

IC 8-1-32.3**Chapter 32.3. Permits for Wireless Service Providers**

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IC 8-1-32.3-1 "Antenna"

Sec. 1. As used in this chapter, "antenna" means any communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless communications service.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-2 "Base station"

Sec. 2. As used in this chapter, "base station" means a station located at a specific site that is authorized to communicate with mobile stations. The term includes all radio transceivers, antennas, coaxial cables, power supplies, and other electronics associated with a station.
As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-3 "Business day"

Sec. 3. As used in this chapter, "business day" means a day other than a Saturday, a Sunday, or a legal holiday (as defined in IC 1-1-9-1).
As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-4 "Collocation"

Sec. 4. As used in this chapter, "collocation" means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.
As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-4.2 "Communications service provider"

Sec. 4.2. As used in this chapter, "communications service provider" has the meaning set forth in IC 8-1-2.6-13.
As added by P.L.261-2017, SEC.1.

IC 8-1-32.3-5 "Electrical transmission tower"

Sec. 5. As used in this chapter, "electrical transmission tower" means a structure that physically supports high voltage overhead power lines. The term does not include a utility pole.
As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-6 "Equipment compound"

Sec. 6. As used in this chapter, "equipment compound" means the area that:
(1) surrounds or is near the base of a wireless support structure; and
(2) encloses wireless facilities.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-7 "Existing structure"

Sec. 7. As used in this chapter, "existing structure" does not include a utility pole or an electrical transmission tower.
As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-7.5 "Micro wireless facility"

Sec. 7.5. As used in this chapter, "micro wireless facility" means a small cell facility to which both of the following apply:

(1) The small cell facility is not larger in dimension than:

- (A) twenty-four (24) inches in length;
- (B) fifteen (15) inches in width; and
- (C) twelve (12) inches in height.

(2) If the small cell facility has an exterior antenna, the exterior antenna is not longer than eleven (11) inches.

As added by P.L.261-2017, SEC.2.

IC 8-1-32.3-8 "Permit authority"

Sec. 8. As used in this chapter, "permit authority" means a unit, a board, a commission,

or any other governing body that makes legislative or administrative decisions concerning the construction, installation, modification, or siting of wireless facilities or wireless support structures. The term does not include:

- (1) the Indiana department of transportation;
- (2) the Indiana finance authority;
- (3) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities;
- (4) the director of the department of natural resources; or
- (5) a court or other judicial body that reviews decisions or rulings made by a permit authority.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-9 "Small cell facility"

Sec. 9. (a) As used in this chapter, "small cell facility" means:

- (1) a personal wireless service facility (as defined by the Federal Telecommunications Act of 1996 as in effect on July 1, 2015); or
- (2) a wireless facility that satisfies the following requirements:
 - (A) Each antenna, including exposed elements, has a volume of six (6) cubic feet or less.
 - (B) The primary equipment enclosure located with the facility has a volume of twenty-eight (28) cubic feet or less.

(b) For purposes of subsection (a)(2)(B), the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure:

- (1) Electric meters.
- (2) Concealment equipment.
- (3) Telecommunications demarcation boxes.
- (4) Ground based enclosures.
- (5) Back up power systems.
- (6) Grounding equipment.
- (7) Power transfer switches.
- (8) Cut off switches.

As added by P.L.145-2015, SEC.3. Amended by P.L.261-2017, SEC.3.

IC 8-1-32.3-10 "Small cell network"

Sec. 10. As used in this chapter, "small cell network" means a collection of interrelated small cell facilities designed to deliver wireless service.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-11 "Substantial modification of a wireless support structure"

Sec. 11. (a) As used in this chapter, "substantial modification of a wireless support structure" means the mounting of a wireless facility on a wireless support structure in a manner that:

- (1) increases the height of the wireless support structure by the greater of:
 - (A) ten percent (10%) of the original height of the wireless support structure; or
 - (B) twenty (20) feet;
- (2) adds an appurtenance to the wireless support structure that protrudes horizontally from the wireless support structure more than the greater of:
 - (A) twenty (20) feet; or
 - (B) the width of the wireless support structure at the location of the appurtenance;or
- (3) increases the square footage of the equipment compound in which the wireless facility is located by more than two thousand five hundred (2,500) square feet.

