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10/9/17

ORDINANCE NO. 1453

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AMENDING APACHE JUNCTION CITY CODE, VOLUME I, CHAPTER 13: PUBLIC WORKS, BY ADOPTING NEW ARTICLE 13-4: SMALL WIRELESS FACILITIES LOCATED IN PUBLIC RIGHTS-OF-WAY, MORE FULLY DETAILED IN THAT CERTAIN DOCUMENT ENTITLED "2017 AMENDMENTS TO THE APACHE JUNCTION CITY CODE, VOLUME I, CHAPTER 13: PUBLIC WORKS, NEW ARTICLE 13-4: SMALL WIRELESS FACILITIES LOCATED IN PUBLIC RIGHTS-OF-WAY"; 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 and exercise exclusive control over their streets, alleys, avenues and sidewalks; and

WHEREAS, the City of Apache Junction (the "City") includes in its City Code, Volume I, Chapter 13, such regulatory provisions; and

WHEREAS, H.B 2365 (Wireless Facilities, Rights-of-Way) is codified under A.R.S. § 9-591 *et seq.*) and was signed into law on March 31, 2017 (the "Law"); and

WHEREAS, the Law, allows wireless providers to install and operate small cell towers and related equipment in city and town rights-of-way ("ROW") and public easements; and

WHEREAS, the installation of this equipment in ROW purportedly helps wireless carriers add capacity to their networks to provide better access to cell phone coverage and high-speed wireless data service in areas that are not being served by traditional cell sites; and

WHEREAS, the Law also allows collocation of small cell sites that replace monopoles in the ROW; and

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WHEREAS, maximum fees and charges for small cell wireless sites are set forth in the Law which cities and towns can charge; and

WHEREAS, cities and towns may implement an application process with strict processing times for new small cell towers, monopoles and utility poles in the ROW; and

WHEREAS, the City desires to set reasonable regulations and fees and charges to the extent allowed under the Law.

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

SECTION I IN GENERAL

1. That certain document entitled "2017 Amendments to the Apache Junction City Code, Volume I, Chapter 13: Public Works, New Article 13-4: Small Wireless Facilities Located in Public Rights-of-Way", 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. 17-29 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

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 become effective February 9, 2018.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS _____ DAY OF _____, 2017.

SIGNED AND ATTESTED TO THIS _____ DAY OF _____, 2017.

JEFF SERDY
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD JOEL STERN
City Attorney