

ORDINANCE 655-18

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING EXISTING SECTION 6.9 OF THE ZONING ORDINANCE, "WIRELESS COMMUNICATIONS" INCLUDING, BUT NOT LIMITED TO, NEW PROVISIONS RELATED TO SMALL WIRELESS FACILITIES AND AMENDING TOWN CODE CHAPTER 16 "UTILITIES" INCLUDING, BUT NOT LIMITED TO, NEW PROVISIONS REGARDING SMALL WIRELESS FACILITIES AND RATES AND FEES FOR USE OF THE PUBLIC RIGHT OF WAY AND TOWN STRUCTURES.

WHEREAS, Arizona State Legislature passed House Bill 2365 amending the Arizona Revised Statutes by adding Title 9, Chapter 5, Article 8 "Use of Public Highways by Wireless Providers"; and

WHEREAS, the Town Council has determined that it is in the best interest of the residents of Queen Creek to amend the Town Code, amend Chapter 16 to include Article 16-10, as further set forth in Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has determined that it is in the best interest of the residents of Queen Creek to make changes to the Town Zoning Ordinance Section 6.9, such that it is advisable to amend Section 6.9, as further set forth in Exhibit "B", which is attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has determined that changes to the Town Code and Zoning Ordinance are necessary to: promote the health, safety, and general welfare of the residents of the Town; to enhance the aesthetic quality of the natural and built environment of the community; to maintain and enhance the desirable character of the community; and to facilitate quality development in accordance with the Town's adopted General Plan and Zoning Ordinance.

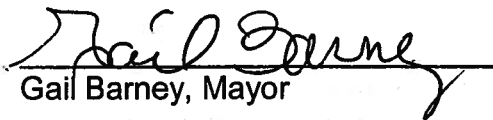
NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Section 1. Any proposal for the construction or installation of new monopoles, utility poles associated with wireless facilities, or wireless facilities in the public right of way shall be subject to the following: Section 6.9 of the Town's Zoning Ordinance; the Town's reasonable design standards; the Town's reasonable stealth and concealment standards; the Town's reasonable rates and fees as adopted by the Town; and all other applicable regulatory processes.

- Section 2. Existing Chapter 16 of the Queen Creek Town Code is hereby amended by the addition of a new subsection 16-10 set as forth in Exhibit "A."
- Section 3. Exhibit "A" is hereby approved, adopted and incorporated into the Town Code by reference, as fully as if set forth in this Ordinance in its entirety.
- Section 4. If any section, subsection, clause, phrase or portion of this Ordinance or any part of the amended and restated Town Code 16- 10 is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.
- Section 5. Existing Section 6.9 of the Zoning Ordinance is hereby amended as set forth in Exhibit "B."
- Section 6. Exhibit "B" is hereby approved, adopted and incorporated into the Town Code by reference, as fully as if set forth in this ordinance in its entirety.
- Section 7. If any section, subsection, clause, phrase or portion of this ordinance or any part of the amended and restated Town Zoning Ordinance Section 6.9, is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.
- Section 8. One (1) paper copy and one (1) electronic copy of this ordinance are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED BY the Mayor and Common Council of the Town of Queen Creek, Arizona, this 7th day of February 2018.

FOR THE TOWN


Gail Barney, Mayor

REVIEWED BY:


John Kross, Town Manager

ATTESTED TO:


Jennifer F. Robinson, Town Clerk

APPROVED AS TO FORM:

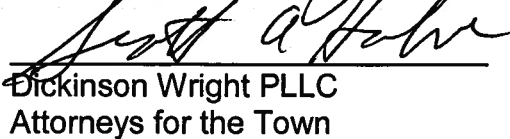

Dickinson Wright PLLC
Attorneys for the Town

EXHIBIT A

ARTICLE 16-10 Small Wireless Facilities

Section 16-10-1 Purpose

The intent and purpose of this article is to facilitate the development and installation of small wireless facilities in the Town of Queen Creek to supplement existing wireless communications networks and to increase capacity in high demand areas, while simultaneously promoting and preserving the health, safety, and general welfare of the residents of the Town and protecting and preserving the aesthetic qualities of the natural and built environment of the Town. Through this article, the Town seeks to balance the need for increased wireless communications capacity with the need for reasonable standards to preserve the aesthetic values of the Town and to ensure safe placement of small wireless facilities.

Section 16-10-2 Definitions

The definitions contained in A.R.S. § 9-591 are incorporated by this reference and shall apply to this article as if fully set forth here.