- (b) The term does not include the following:
- (1) Increasing the height of a wireless support structure to avoid interfering with an existing antenna.
 - (2) Increasing the diameter or area of a wireless support structure to:
 - (A) shelter an antenna from inclement weather; or
 - (B) connect an antenna to the wireless support structure by cable.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-12 "Utility pole"

Sec. 12. As used in this chapter, "utility pole" means a structure that is:

- (1) owned or operated by:
 - (A) a public utility;
 - (B) a communications service provider;
 - (C) a municipality;
 - (D) an electric membership corporation; or
 - (E) a rural electric cooperative; and
- (2) designed or used to:
 - (A) carry lines, cables, or wires for telephony, cable television, or electricity;
 - (B) provide lighting;
 - (C) provide traffic control; or
 - (D) provide signage.

The term does not include a wireless support structure or an electrical transmission tower.

As added by P.L.145-2015, SEC.3. Amended by P.L.261-2017, SEC.4.

IC 8-1-32.3-12.5 "Wireless communications service"

Sec. 12.5. As used in this chapter, "wireless communications service" means services, whether mobile or at a fixed location, that are provided using wireless facilities through licensed or unlicensed spectrum.

As added by P.L.261-2017, SEC.5.

IC 8-1-32.3-13 "Wireless facility"

Sec. 13. As used in this chapter, "wireless facility" means the set of equipment and network components that are:

- (1) owned and operated by a communications service provider; and
- (2) necessary to provide wireless communications service.

The term does not include a wireless support structure.

As added by P.L.145-2015, SEC.3. Amended by P.L.261-2017, SEC.6.

IC 8-1-32.3-14 "Wireless support structure"

Sec. 14. (a) As used in this chapter, "wireless support structure" means a freestanding structure that is:

- (1) designed to support; or
- (2) capable of supporting;

wireless facilities.

(b) The term does not include a utility pole or an electrical transmission tower.

As added by P.L.145-2015, SEC.3. Amended by P.L.261-2017, SEC.7.

IC 8-1-32.3-15 Permits; exemptions; areas designated for underground or buried utilities; registration by homeowners or neighborhood association to receive notice; historic preservation districts and areas; applicant's duty to identify name and contact information; areas designated for underground or buried utilities after April 14, 2017, and before May 2, 2017

Sec. 15. (a) This chapter applies to permits issued by a permit authority to a communications service provider, under local law and consistent with IC 36-7, for the following:

- (1) Construction of a new wireless support structure.
- (2) Substantial modification of a wireless support structure.
- (3) Collocation of wireless facilities on an existing structure.
- (4) Construction, placement, and use of small cell facilities.

(b) A permit authority may not require an application or a permit for, or charge fees for, any of the following:

- (1) The routine maintenance of wireless facilities.
- (2) The replacement of wireless facilities with wireless facilities that are:
 - (A) substantially similar to; or
 - (B) the same size or smaller than;the wireless facilities being replaced.
- (3) The installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:
 - (A) adopted by a recognized national code organization; and
 - (B) enacted solely to address imminent threats of destruction of property or injury to persons;including any local amendments to those codes.

(c) With respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

- (1) The area is designated strictly for underground or buried utilities before May 1, 2017.
- (2) The permit authority does all of the following:
 - (A) Allows the collocation of small cell facilities on existing:
 - (i) utility poles; and
 - (ii) wireless support structures;within the area.
 - (B) Allows the replacement or improvement of existing:
 - (i) utility poles; and
 - (ii) wireless support structures;within the area.
 - (C) Provides:
 - (i) a waiver;
 - (ii) a zoning process; or
 - (iii) another procedure;that addresses requests to install new utility poles or new wireless support structures within the area.
 - (D) Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area that is designated strictly for underground or buried utilities, posts notice of the application on the permit authority's Internet web site, if the permit authority maintains an Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

(3) The prohibition or other restrictions with respect to the placement of new utility poles or new wireless support structures within the area are applied in a

nondiscriminatory manner.

