A.R.S. §11-822, no Assurance shall be released until all of the Work pursuant to all Permits has received final approval from the County and a Warranty Assurance, in the amount of 10% of the original Assurance, has been provided. The duration of the Warranty Assurance shall be a period of one year and any balance remaining on the Warranty Assurance shall be released at the end of the warranty period.

#### **ARTICLE XI. INSURANCE**

Except as provided hereinafter, no Permit shall be issued unless and until proof of liability and property damage insurance issued by an insurance carrier authorized to do business in the State of Arizona, insuring the prospective Permittee and the County against loss by reason of injuries to, or death of persons, or damages to property arising out of, or related to any occupation, use or Work performed by the prospective Permittee under such Permit(s), has been presented to the County. Such insurance shall be primary and shall be in the following minimum amounts:

\$1,000,000 for death of, or injury to, any one person in any one accident.

\$2,000,000 for death of, or injuries to, more than one person in any one accident.

\$1,000,000 for damages to property.

Required insurance shall remain in effect and be kept on file with the Maricopa County Department of Transportation until all Work to be performed under the Permit(s) has been completed. The failure to provide proof of required insurance, or the lapse of any policy of insurance without immediate replacement, shall render any granted Permit(s) invalid.

Proof of insurance shall not be required if any of the following shall apply:

- i) The Applicant is a federal, state, county, or municipal agency or political subdivision of the State of Arizona; or
- ii) The Applicant is a public service corporation with a net worth of more than \$1,000,000 as reflected by its most current balance sheet; or



- iii) The resident Owner of a residential property where all construction is to be performed by the Owner, all construction shall occur in front of the Owner's property and which construction does not obstruct traffic.

By accepting a Permit, the Permittee agrees that the Permittee shall be responsible for all liability imposed by law for personal injury or property damage arising out of or related to any occupation, use, or Work performed under the Permit and that Permittee shall defend, indemnify and hold the County harmless from any claim, including claims alleging the joint negligence of the County and the Permittee, to the fullest extent of the law, including the obligation to provide the County with defense of any such claim.

## **ARTICLE XII. VIOLATIONS**

It shall be unlawful for any person, corporation, partnership, limited liability company, association, utility, or political subdivision of the State of Arizona to occupy, use or perform any Work of any nature whatsoever in any Maricopa County Right-of-Way, without first obtaining a Permit. Upon discovery of any possible Violation, the Director shall issue a Cease Work Order to immediately cease any such Violation. Any and all Permits necessary to cure the Violation shall be obtained.

In addition, a person who violates this Ordinance or any Permit requirement is subject to a civil penalty imposed by the Director, pursuant to A.R.S. § 11-251.05(A)(2). Civil penalties shall not exceed the amount of the maximum fine for a class 2 misdemeanor. Each day of continuance of the Violation constitutes a separate Violation. A person who violates this Ordinance or any Permit requirement may request a hearing before a County appointed hearing officer, which hearing officer shall hold a hearing after the Director serves notice of the hearing on the alleged violator. The notice shall be personally served on the alleged violator by the Director at least five days before the hearing. If the Director is unable to personally serve the notice, the notice may be served in the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure. A notice served on the alleged violator other than by personal service shall be served at least thirty days before the hearing.

At the hearing, the Director shall present evidence showing the existence of a Violation and the alleged violator or the alleged violator's attorney shall be given a reasonable opportunity to present evidence. The County attorney may present evidence on behalf of the Director. At the conclusion of the hearing, the hearing officer shall determine whether a Violation exists and, if a Violation is found to exist, shall impose civil penalties.

Judicial review of the final decisions of the hearing officer shall be pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 6.

**EXHIBIT A  
REVIEW FEES\***

<u>Plan Review</u>	<u>Fee</u>
Construction Plan Review** .....	\$100.00 per sheet
Subsequent Reviews .....	\$50.00 per sheet
Special Event Plan Review .....	\$100.00 per sheet
Subsequent Reviews .....	\$50.00 per sheet
Traffic Control Plan Review .....	\$30.00
Subsequent Reviews .....	\$30.00

Planning/Development Submittals

Zoning Cases .....	\$250.00 each
Development Master Plan Review (DMP) .....	\$500.00 each
Subdivision Plats .....	\$100.00 each

Right-of-Way Actions

Abandonment of Existing Right-Of-Way.....	\$250.00 each
Right-Of-Way Reservation Action Request .....	\$75.00 each

Patent Easement Abandonment

Patent Easement Abandonment .....	\$250.00 each Initial Determination
Patent Easement Abandonment .....	\$1,600.00 each

Note: If an Application for Patent Easement Abandonment is filed within six (6) months of the date upon which an Initial Review has been completed for the same patent easement, the applicant shall receive a credit against the fee for the Application for Patent Easement Abandonment in the amount of \$250.00.

\*Exemptions - Public Utility Companies and Residential Improvements performed by the Occupying Owner

\*\*Includes any plan to occupy, use or perform Work within Maricopa County Rights-Of-Way

**EXHIBIT B  
PERMIT FEES**

<u>Permit Type</u>	<u>Fee</u>
Inspection .....	three percent (3%) of the approved engineer's cost estimate for Work occurring within Maricopa County Rights-of-Way.
Processing.....	\$50.00 per Permit.
Early Pavement Cut to any New Street* .....	\$20.00 per lineal foot
Renew Expired Permit ** .....	twenty percent (20%) of the original Permit (Inspection) Fee

\*Performed within two years of open and declare by BOS.

\*\*A renewal requested within 90 days of expiration of a Permit. A renewal requested 90 or more days after the expiration shall be processed as a new Permit, subject to all Plan Review and Permit Fees.

**EXHIBIT C  
SMALL WIRELESS STRUCTURES AND FACILITIES  
SCHEDULE OF PERMIT FEES AND RATES**

<u>Individual Permit Application</u>	<u>Fees</u>
Permit Application and Inspection Fee.....	\$100.00 per application
 <u>Consolidated Permit Applications</u>	
Permit Application and Inspection Fee for first five (5) locations .....	\$100.00 per location
Permit Application and Inspection Fee for each additional location .....	\$ 65.00 per location
 <u>Permit Rate</u>	
Collocation on an existing non-County owned structure without ground equipment .....	\$0.00
Collocation on an existing non-County owned structure with ground equipment .....	\$175.00
Collocation on an existing County owned structure without ground equipment .....	\$20.00
Collocation on an existing County owned structure with ground equipment .....	\$175.00
Installation of a new non-County owned structure with collocation .....	\$175.00
(with or without ground equipment)	
Replacement of County owned structure .....	\$0.00