

ORDINANCE NO. 1424

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AMENDING APACHE JUNCTION CITY CODE, VOLUME I, BY REPEALING CHAPTER 13: PUBLIC WORKS IN ITS ENTIRETY; AND ADOPTING BY REFERENCE A NEW CHAPTER 13: PUBLIC WORKS MORE FULLY DETAILED IN THAT CERTAIN DOCUMENT ENTITLED "2016 AMENDMENTS TO THE APACHE JUNCTION CITY CODE, VOLUME I, CHAPTER 13: PUBLIC WORKS"; REPEALING ANY CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 9-240 and 9-276, cities and towns are authorized to regulate, exercise exclusive control over their streets, alleys, avenues and sidewalks; and

WHEREAS, such authority also allows local governmental entities to widen, extend, grade, clean, vacate, abandon and protect such property from encroachment and injury; and

WHEREAS, on December 5, 1979 the mayor and city council passed Ordinance No. 16 which created the first version of Chapter 13 relating to the authority of the public works department; and

WHEREAS, since this initial authorizing ordinance, there have been multiple code amendments relating to the public works department, including but not limited to its regulatory powers over streets; and

WHEREAS, the mayor and city council find it necessary to amend the current street regulations to more accurately reflect administrative actions being practiced and to meet statutory requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

SECTION I IN GENERAL

1. Existing Apache Junction City Code, Volume I, Chapter 13: Public Works, is hereby repealed in its entirety.
2. That certain document entitled "2016 Amendments to the Apache Junction City Code, Volume I, Chapter 13: Public Works", one electronic copy which is accessible on the city's website and one paper copy which is filed in the office of the city clerk, which document was made a public record by Resolution No. 16-05 of the City of Apache Junction, is hereby referred to, adopted and made a part

hereof as if fully set out in this ordinance, pursuant to A.R.S. § 9-802.

SECTION II REPEALING ANY CONFLICTING PROVISIONS

All other ordinances and parts of ordinances in conflict with the provisions of this ordinance or in conflict with any part of the code adopted herein by reference are also hereby repealed.

SECTION III PROVIDING FOR SEVERABILITY

If any section, subsection, sentence, phrase, clause or portion of this ordinance, or any part of the code adopted herein by reference is for any reason held to be invalid, pre-empted or unconstitutional by the decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions thereof.

SECTION IV PROVIDING FOR PENALTIES

After the city exhausts all of its civil violation procedures as referenced in the adopted regulations, any violation of any provisions adopted herein, shall be punishable as a class 1 misdemeanor consistent with Apache Junction City Code, Volume 1, CHAPTER 1: GENERAL, ARTICLE 1-1: GENERAL, § 1-1-11, Penalty.

SECTION V ESTABLISHING AN EFFECTIVE DATE

The provisions of this ordinance shall take effect on July 1, 2016.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS 19th DAY OF April, 2016.

SIGNED AND ATTESTED TO THIS 19th DAY OF April, 2016.



JOHN S. INSALACO
Mayor

ATTEST:



KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

A 4-19-16
R. JOEL STERN
City Attorney

CHAPTER 13: PUBLIC WORKS

Article

13-1. GENERAL PROVISIONS

13-2. STREETS AND SIDEWALKS

13-3. ENCROACHMENT PERMITS

ARTICLE 13-1: GENERAL PROVISIONS

[RESERVED]

ARTICLE 13-2: STREETS AND SIDEWALKS

Section

- 13-2-1 Reserved
- 13-2-2 Definitions
- 13-2-3 Street improvements
- 13-2-4 Roadway abandonments and right-of-way easement
- 13-2-5 Assignment of street names and parcel addresses
- 13-2-6 Improvement of streets prior to development of adjacent property
- 13-2-7 Street financing policy for improvement districts

§ 13-2-1 RESERVED.

This section has been reserved for future legislation.

§ 13-2-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDON, ABANDONING, ABANDONMENT. Any one of the methods as set forth in this article whereby the Council may dispose of streets or portions of streets no longer necessary for public use as streets.

ABUTTING. Two or more lots or parcels of land sharing a common boundary line.

CITY. City of Apache Junction, a municipal corporation.

