

DRAFT
11/20/17

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

DRAFT
10/09/17

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

ARTICLE 13-4

SMALL WIRELESS FACILITIES LOCATED IN PUBLIC RIGHTS-OF-WAY

13-4-1 Purpose

This article provides design standards, concepts and requirements, as well as standard terms and conditions necessary for the preservation of the public rights-of-way (“ROW”) in the city for the maximum benefit and use for the public and applies to the siting, construction or modification of any and all small wireless facilities (“SWF”) proposed to be located in the ROW.

A. Application Authority. Any application for a SWF to be located in the ROW is subject to approval by the city engineer in addition to other requirements and processes specified in this chapter to include the Design Standards, Concepts and Requirements set forth under Appendix A, and Standard Terms and Conditions set forth in Appendix B. Location or collocation of wireless equipment on city-owned poles shall be at the discretion of the city engineer as per state law.

B. Eligible Applicants. Only applicants who have been granted the right to enter the ROW pursuant to state or federal law shall be eligible to apply to install or modify a SWF or a collocation of such a facility in the ROW. A valid ROW license shall also be required prior to construction.

C. Speculative Equipment Prohibited. The city finds that the practice of “preapproving” wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public’s best interest. The city shall not approve any equipment or other improvements in connection with a SWF application when the applicant does not actually and presently intend to install such equipment or construct such improvements.

D. Fiber/Cable. No applicant seeking to install SWF antennas shall seek a ROW use permit for fiber or coaxial cable only. Applicants shall simultaneously apply for fiber installation or other cable installation when seeking to install antennas in the ROW.

E. Application. Applications for a SWF in the ROW shall include, in addition to other application requirements as stated in this article under Appendixes A and B, the following:

1. Detailed engineering plans of the proposed facility and related report prepared by an Arizona registered engineer documenting the following:

- a. Technical engineering specifications.

- b. Evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy.

- c. A photograph and model name and number of each piece of equipment to be used.
 - d. Power output and operating frequency for the proposed antenna.
 - e. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges which can be accommodated.
 - f. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city.
 - g. Electrical and mechanical engineering documents for the facility and all appurtenant equipment, including support equipment such as equipment cabinets and backup power.
2. A statement providing the basis for the applicant's claimed right to enter the ROW. If the applicant has a certificate of convenience and necessity ("CCN") issued by the Arizona Corporation Commission, it shall provide a copy of its CCN to public works department staff.

F. Additional Design and Performance Standards.

- 1. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of SWF in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community.
- 2. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact.
- 3. Facilities shall be located such that views from an adjacent residential structure are not significantly impaired.
- 4. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety, including, but not limited to, being located outside of sight visibility triangles and clear zones.
- 5. All facilities shall be of subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
- 6. The applicant shall use the least visible equipment possible. Antenna elements shall be flush-mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless

otherwise provided in this section, antennas shall be situated as close to the ground as possible.

7. Poles.

a. Only pole-mounted antennas shall be permitted in the ROW. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing existing poles, unless:

(1) Such new poles shall be designed to resemble existing poles in the ROW near that location, including size, height, color, materials, and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

(2) Such new poles that are not replacement poles shall be located at least 90 feet from any existing pole to the extent feasible.

(3) A new pole analysis shall be submitted to demonstrate that the new pole is designed to be the minimum functional height and width required to support the proposed facility.

(4) All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent possible.

(5) No new wooden poles shall be permitted. For collocations on existing wooden poles wherein interior installation is infeasible, antennas, conduit, cables, and any other appurtenances attached to the exterior of the poles shall be mounted flush thereto and painted to match the pole.

b. The maximum height of any antenna shall not exceed:

(1) Four feet above the height of the existing pole.

(2) Nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any driveable road surface for utility poles or 16 feet above any driveable road surface for light poles.

c. No portion of any antenna shall project greater than 24 inches from the pole.

d. Pole-mounted equipment, exclusive of antennas, shall not exceed six cubic feet in dimension.

8. Each facility shall be designed to occupy the least amount of space in the ROW that is technically feasible.

9. Each facility shall be properly engineered to withstand wind loads as required by the adopted building code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall be submitted and shall include the impact of modification of an existing facility.

10. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian, bicycle, or vehicular traffic, inconvenience the public's use of the ROW, or create safety hazards to pedestrians, bicyclists, and motorists, and shall not be located within sight visibility triangles.

11. A facility shall not be located within any portion of ROW interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

12. All ground-mounted facilities, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed outside of the clear zone as determined by the city engineer, or at least 18 inches from the curb line or edge of nearest travel lane where there is no curb, whichever is greatest.

13. Not including the electric meter, all accessory equipment shall be located underground, unless city staff determines there is no room in the ROW for undergrounding, or that undergrounding is not feasible.

a. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted:

(1) Such accessory equipment shall be enclosed within a structure and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged.

(2) In locations with rural or residential zoning only along one side of a street, above-ground accessory equipment shall not be installed on that side of the street. Such above-ground accessory equipment shall be installed along the side of the street that is not rurally or residentially zoned.

b. While pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this article.

14. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage, and shrubs. Additional landscaping shall be planted, irrigated, and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.

15. Where facility lighting is required by the FAA, FCC, or other government entity, a lighting study shall be provided, prepared by a qualified lighting professional, to evaluate potential impacts to adjacent properties and traffic.

16. Backup generators shall not be permitted in the ROW.

17. At no time shall equipment noise from any facility exceed an exterior noise level of 65 dBA three feet from the source of the noise if the facility is located in the ROW adjacent to a business or industrial zone. Any facility located within 500 feet of any rural or residential zone, or a residential or school use, shall not exceed 55 dBA three feet from the source of the noise.

18. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism.

19. Consistent with current federal laws, at the time of modification of SWF, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

20. The installation and construction shall begin within 180 calendar days after the facility's approval or it will expire without further action by the city.

21. All applicants must secure a Letter of Credit and ROW License Agreement as set forth in this article.

22. All applicants shall pay the appropriate ROW License Fees as set forth in Apache Junction City Code, Vol. I, Chapter 4, Fees, Article 4-6, Public Works Fee Schedule, Section 4-6-2, Small Wireless Facilities Rights-of-Way Fees and Charges.