(4) The area is zoned strictly for residential land use before May 1, 2017.

(d) A permit authority shall allow a neighborhood association or a homeowners association to register with the permit authority to receive notice by United States mail of any application filed with the permit authority for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area within the jurisdiction of the neighborhood association or homeowners association. If the permit authority maintains an Internet web site, the permit authority shall post on the permit authority's Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this subsection.

(e) Subject to section 26(b) of this chapter, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure within an area:

- (1) designated as a historic preservation district under IC 36-7-11;
- (2) designated as a historic preservation area under IC 36-7-11.1; or
- (3) that is subject to the jurisdiction of the Meridian Street preservation commission under IC 36-7-11.2;

a permit authority may apply any generally applicable procedures that require applicants to obtain a certificate of appropriateness.

(f) An applicant for the placement of a small cell facility and an associated supporting structure shall comply with applicable:

- (1) Federal Communications Commission requirements; and
- (2) industry standards;

for identifying the owner's name and contact information.

(g) A resolution, ordinance, or other regulation:

- (1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and
- (2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities;

applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried.

As added by P.L.145-2015, SEC.3. Amended by P.L.261-2017, SEC.8; P.L.23-2018, SEC.1.

IC 8-1-32.3-16 Application fees; prohibited unless required for similar types of development; limitations

Sec. 16. (a) A permit authority may not require an applicant to pay a fee associated with the submission, review, processing, or approval of an application for a permit unless the permit authority requires payment of the same or a similar fee for applications for permits for similar types of commercial development within the jurisdiction of the permit authority.

(b) A fee associated with the submission, review, processing, or approval of an application for a permit, including a fee imposed by a third party that provides review, technical, or consulting assistance to a permit authority, must be based on actual, direct, and reasonable costs incurred for the review, processing, and approval of the application.

(c) A fee described in this section may not include:

- (1) travel expenses incurred by a third party in its review of an application; or
- (2) direct payment or reimbursement of third party fees charged on a contingency basis.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-17 Discrimination among providers or utilities prohibited; limits on fall zone requirements

Sec. 17. (a) A permit authority may not discriminate among communications service providers or public utilities with respect to the following:

- (1) Approving applications, issuing permits, or otherwise establishing terms and conditions for construction of wireless or wireline communications facilities.
- (2) Authorizing or approving tax incentives for wireless or wireline communications

facilities.

(3) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned or controlled by the permit authority.

(b) A permit authority may not impose a fall zone requirement that:

(1) applies to a wireless support structure; and

(2) is larger than the area within which the wireless support structure is designed to collapse, as set forth in the applicant's engineering certification for the wireless support structure.

However, a permit authority may impose a fall zone requirement that is larger than the area described in subdivision (2) if the permit authority provides evidence that the applicant's engineering certification is flawed. The permit authority's evidence must include a study performed and certified by a professional engineer.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-18 Zoning, land use, planning, and permitting authority not affected; land use laws and ordinances apply

Sec. 18. This chapter does not:

(1) affect the ability of a permit authority to exercise zoning, land use, planning, or permitting authority otherwise allowed under law, including IC 36-7, with respect to the siting of new wireless support structures; or

(2) exempt an applicant from complying with applicable laws and ordinances concerning land use.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-19 Eligible applicants; application requirements

Sec. 19. (a) The following may apply for a permit under this chapter on a form and in the manner prescribed by the appropriate permit authority:

(1) A person that provides wireless communications service.

(2) A person that owns or otherwise makes available infrastructure required for wireless communications service.

(b) An application for a permit must include the following:

(1) The name, business address, and point of contact for the applicant.

(2) The location of the proposed or affected wireless support structure or wireless facility.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-20 Application to construct new wireless support structure; requirements; review for completeness; notification of approval or denial; additional time for review

Sec. 20. (a) An application for a permit to construct a new wireless support structure must include only the following:

(1) All information required by section 19 of this chapter.