COST. The actual cost of:

- (1) Right-of-way acquisition;
- (2) Construction of the public street improvements as determined by the construction contract price or by actual costs if work was not performed under contract;
- (3) Inspection, testing and permit fees;
- (4) Engineering fees required for the preparation of plans and specifications; or
- (5) Other incidental fees required to complete the improvements.

COUNCIL. The Council of the City of Apache Junction.

DEVELOPMENT. Construction of residential, commercial or industrial projects or major additions or alterations to existing structures and includes new buildings or structures on property having existing buildings or structures situated thereon. When such property is zoned for agricultural or single-family residential use at the time of assessment, subsequent **DEVELOPMENT** shall require a change of use or purpose (construction of buildings or structures on vacant, undeveloped property is considered a change of use of purpose).

EASEMENT. An interest in a defined area of land granted to or owned by another that entitles its holder to specific limited uses or purposes, such as, but not limited to, ingress and egress.

EXTINGUISHMENT. The term in which the roadway portion of a federally patented easement, or a private easement, is relinquished to the owner of the underlying property resulting in elimination of the public's right to use in perpetuity.

GRANTEE. Recipient of the interest conveyed by the grantor.

OWNER. The person who has the right to possess and use real property to the exclusion of others.

PERSON. Any individual, corporation, partnership, company, firm, association and any other form of organization who may carry on business, foreign or domestic, or their successors or assigns, or the agent of any of the aforesaid.

PROPERTY OWNER. The individual, corporation, partnership, trust or other legal entity

that owns property.

RIGHT-OF-WAY. Land which by deed, conveyance, agreement, easement, dedication or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, pedestrian walkway, bikeway, drainage or other purposes.

ROADWAY. All or part of any platted or designed public street, highway, alley, lane, parkway, avenue, road, sidewalk, public utility easement or other public way, whether or not it has been used as such.

STREETS. The full width of the right-of-way, easements or federally patented easements and any road, street, highway, alley, land or pedestrian walkway used by or for the general public, whether or not the road, street, highway, alley, land or pedestrian right-of-way has been improved or accepted for maintenance by the city.

§ 13-2-3 STREET IMPROVEMENTS.

(A) The "street classification plan" is hereby adopted and amended in a manner and form affixed hereto and made a part of this article by reference. A copy of the most recent version of the plan shall be kept on file in the office of the City Clerk.

(B) It shall be a condition precedent to the issuance of a building permit for new construction within the city that the required street improvements be made as set forth in the A.J.C.C., Vol. II, Article 10-3, Street Design and Construction. This provision, however, shall not be applicable to the construction or installation of individual, single family construction on individual lots which are in existence at the time of passage of this division and subsection (C) below, or which are subsequently created without the necessity of an applicant to comply with city and state subdivision requirements.

(C) (1) The public works director may postpone the installation of required off-site improvements provided the applicant enters into an agreement to install improvements by a specific date and/or in conjunction with projects being constructed by the city, state, county or other developers in the vicinity.

(2) In granting the postponement, the public works director may require other interim improvements as deemed necessary for public safety, drainage, or maintenance.

(3) Factors which the public works director shall consider in determining whether or not improvements shall be postponed include:

- (a) Inability to establish grade or center at the time of application;
- (b) The subject improvement would be less than ½ block or 150 feet in length; and

(c) Other pending improvements as a street improvement district or major utility work which would make the subject improvement impractical at the time of application for building permit.

(4) Should the public works director deny a request for postponement of off-site improvements, the applicant may appeal the denial as follows:

(a) Applicant shall file an appeal to the city manager.

(b) City manager's office shall schedule an appellate hearing within 15 days

(c) City manager's office shall provide a written final decision within five days after the appellate hearing.

(d) Applicant may appeal the final decision within 10 days to a civil hearing officer

(e) The civil hearing officer's decision shall be final and binding subject to a further appeal with the superior court under Title 12 (A.R.S. §12-901 et seq.)

(D) All street improvements shall be constructed in accordance with the current edition of the Maricopa Association of Governments standard details and specifications, which standard details and specifications shall be the standards of design and construction for the city, provided however, that the public works director may revise, delete or add standard details and specifications by supplement and addendum as may be required and acceptable under the metro Phoenix development industry..

§ 13-2-4 ROADWAY ABANDONMENTS AND RIGHT-OF-WAY EASEMENT EXTINGUISHMENTS.

