OFFICIAL CODE OF THE TOWN OF MARANA, ARIZONA

This is the official codification of the ordinances of the town of Marana (excluding the ordinances codified in the land development code and the various codes incorporated by reference into the town code), reformatted and updated by Ordinance 2005.22, with revisions through Ordinance 2015.015, adopted and effective June 30, 2015.

Navigating this PDF:

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TITLE 1. GENERAL

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TITLE 1. GENERAL

Title 1 was adopted by Ordinance 95.31

CHAPTER 1-1. HOW CODE DESIGNATED AND CITED

The ordinances embraced in the following titles and sections shall constitute and be designated "the code of the town of Marana, Arizona," and may be so cited. This code may also be cited as the "Marana town code."

CHAPTER 1-2. CONSTRUCTION OF ORDINANCES

The rules and the definitions set forth in this title shall be observed in the construction of this code and the ordinances of the town unless the construction would be inconsistent with either the manifest intent of the council, the context of this code or the ordinances of the town.

CHAPTER 1-3. DEFINITIONS

1-3-1 General rule regarding definitions

All words and phrases shall be construed and understood according to the common and approved use of the language, but technical words and phrases and any others that may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to their peculiar and appropriate meaning.

1-3-2 Definitions and interpretation

Section 1-3-2 was rewritten by Ordinance 2005.22, which added "and interpretation" to the title, split the provisions into definitions and rules of interpretation, simplified the language, deleted definitions of words not used in the code, and added definitions of "fire chief" and "fire department"

A. In this code, unless the context or a more specific definition requires otherwise, the following terms shall have the following meanings:

1. "Code" means the town code of the town of Marana, Arizona, including those portions codified in this volume, those portions codified separately, and those separate codes and provisions incorporated by reference.
2. "Council" means the town council of the town of Marana.
3. "County" means Pima County, Arizona.
4. "Day" is the period of time between midnight and the following midnight.
5. "Fire chief" means the fire chief of the fire department or a person duly authorized to act on his or her behalf.
6. "Fire department" means the fire district that has jurisdiction over the geographic area in question. When a provision does not apply to a particular geographic area, "fire department" means the Northwest Fire District.
7. "Mayor" means the mayor of the town of Marana.
8. "Month" means a calendar month.
9. "Oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases

the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

10. "Owner" includes any whole or part owner, joint owner, tenant in common, joint tenant or lessee.
11. "Person" means any natural person or any association, firm, individual, partnership, joint stock company, joint venture, trust, corporation, limited liability company, society, syndicate, business or other legally recognized entity, private or public, whether for-profit or not-for-profit.
12. "Personal property" includes every type of property except real property.
13. "Preceding" and "following" mean next before and next after, respectively.
14. "Property" includes real property and personal property.
15. "Real property" means lands, tenements and hereditaments.
16. "Section" means section, subsection, or provision.
17. "Shall" is mandatory and "may" is permissive.
18. "Shall have been" includes past and present and future cases.
19. "Signature" includes a mark when the signer cannot write, the signer's name being written near the mark by a witness who writes his or her own name near the signer's name, but a signature by mark may be acknowledged or may serve as a signature to a sworn statement only when witnessed by two people who sign their own names to the document.
20. "State" means the state of Arizona.
21. "Town" means the town of Marana, Pima County, Arizona. "In the town" or "within the town" mean and include all territory over which the town has jurisdiction for the exercise of its police powers or other regulatory powers as authorized by statute.
22. "Week" means seven consecutive days.
23. "Writing" means any form of recorded message capable of comprehension by ordinary visual means.
24. "Year" means a calendar year.

B. In this code, unless the context requires otherwise, the following rules of interpretation shall apply:

1. When an act is required to be done which may by law as well be done by an agent as by the principal, the requirements shall be construed to include all acts by an authorized agent.
2. Whenever this code refers to a department, board, commission, committee, office, officer or employee, it shall mean a depart-

ment, board, commission, committee, office, officer or employee of the town of Marana unless the context requires otherwise.

3. Words of the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular.
4. Words purporting to give joint authority to a group of three or more town officers or other persons shall be construed as giving the authority to a majority of those officers or other persons unless the law giving the authority expressly declares otherwise.
5. The present tense includes the past and future tenses, and the future includes the present.
6. The time within which an act is to be done as provided in this code or in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day is a Saturday, Sunday or holiday it shall be excluded, and when the time within which an act is to be done is expressed in hours, the whole of Saturday, Sunday or a holiday, from midnight to midnight, shall be excluded.
7. A reasonable time means the amount of time needed for prompt performance.
8. Whenever any notice, report, statement or record is required or authorized, it shall be made in writing in the English language.