(2) A construction plan that describes the proposed wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.

(3) Evidence supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless support structure was not a viable option because collocation:

(A) would not result in the same wireless service functionality, coverage, and capacity;

(B) is technically infeasible; or

(C) is an economic burden to the applicant.

(4) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the ordinance with respect to the special exception, special use, contingent use, or conditional use.

(5) If the proposed wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4.

A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location.

(b) An application that contains the information required under subsection (a) is considered complete.

(c) A permit authority shall review an application within ten (10) business days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(d) An applicant that receives a written notice under subsection (c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(e) Subject to subsection (f), not more than ninety (90) days after making an initial determination of completeness under subsection (c), a permit authority shall:

(1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and

(2) notify the applicant in writing whether the application is approved or denied.

(f) Notwithstanding the ninety (90) day period set forth in subsection (e), the following apply:

(1) If the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period set forth in subsection (e) is extended for a corresponding amount of time.

(2) If the application for the proposed wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to comply with subsection (e).

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-21 Application for substantial modification of wireless support structure; requirements; review for completeness; notification of approval or denial; additional time for review

Sec. 21. (a) An application for a permit for substantial modification of a wireless support structure must include only the following:

(1) All information required by section 19 of this chapter.

(2) A construction plan that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.

(3) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed substantial modification of a wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the

ordinance with respect to the special exception, special use, contingent use, or conditional use.

(4) If the proposed substantial modification of a wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4.

A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location.

(b) An application that contains the information required under subsection (a) is considered complete.

(c) A permit authority shall review an application within ten (10) business days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(d) An applicant that receives a written notice under subsection (c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(e) Subject to subsection (f), not more than ninety (90) days after making an initial determination of completeness under subsection (c), a permit authority shall:

(1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and

(2) notify the applicant in writing whether the application is approved or denied.

(f) Notwithstanding the ninety (90) day period set forth in subsection (e), the following apply:

(1) If the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period set forth in subsection (e) is extended for a corresponding amount of time.

(2) If the application for the proposed substantial modification of a wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to comply with subsection (e).

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-22 Application for collocation; requirements; conformance with building permit requirements; consolidated application; review for completeness; notification of approval or denial; additional time for review

Sec. 22. (a) An application for a permit for collocation must include only the following:

(1) All information required by section 19 of this chapter.

(2) Evidence of conformance with applicable building permit requirements.

(b) An application for a permit for collocation:

(1) is not required to comply with zoning or land use requirements; and

(2) is not subject to public hearing.

(c) A permit authority shall allow an applicant to submit a single consolidated application to collocate multiple wireless service facilities that are located within the jurisdiction of the permit authority. The permit authority shall issue a single permit for all wireless service facilities included in the application rather than individual permits for each wireless service facility.

(d) A permit authority shall review an application within ten (10) business days of its

receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(e) An applicant that receives a written notice under subsection (d) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(f) Not more than forty-five (45) days after making an initial determination of completeness under subsection (d), a permit authority shall:

(1) review the application to determine its conformity with applicable building permit requirements; and

(2) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time under subsection (e) to cure defects in the application, the forty-five (45) day period is extended for a corresponding amount of time.

As added by P.L.145-2015, SEC.3.

**IC 8-1-32.3-23 Written notice of approval or denial; basis for decision;
application considered approved upon authority's failure to act**

Sec. 23. (a) In a written notice issued under section 20, 21, or 22 of this chapter, a permit authority shall state clearly the basis for its decision to approve or deny an application. If the permit authority denies an application, the written notice must include substantial evidence in support of the denial.

(b) For purposes of this section, a notice is considered written if it is included in the minutes of a public meeting of a permit authority.

(c) If a permit authority fails to act on an application within the applicable deadline under section 20, 21, or 22 of this chapter, the application is considered approved.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-24 Guidelines to protect confidential or proprietary information

Sec. 24. A permit authority shall establish guidelines to protect any confidential or proprietary information disclosed in an application.