(A) *Disposition of unnecessary public roadway.* Upon recommendation from the public works director, the Council may dispose of unnecessary public roadway either by trade, sale, vacation, exchange, abandonment or extinguishment in accordance with state law.

(B) *Allocation of vacated roadway.* The following shall be the order and method for determining allocation of vacated property.

(1) In the event that the width of a roadway is to be vacated, the order of obtaining the right to title shall be:

(a) First, the owner of the land abutting the vacated roadway to the same extent that the land included within the roadway, at the time the roadway was acquired for public use, was a part of the subdivided land or was part of the adjacent land;

(b) Second, owners on the opposite side of the roadway from the owner in subsection

(1)(a) above, for any or all the portion not desired by the subsection (1)(a) owner; and

(c) Third, the person making to the council the best offer, provided that the offer meets at least the minimum requirements as established by the council.

(2) In the event that less than the entire width is vacated, title to the vacated portion shall vest in the owners of the land where and to the degree the land is abutting the vacated portion.

(3) In the event that a roadway bounded by straight lines is vacated, title to the vacated roadway shall vest in the owners of the abutting land, each abutting owner taking to the center of the roadway, except as provided in subsection (B)(1) and (2) above. In the event that the boundary lines of abutting lands do not intersect the roadways at a right angle, the land included within the roadway shall vest as provided in subsection (B)(4) below.

(4) In all instances not specifically provided for, title to the vacated roadway shall vest in the owners of the abutting land, each abutting owner taking that portion of the vacated roadway to which his land, or any part thereof, is nearest in proximity.

(C) *Access to public road.* No roadway shall be vacated so as to leave any land adjoining the roadway without an established public road connecting the lands with another public roadway.

(D) *Reservation of easements.* Right-of-way easements for any one or all of existing sewer, gas, water or similar pipelines and appurtenances and for canals, laterals or ditches and appurtenances and for electric, telephone and similar lines and appurtenances shall continue as they existed prior to the disposal or abandonment of the public roadway.

(E) *Resolution of disposition; effective when recorded.*

(1) A council resolution disposing of a roadway or portion thereof or applying such roadway to another public use shall describe the roadway and set forth its disposition or use.

(2) The resolution shall take effect when it is recorded in the office of the county recorder of the county within which the roadway or portion thereof is located.

(F) *Extinguishment of easements.* If the city owns no title to a roadway but holds right-of-way easements, only the easements may be extinguished by resolution of the council.

(G) *Abandonment of roadways or right-of-way easements; application and filing; generally.* Any person desiring to have any roadway abandoned or right-of-way easement extinguished shall make application for the same on forms approved by and filed with the department of public works. In addition to the application and associated fees, the applicant shall submit a complete, current title report showing the nature of the easement or right-of-way interest or other ownership interest, including but not limited to any and all existing liens, mortgages or other encumbrances. If deemed essential by the city engineer, an appraisal to determine the value of the targeted property, or the estimated value of the property proposed for exchange, shall be

obtained by the city engineer at the applicant's sole expense.

(H) *Roadway abandonment and right-of-way easement extinguishments; application and filing processing fee.* A non-refundable application fee, as established in A.J.C.C., Vol. I, Chapter 4, Fees, must be submitted with any application for abandonment of roadways or right-of-way easement extinguishments. A nonrefundable application fee will be assessed to the benefiting property owner to provide for city administrative costs except that the fee shall be lower where the benefiting property consists solely of developed residential property. However, no fee shall be charged when the application for abandonment is initiated by the city.

(I) *Abandonment of roadways and extinguishment of right-of-way easements; required reports.*

(1) Upon application for abandonment of roadways or right-of-way easements to the public works director, the Director shall submit copies of the application, and all appropriate attachments thereto, to the director of development services, the director of public safety and the city engineer.

(2) The public works director shall also submit copies of the application and all attachments to all public utility providers, who shall have up to 60 calendar days to comment on the roadway abandonment or right-of-way extinguishment.

(3) No abandonment or extinguishment may be finalized by council unless recommendations from all utility providers have been solicited and such providers either had no objection or otherwise failed to respond after at least two documented attempts to contact were ignored.

§ 13-2-5 ASSIGNMENTS OF STREET NAMES AND PARCEL ADDRESSES.