Section 16-10-3 Small Wireless Facilities in the Public Right of Way

This section permits the installation of small wireless facilities in the right of way subject to the following requirements:

A. No monopoles, utility poles associated with small wireless facilities, or small wireless facilities shall be collocated, installed, modified, or replaced in the public right of way unless the following requirements are met:

- 1) An Application is submitted to and approved by the Town pursuant to Section 16-10-4;
- 2) All Town requirements as set forth in this article are met;
- 3) All other applicable codes and requirements are met;
- 4) A Wireless Facility License Agreement is signed; and
- 5) A Wireless Facility Site Permit issued.

B. The installation and maintenance of monopoles in the public right of way and small wireless facilities on utility poles in the public right of way shall be subject to and comply with reasonable requirements, including the Wireless Facilities Standard Terms and Conditions, the Town's Design Standards and Guidelines, and any site-specific requirements developed based upon consultation with the Town through the site review and permitting process.

C. The installation and maintenance of monopoles in the public right of way and small wireless facilities on utility poles or monopoles in the public right of way shall be subject to rates and fees pursuant to Section 16-10-5 of this article.

D. In addition to the above requirements, the installation, replacement, and/or modification of monopoles in the public right of way shall be subject to the requirements of Section 6.9 of the Town's Zoning Ordinance.

E. In addition to the above requirements, the installation, replacement, and/or modification of utility poles that exceed the greater of either 1) ten (10) feet above the tallest existing utility pole (excluding utility poles supporting only wireless facilities), that is located within five hundred (500) feet of the proposed site for the new, replacement or modified pole if that existing pole was in place prior to August 9, 2017, but the new pole cannot be more than fifty (50) feet above ground level; or 2) Forty (40) feet above ground level, shall be subject to the requirements of Section 6.9 of the Town's Zoning Ordinance.

G. In addition to the above requirements, collocations of new small wireless facilities that exceed ten (10) feet above the utility pole or wireless support structure (defined as including a monopole if there was an existing one in the ROW) and exceed fifty (50) feet above ground level shall be subject to the requirements of Section 6.9 of the Town's Zoning Ordinance.

Section 16-10-4 Application

A. Prior to the collocation, installation, modification, or replacement of any monopole, utility pole associated with wireless facilities, or small wireless facility in the public right of way, the wireless provider must complete and submit an Application to the Town's Department of Development Services.

B. The Department of Development Services shall prescribe and provide a regular form of application for use by Applicants for permits required by this section. The Application shall include such information and details as the department deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed small wireless facility. If requested, the Applicant shall include maps, sketches, diagrams, or similar exhibits. The Applicant shall include proof of liability insurance.

C. The Department of Development Services shall determine if the Application establishes that the utility poles associated with wireless facilities, monopoles, and/or small wireless facilities that are the subject of the Application comply with the following:

- 1) Town Design Standards and Guidelines
- 2) Town codes, ordinances, regulations, requirements, policies, and guidelines, regarding undergrounding
- 3) Town codes, ordinances, regulations, requirements, policies, and guidelines, regarding public safety
- 4) Town codes, ordinances, regulations, requirements, policies, and guidelines regarding spacing new utility poles
- 5) All other applicable Town codes, ordinances, regulations, requirements, policies, and guidelines to which the town is authorized by law to subject small wireless facilities.

D. If it is determined that the Application does not establish compliance with requirements of this section, then the Application must be denied.

Section 16-10-5 Rates and Fees

A. The Town Council shall, by ordinance or resolution, set and amend any rate, rate component, charge, or fee authorized by state law for the use of the public right of way and Town utility poles in connection with small wireless facilities including:

- 1) Fees for conditional use permit applications
- 2) Fees for collocation applications;
- 3) Fees for the use of the right of way;
- 4) Rates for the use of the Town's utility poles;
- 5) Fees to recover legal costs resulting from enforcement to any noncompliance including, but not limited to, administrative expenses, investigation, testing, legal proceedings and filings, and continued monitoring; and
- 6) Other fees as the Town may determine necessary to carry out the requirements contained herein.

B. All rates and fees set or amended pursuant to this article shall be reasonable and shall not exceed the amounts permitted by state law.

C. The Town shall publish and make available its schedule of rates and fees.

D. These fees relate solely to the matters covered by this article and are separate from all other fees, fines and penalties chargeable by the Town.