As added by P.L.145-2015, SEC.3.

**IC 8-1-32.3-25 Utility poles and electrical transmission towers; requirements
and regulations prohibited**

Sec. 25. A permit authority may not require or regulate the installation, location, or use of wireless service facilities on utility poles or electrical transmission towers.

As added by P.L.145-2015, SEC.3.

**IC 8-1-32.3-26 Small cell facilities; exemption for placement in right-of-way;
small cell networks; application fees; permit authority's
proposed alternative location; procedures and time for review;
prohibited acts by permit authority; safety regulations for use
of public right-of-way; utility poles owned or controlled by
governmental unit**

Sec. 26. (a) An application for a permit or approval for the construction, placement, or use of small cell facilities is subject to the following:

(1) The placement of a small cell facility and the associated supporting structure in the public right-of-way is considered a permitted use and is exempt from local zoning review if the total height of the structure supporting the small cell facility does not

exceed the greater of:

(A) fifty (50) feet measured from grade; or

(B) the height of any utility pole in place on July 1, 2017, and within five hundred (500) feet of the proposed small cell facility, plus ten (10) feet.

(2) A permit authority shall allow an applicant to submit a single consolidated application for multiple small cell facilities that are located within the permit authority's jurisdiction and constitute a single small cell network. The permit authority shall issue a single permit for the small cell network rather than multiple permits for each small cell facility.

(3) The total of any application fees allowed under this section may not exceed the lesser of:

(A) the amount charged by the permit authority for an application for a building permit for any similar type of commercial:

(i) construction;

(ii) activity; or

(iii) land use development;

within the jurisdiction of the permit authority; or

(B) one hundred dollars (\$100) per small cell facility included in the application.

(4) With respect to an application for the construction, placement, or use of a small cell facility and the associated supporting structure at a location where a supporting structure does not exist, a permit authority may propose, as an alternative location for the proposed small cell facility, that the small cell facility be collocated on an existing utility pole or on an existing wireless support structure, if the existing utility pole or the existing wireless support structure is located within fifty (50) feet of the location proposed in the application. The applicant shall use the alternative location proposed by the permit authority if:

(A) the applicant's right to use the alternative location is subject to reasonable terms and conditions; and

(B) the alternative location will not result in technical limitations or additional costs, as determined by the applicant.

(5) With respect to an application for the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority shall follow the procedures and time limits for review and approval that apply to collocation permit applications under section 22 of this chapter. However, notwithstanding section 22(f) of this chapter, not more than sixty (60) days after making an initial determination of completeness under section 22(d) of this chapter with respect to an application for the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority shall notify the applicant in writing whether the application is approved or denied. However, if the applicant requested additional time as allowed under section 22(e) of this chapter to cure defects in the application, the permit authority may extend the sixty (60) day period for a corresponding amount of time.

(b) Subject to subsection (c), with respect to the construction, placement, or use of any small cell facility and the associated supporting structure, a permit authority shall not do any of the following:

(1) Limit the placement of the small cell facility by minimum separation distances or maximum height limitations.

(2) Impose unreasonable requirements regarding the maintenance or appearance of the small cell facility and associated supporting structure, including requirements concerning the types of materials to be used or the screening or landscaping of the location.

(3) Condition the grant of approval on the applicant's agreement to allow other wireless facilities to be placed at, attached to, or located on the associated wireless support

structure or utility pole.

(4) Limit the duration of any permit that is granted. However, a permit authority may require that, as applicable, construction commence not later than two (2) years after the date the permit is granted.

(5) Prohibit an applicant from locating a small cell facility, wireless support structure, or utility pole in a residential area.

(6) Impose setback or fall-zone requirements for the associated wireless support structure or utility pole that are different from requirements imposed on other types of structures in the right-of-way.

(7) Require the removal of existing wireless support structures, wireless facilities, or utility poles, wherever located, as a condition for approval of the application. However, this subdivision does not prohibit the permit authority from adopting reasonable rules intended to ensure the public health, safety, and welfare regarding the removal of an abandoned wireless support structure or abandoned wireless facilities.