(A) The streets and alignments of streets appearing on the map entitled "official street naming map of Apache Junction, Arizona," incorporated herein, shall be the official street names for streets within the City of Apache Junction, either as existing on February 4, 1981 or upon becoming public streets of Apache Junction.

(B) When there is a change in part or all of a street name, property owners shall be given 12 months from the effective date of the change to correct their mailing address.

(C) (1) Future requests for street names shall be initially reviewed by the Planning and Zoning Commission of the City of Apache Junction, Arizona, and the Apache Junction, Arizona, United States Post Office, who shall submit their recommendations to the council for action.

(2) No future streets shall be named except by ordinance of the council.

(D) The zoning administrator shall maintain an address map, and assign addresses to various

parcels of land within the city according to rules and regulations of the department of public works, as may from time to time be amended.

§ 13-2-6 IMPROVEMENT OF STREETS PRIOR TO DEVELOPMENT OF ADJACENT PROPERTY.

(A) Street improvements; assessment policy.

(1) The council may determine that certain streets within the city shall be constructed or improved prior to development of the property adjacent to the streets in accordance with state law or as hereafter provided by this article.

(2) If deemed necessary, the council may order the streets constructed or improved at city expense. The expense shall be assessed against the adjoining property subject to the following:

(a) The assessment of adjoining property for streets shall not exceed the cost of improving more than $\frac{1}{2}$ of the street width;

(b) Any parcel of land, which at the time of assessment is used for single-family residential use, shall not be assessed greater than $\frac{1}{2}$ the costs of a residential street; and

(c) The assessment of property for all related work shall not exceed the actual costs incurred by the city prior to and at the time of construction.

(B) Street improvements; assessment procedure.

(1) The council, at a public hearing, shall determine the necessity of street improvements if the cost thereof is to be assessed against adjacent property. Notice of the hearing shall be given to the property owners who would be assessed for the costs of the improvements by regular mail no less than 10 days prior to the date of the hearing. Notice of hearing shall contain:

(a) A description of the proposed street improvements;

(b) The estimated cost for each affected parcel of property; and

(c) The date, time and place that the council shall consider the necessity of improvements and adoption of a resolution of intention. Notice shall also be published in a newspaper of general circulation, published or circulated in the city and, in addition, shall conspicuously be posted along the line of the proposed improvements at least 10 days prior to the hearing.

(2) The property owners and any other persons directly interested in the work or in the assessment may, prior to the time fixed for the hearing, file in the office of the city clerk a written objection briefly specifying the grounds for objection.

(3) At the public hearing, the governing body shall hear and pass upon any objections to the proposed improvements and its decision shall be final and conclusive. It may modify the extent of the proposed improvements and proceed without the necessity for republishing, reposting and remailing new notices.

(4) At the conclusion of the hearing, the council may pass its resolution of intention directing that plans, specifications and estimates of the cost and expenses of the proposed improvements be prepared.

(5) Upon completion of construction and finalization of the project, the council shall by resolution at a public hearing determine the final cost of the improvements and assess against the properties adjacent to the street improvement the total amount of the costs and expenses for the work. Notice of this public hearing shall be given to the property owners who would be assessed for the costs of improvements, by regular mail at least 10 days prior to the date of the hearing. This notice shall contain:

(a) A description of the street improvements; and

(b) The amount of the proposed assessment for each affected parcel of property.

(6) The property owners and any other persons directly interested in the work or in the assessment who have any objection to the legality of the assessment or to any of the previous proceedings connected therewith, or who claim that the work has not been performed according to the contract, may, prior to the time fixed for the hearing, file in the office of the city clerk a written notice briefly specifying the grounds for objection. At the time fixed for the hearing or at any time thereafter to which the hearing may be postponed, the council shall hear and rule upon the objections. The decision of the council shall be final and conclusive as to all errors, informalities and irregularities which the council might have remedied or avoided at any time during the progress of the proceedings.

(7) The council's resolution shall provide that any assessments remaining unpaid shall be paid prior to or at the time of rezoning or development of the assessed property.

(8) The resolution declaring the assessment and describing the properties against which the assessments are imposed shall be recorded in the office of the Pinal County recorder. When so recorded the amount so assessed shall be a lien upon the properties until the assessments are paid.

(9) When it is necessary to improve a full street and sufficient right-of-way is not available, the city may obtain necessary right-of-way by rezoning, building permit, street abandonment, donation, acquisition or condemnation. Any costs incurred by the city to obtain right-of-way shall be assessed to that respective parcel.

(C) *Manner of collecting unpaid assessments at time of rezoning or development.* At the time of rezoning or development of the property, the applicant shall pay the assessment as previously

determined by the city prior to the city's processing of a rezoning application or issuance of a building permit. Should the rezoning application or building permit not be approved or issued, the payment shall be returned to the applicant whereupon the process may be repeated until the property is rezoned or developed and the assessment paid.

§ 13-2-7 STREET FINANCING POLICY FOR IMPROVEMENTS DISTRICTS.

(A) *Improvements in general.*

(1) The cost of all street and related improvements including but not limited to paving, storm drains, utility installations, landscaping, signalization and lighting located in or adjacent to new projects or areas to be developed or redeveloped, shall be the full responsibility of the owner of such an area to be developed or redeveloped. Construction of such improvements shall meet applicable standards of the city.

(2) If approved by the city, the improvements may be constructed as part of an improvement district in accordance with subsection (B) below.

(B) *Improvement districts.* If the improvements required by subsection (A) above are constructed as part of an improvement district, the provisions of this section shall apply.

(1) Except as provided in subsections (B)(2), (3) and (4) below, property in an improvement district shall be assessed for all the street and related improvements constructed pursuant to the improvement district and shall be assessed in accordance with the method of assessment adopted by the council for the cost of the improvements.

(2) Except in an improvement district created primarily to benefit existing single-family residential uses, an existing single-family residential use may receive a credit for the street and related improvements equal to its assessment as determined by the assessment method for the improvement district. If the existing single-family residential use changes to use other than single-family residential use, then upon rezoning or upon development (defined as issuance of a building permit for a use other than a single-family residential use on the property) the credit shall be extinguished and any amount credited for the construction of the improvements by the improvement district shall be paid to the city. No zoning change shall be approved nor building permit be issued for the property related to a change of use from a single-family residential use until the amount of the credit is paid.

(3) A single-family residential use existing at the time of the adoption of a resolution of intention to create the improvement district may be included in the improvement district. If included in the district and if the district is not created primarily to benefit existing single-family residential uses, the owner of the property shall either:

(a) Pay the assessments associated with that property; or

(b) Enter into an agreement with the city which provides the terms and conditions under which the city will pay the cost (assessments) of the improvements and property owner repays those costs (assessments) upon a zoning change, development of the property (defined as issuance of a building permit for a use other than a single-family residential use), or sale of any of the property.

(4) The assessments for street and related improvements in a subdivision may be paid by the subdivider of the subdivision rather than the purchaser of the lots from the subdivider if the subdivider enters into a contract with the city for the payment of the assessments. The contract shall be recorded in the office of the Pinal County recorder.

ARTICLE 13-3: ENCROACHMENT PERMITS

Section

- 13-3-1 Permits
- 13-3-2 Inspections
- 13-3-3 Fee schedule
- 13-3-4 Unauthorized work
- 13-3-5 Control of work
- 13-3-6 Emergency repair
- 13-3-7 Construction standards
- 13-3-8 Assurance of construction
- 13-3-9 Liability and property insurance
- 13-3-10 Exemptions
- 13-3-11 Suspension and revocation
- 13-3-12 Notice of hearing and appeal
- 13-3-13 Penalties

§ 13-3-1 PERMITS.

(A) All applications for permits shall be in writing on a form as provided by the city. Applications shall be submitted at least 3 working days prior to start of construction and shall, unless waived by the public works director, hereinafter throughout this article referred to as "public works director" collectively, be accompanied by three copies of a drawing, map, diagram or similar exhibit of a size and sufficient to clearly illustrate the location, dimension, motive, method and purpose of the proposed work. Applicants for the permits may be either an owner or contractor; however, the work may be performed only by:

- (1) a contractor;
- (2) utility company;

(3) governmental agency; or

(4) resident owner of residential property where the property owner proposes to do the work. If the improvement to be constructed under the permit is not to become the property of the city and if the applicant is someone other than the owner, the owner shall also sign the permit form indicating agreement to the conditions of the permit.