(c) This chapter does not prohibit a permit authority from applying a reasonable and generally applicable safety regulation under IC 8-1-2-101(b) to the construction, placement, or use of small cell facilities and associated supporting structures in the public right-of-way.

(d) The construction, placement, or use of small cell facilities on a utility pole owned or controlled by a governmental unit is subject to the following:

(1) The rate for the construction, placement, or use of small cell facilities on the utility pole owned or controlled by the unit may not exceed fifty dollars (\$50) per utility pole per year.

(2) For a utility pole used to provide communications service or electric service, the parties to the construction, placement, or use shall comply with the process for make ready work under 47 U.S.C. 224 and any associated implementing regulations. The good faith estimate of the unit owning or controlling the utility pole with respect to any make ready work necessary to enable the utility pole to support the requested placement must include pole replacement if necessary.

(3) For a utility pole that does not support aerial facilities used to provide communications service or electric service, the unit shall provide a good faith estimate for any make ready work necessary to enable the utility pole to support the requested construction, placement, or use, including pole replacement if necessary, not later than sixty (60) days after the unit's receipt of a complete application. Make ready work, including any pole replacement, shall be completed not later than sixty (60) days after the applicant's written acceptance of the good faith estimate.

(4) The unit shall not require more make ready work than required to meet applicable codes (as defined in section 15(b)(3) of this chapter) or industry standards. Fees for make ready work may not include costs related to preexisting or prior damage or to noncompliance. Fees for make ready work, including any utility pole replacement, may not:

(A) exceed actual costs or the amount charged to communications service providers for similar work; or

(B) include any consultants' fees or expenses.

(5) Subject to subdivision (7), the unit shall offer rates, fees, and other terms for the construction, placement, or use that comply with this chapter. Not later than:

(A) December 31, 2017; or

(B) three (3) months after receiving the first request under this chapter for the construction, placement, or use of a small wireless facility on a utility pole owned or controlled by the unit;

whichever occurs later, the unit shall establish and make available, by ordinance or otherwise, the rates, fees, and terms that govern the construction, placement, or use of small cell facilities on utility poles owned or controlled by the unit and that are in

compliance with this chapter.

(6) The unit or a utility owned by the unit shall not impose a rental or other recurring fee for small cell facilities that are strung or located between utility poles if one (1) or more of the utility poles has an associated attachment for which a rental rate is charged.

(7) The unit may impose additional general terms and conditions for the construction, placement, or use of small cell facilities on utility poles owned or controlled by the unit if the additional general terms and conditions are:

- (A) consistent with this chapter;
- (B) reasonable;
- (C) nondiscriminatory; and
- (D) generally applicable to users of the rights-of-way.

Additional general terms and conditions authorized by this subdivision must be included in the rates, fees, and terms that the unit is required to establish and make available under subdivision (5).

As added by P.L.145-2015, SEC.3. Amended by P.L.261-2017, SEC.9.

IC 8-1-32.3-27 Collocation on privately owned utility poles, wireless support structures, or property; owner's consent; utility poles and wireless support structures owned, controlled, or operated by public utility

Sec. 27. (a) This chapter does not authorize the collocation of small cell facilities on any:

- (1) privately owned utility pole;
- (2) privately owned wireless support structure; or
- (3) private property;

without the consent of the owner of the utility pole, wireless support structure, or property, as applicable.

(b) This chapter does not affect the duty of an entity that seeks to place a small cell facility on a utility pole or wireless support structure owned, controlled, or operated by a public utility to obtain from the public utility any necessary authority to place the small cell facility on the utility pole or wireless support structure.

(c) This chapter does not affect the authority of a public utility that owns, controls, or operates a utility pole or a wireless support structure to:

- (1) deny, limit, or restrict; or
- (2) determine the rates, fees, terms, and conditions for;

the use of or attachment to the utility pole or wireless support structure, consistent with federal law and any applicable decisions of or rules promulgated by the Federal Communications Commission.

As added by P.L.261-2017, SEC.10.