(B) Permits shall be issued only to the person, corporation, political subdivision or other entity making application, and therefore may not be assigned to another person, corporation, political subdivision or entity by the permittee. If the permittee assigns the permit to another, the permit shall become void.

(C) If the public works director finds the following, he or she may issue a permit:

(1) that a proposed encroachment will not be detrimental to the health, safety or welfare of the community or the surrounding property; and

(2) the proposed encroachment will not be detrimental to the condition of any public road, street, alley, federally patented easement or right-of-way of any public street, alley or way not a state highway located within the municipality; and

(3) when completed, the proposed encroachment will not interfere with access to any public place.

(4) If the proposed encroachment does not meet each of the requirements of the preceding sentences, the director may impose such special conditions to the permit. Any decision of the public works director hereunder may be appealed in accordance with the provisions of A.J.C.C., Vol. I, § 13-3-12(B). In the event of any appeal, no permit will be issued while the appeal is pending.

(D) Conditions to a permit shall include those contained in the current edition of the Maricopa Association of Governments Uniform Standard Details for Public Works Construction, and as hereafter may be amended, and/or the current edition of the Maricopa Association of Governments Uniform Specifications for Public Works Construction, and as hereafter may be amended, and/or the City of Apache Junction Engineering Standards, as amended, as the public works director may deem applicable to the proposed encroachment. Additional requirements may be added to a permit in accordance with the provisions of subsection (C) above. Work pursuant to a permit must be completed within the time indicated on the permit, which shall not exceed 12 months. If work is not completed within the allotted time, the permit shall be canceled by the city. If a permit is canceled and the applicant or contractor desires to complete the work, a new permit must be obtained for such remaining work.

(E) New pavement construction, pavement overlay or pavement reconstruction on newly paved streets may not be cut for 3 years after their initial completion, subject to the exceptions set forth below. Underground utility work will be permitted during the three year period but an

underground bore must first be performed. If boring is not an option and connections cannot be made at an alternate location, then open cuts of newly paved streets may be permitted upon approval of the public works director. If the public works director approves in writing excavation on newly paved arterial, section line and mid-section line streets, the following criteria must be fully met:

- (1) A 1-sack slurry backfill will be required for all trenches unless otherwise approved in writing by the public works director;
- (2) The base asphalt shall be T-Top according to the Apache Junction Standard Detail 200M-AJ extending 12 inches beyond the undisturbed trench walls;
- (3) The entire roadway width (lip of gutter to lip of gutter) shall be chip sealed per MAG Section 330 for a minimum width of 10 feet on both sides of the trench centerline for which trenches extend beyond the road centerline. The roadway shall be chip sealed per MAG Section 330 for a minimum width of 10 feet on both sides of the trench centerline, from the lip of the gutter to the roadway centerline for trenches which do not cross the roadway centerline. Slurry seal, per MAG Section 332, may be substituted for chip seal only with written permission of the public works director;
- (4) All trench backfill and overlay will be inspected by the public works department – engineering division, and any work not conforming to MAG Standards will be ordered removed and replaced by the contractor at the contractor's expense;
- (5) The period from the date trenching begins to the date the roadway overlaying is completed shall not exceed 2 weeks unless approved in writing by the public works director; and
- (6) These above conditions are in addition to the procedures and requirements of the current encroachment permit process.

§ 13-3-2 INSPECTIONS.

(A) All work being performed must be performed in accordance with the ordinances and codes of the city, the Maricopa Association of Governments Uniform Standard Details for Public Works Construction, the Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction, the Engineering standards of the City of Apache Junction, Manual on Uniform Traffic Control Devices and the approved construction drawings as submitted. If building codes require building permits for the work being performed, applicants must conform with those particular provisions of the ordinances of the city.

(B) The public works director may provide applicants with inspection services to determine if the improvements constructed are substantially in accordance with the approved plan, special condition and permit granted. Any person or corporation, association or political subdivision doing work under any permit as set forth in this article shall notify the public works department

at least 2 full working days in advance of the time and place needing an inspection.

(C) Any and all inspections by the city shall be at such locations and in such frequency, manner and method as may be determined by the public works director.

(D) Neither the issuance of an encroachment permit, nor the completion of an inspection, nor permission from the public works department for the conduct of construction work shall constitute a representation, warranty or guarantee, express or implied, that either the encroachment or construction being performed complies with the applicable laws and ordinances or is free from defects or will perform or last in any particular way.

§ 13-3-3 FEE SCHEDULE.

(A) Applicant shall, before any permit is issued, provide the city with a fee to offset expenses incurred in connection with processing and inspecting work. *See A.J.C.C., Vol. I., Chapter 4, Fees*

§ 13-3-4 UNAUTHORIZED WORK.

(A) Any work undertaken prior to securing a permit may be required to be restored to its original condition prior to granting a permit, or the city may charge a fee not to exceed \$2,000 in addition to the normal fee for inspection and examination of the work done, prior to issuance of a permit.

(B) The public works department may issue a stop work order for work undertaken without a permit. All stop work orders shall require that work cease until the public works department determines whether the construction should be restored to its original condition or grants a permit in accordance with this article.

(C) It shall be an unlawful act for any work to be undertaken, except for emergency repair as provided herein, without first securing a permit. Each day unauthorized construction work has not been restored to its original condition or exists prior to issuance of a permit shall be a separate offense and punishable pursuant to Vol. I, § 1-1-11.

§ 13-3-5 CONTROL OF WORK.

The authority of the public works director with regard to work being performed hereunder shall be that as contained in the current edition of the Maricopa Association of Governments Uniform Specifications for Public Works Construction, or as hereafter amended. The public works director is hereby authorized to suspend work and issue stop work orders in accordance with the provisions of the specifications. It shall be an unlawful act for anyone to conduct work in contravention of an issued stop work order. Each day work has not been restored to its original

condition prior to issuance of the stop work order or exists in contravention of a stop work order shall be a separate offense and punishable pursuant to Vol. I, § 1-1-11.

§ 13-3-6 EMERGENCY REPAIR.

This article shall not prevent any person, corporation, political subdivision or entity who has legal authority to occupy the easements, streets, alleys or rights-of-way of the public roads, streets, alleys or rights-of-way of the city from maintaining any pipe or utility lawfully on or under any public street, or from making excavation or performing any work as may be necessary for the preservation of life or property when an urgent necessity arises during the hours the city offices are closed, except that those making emergency use shall apply for a permit within 1 calendar day after the city offices are again open.

§ 13-3-7 CONSTRUCTION STANDARDS.

All work performed in the public road, streets, alleys or ways shall be done in accordance with the ordinances and codes of the city, the current edition of the Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction and as hereafter may be amended, the current edition of the Maricopa Association of Governments Uniform Standard Details for Public Works Construction and as hereafter may be amended, the City of Apache Junction Engineering standards, as amended, the Manual on Uniform Traffic Control Devices as adopted by the Arizona Department of Transportation, and any approved permit, plan, specifications and special provisions of the city for such installation. The public works director may require additional work, materials, equipment and devices to properly control traffic, provide access to adjoining property and maintain other facilities in the area during the time work is being performed.

§ 13-3-8 ASSURANCE OF CONSTRUCTION.

Prior to issuing a permit, each applicant shall submit to the city an assurance of construction as outlined in the current edition of the city's engineering standards. In the event the public works director determines that special circumstances apply, and additional financial assurances to the city are required or that financial assurances may be otherwise modified or waived prior to issuance of a permit, the public works director shall provide to the applicant notice of the requirements regarding financial assurances together with the reasons and grounds regarding the requirement of additional financial assurances, modification from the engineering standards or waiver. Any applicant who disagrees with a decision of the public works director may appeal the decision in accordance with the provisions of A.J.C.C., Vol. I, § 13-3-12(B). In the event of an appeal, no permit may be issued while the appeal is pending. In instances where an applicant is issued numerous small permits throughout the year, the applicant may post a continuing use bond to cover work under more than 1 permit. However, this continuing bond provision is not intended for use to construct residential and commercial projects. The continuing bond shall be

of value sufficient to cover all work under construction by the permittee at any time and shall be satisfactory to the city.

§ 13-3-9 LIABILITY AND PROPERTY INSURANCE.

(A) No applicant shall be entitled to a permit under this Article unless and until the applicant shall have filed and maintained on file with the city a certificate of insurance certifying that the applicant carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the State of Arizona, at applicant's own cost and expense, insuring the applicant and the city and its agents against claims and liability for personal injury, death and property damage arising from the construction, operation or maintenance by applicant of its facilities, in an amount of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. The city, its officers, agents and employees shall also be named as additional insured parties. It is the intent of the parties that applicant's insurance shall be primary and without right of subrogation with respect to any claim or liability caused by applicant's negligence or other misconduct.

(B) Failure by the applicant to provide the city with such a certificate and failure by the city to demand the filing by applicant of such a certificate before such a permit is issued, shall not be deemed to waive applicant's obligation to provide the insurance specified herein. The insurance certificates shall remain in effect and be kept on file with the city so long as applicant maintains, operates or owns facilities within rights-of-way of the city. The insurance certificate shall provide that coverage cannot be canceled or expire without providing 30 days written notice to the city of such action and noting the permit number on the written notice. No evidence of liability insurance or surety bond shall be required as a condition precedent to the issuance of a permit to a resident on residential property where the resident proposes to perform construction in front of resident's own property, or a federal, state, county or municipal agency or political subdivision. The city shall in no way be liable to or responsible for any accidents or damage which may occur in the construction, operation by applicant of its appurtenances hereunder, and the acceptance of a permit shall be deemed an agreement on the part of applicant to indemnify the city and hold it harmless from and against any and all liability, loss, costs, legal fees, damage or other expense which may accrue to city by reason of the negligence, default or misconduct of applicant and the construction, operation and maintenance of its lines, facilities or the appurtenances hereunder, including maintenance of barricades and traffic control devices in construction and maintenance areas. Applicant agrees to pay on behalf of city any claims, settlement or judgments, including legal fees, made or entered against city as a result of injury or damage to any person or property occasioned by the exercise of any permit issued to applicant.

§ 13-3-10 EXEMPTIONS.

A no-cost permit may be issued to federal, state or county agencies, a political subdivision, or for a cable television system or a public utility which holds a license or franchise from the city, or to contractors under contract with the city for projects owned and maintained by the city.

§ 13-3-11 SUSPENSION AND REVOCATION.

(A) The public works director shall be authorized to stop work or refuse to renew any permit of any applicant or contractor who is in violation of any provision of this article or any condition or requirement of an issued permit. Any stop work or refusal to renew shall continue until such violation has been fully corrected. All work is to cease during a period of suspension or nonrenewal.

(B) Permits issued under the provisions of this article may be revoked by the public works director after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for permit;
- (2) Any violation of this article;
- (3) Any violation of any of the terms and conditions of the permit as issued;
- (4) Conducting a business in violation of the provisions of the ordinances of the city or in violation of the Arizona Revised Statutes Annotated; or
- (5) A determination by the public works director that the encroachment interferes with a need by the municipality for use of the street, alley or way for another public purpose.

§ 13-3-12 NOTICE OF HEARING AND APPEAL.

(A) Notice of any decision of the public works director from which an appeal is provided or for revocation of permit shall be given in writing, setting forth specifically the grounds of the decision and, in the case of revocation, the time and place of hearing. The notice shall be mailed, postage prepaid, certified mail to the applicant, contractor or permittee at the address shown on the application for permit. In the case of revocation, the notice shall be mailed at least 10 calendar days prior to the date set for hearing.

(B) Any person aggrieved by a decision of the public works director pursuant to A.J.C.C., Vol. I, § 13-3-1(C), (D), and A.J.C.C., Vol. I, § 13-3-8, or a decision with reference to the revocation of a license shall have the right of appeal to the City Manager. The appeal shall be taken by filing with the City Clerk, within 14 calendar days after notice of the action complained of has been mailed to such person's address as shown on the application for permit, a written statement setting forth fully the grounds for the appeal. The City Manager shall set a time and place for a hearing on the appeal, and notice of the hearing shall be given to the appellant in the same manner as provided for notice of hearing on revocation. The decision and order of the City Manager shall be final and conclusive, except any person aggrieved may pursue any proper judicial proceedings.

§ 13-3-13 PENALTIES.

Any person violating or failing or refusing to do or perform any act required or provided for in any of the provisions of this chapter, shall be guilty of a Class 1 Misdemeanor, and shall be subject to the penalty and multiple charging provisions set forth in A.J.C.C., Vol. I, § 1-1-11.