CHAPTER 1-4. REFERENCE TO CODE; CONFLICTING PROVISIONS; SCRIVENER'S ERRORS

The title of chapter 1-4 was amended by Ordinance 2008.16

1-4-1 Additional rules of construction

In addition to the rules of construction specified in chapter 1-2 and chapter 1-3, the rules set forth in this chapter shall be observed in the construction of this code.

1-4-2 References to this code

All references to titles, chapters or sections are to the titles, chapters and sections of this code unless otherwise specified.

1-4-3 Conflicting provisions - different titles

If the provisions of different titles of this code conflict with or contravene each other, the provisions of each title shall prevail as to all matters and questions growing out of the subject matter of that title.

1-4-4 Conflicting provisions - same title

If conflicting provisions are found in different sections of the same title, the provisions of the section which is last in numerical order shall

prevail unless that construction is inconsistent with the meaning of that title.

Section 1-4-5 was added by Ordinance 2008.16

1-4-5 Authority to correct scrivener's errors

A. The town attorney and town clerk are hereby each individually authorized to correct scrivener's errors in the town code and in ordinances and resolutions adopted by the council without the need for re-adoption of the town code provision, ordinance or resolution.

B. For purposes of this section, a scrivener's error includes one or more of the following:

1. Misspelling.
2. Grammatical error.
3. Numbering error.
4. Cross-referencing error.
5. Inconsistency with the rules of style adopted for the reformatted town code.

C. A scrivener's error correction made under the authority granted by this section shall be documented as follows:

1. A correction to the town code shall be noted with the explanatory and historical notes in the right-hand margin of the town code.
2. A correction to an ordinance or resolution shall be accompanied by a scrivener's note on or attached to the corrected ordinance or resolution.

CHAPTER 1-5. SECTION HEADINGS

Headings of the several sections of this code are intended as a convenience to indicate the contents of the section and do not constitute part of the law.

CHAPTER 1-6. EFFECT OF REPEAL

When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision, unless it is expressly so provided. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect or any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

CHAPTER 1-7. SEVERABILITY OF PARTS OF THE CODE

The sections, paragraphs, sentences, clauses and phrases of this code shall be severable, and if any provision of this code is held unconstitutional for any reason by a court of competent jurisdiction, the unconstitutionality shall not affect any of the remaining provisions of the code.

CHAPTER 1-8. PENALTY

1-8-1 General violations

Except as otherwise provided in this code, any person found guilty of violating any provision of this code shall be guilty of a class 1 misdemeanor. Each day that a violation continues shall be a separate offense.

1-8-2 Traffic violations

Any violation of or failure or refusal to do or perform any act required by title 12 of this code or title 28, Arizona revised statutes constitutes a civil traffic violation. Civil traffic violations are subject to the provisions of title 28, title 6, chapters 20 and 21, Arizona revised statutes and amendments to them.

CHAPTER 1-9. CODE COMPLIANCE

Chapter 1-9 was added by Ordinance 2010.01

1-9-1 Definition

"Code compliance officer" means any employee designated and authorized by the town manager to administer and enforce any provision of the town code, the land development code or any other town ordinance, or any duly authorized agent or designee of that employee, regardless of the employee's position title.

1-9-2 Authority of code compliance officers

Code compliance officers are granted the authority expressly and impliedly necessary for the administration and enforcement of those areas of the town code, the land development code or any other town ordinance that the code compliance officer is responsible for. This authority includes, but is not limited to, authorization to issue uniform civil code complaints, as described in chapter 5-7 of this code, for any violations of the town code, the land development code or any town ordinance that are classified as civil offenses. Code compliance officers may not issue citations for violations that are classified as criminal offenses.

Title 2

Mayor and Council

2

TITLE 2. MAYOR AND COUNCIL

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TITLE 2. MAYOR AND COUNCIL

Title 2 was adopted by Ordinance 96.13

CHAPTER 2-1. COUNCIL

2-1-1 Elected officers

Section 2-1-1 was amended by Ordinance 99.11, providing for direct election of the mayor.

The elected officers of the town shall be a mayor and six council members. The mayor and council members shall constitute the council and shall continue in office until assumption of duties of office by their duly elected successors. The mayor and council members shall serve four-year overlapping terms.

2-1-2 Corporate powers

The corporate powers of the town shall be vested in the council and shall be exercised only as directed or authorized by law. All powers of the council shall be exercised by ordinance, resolution, order or motion.

2-1-3 Duties of office

Section 2-1-3 was amended by Ordinance 99.11.

Members of the council shall assume the duties of office immediately upon being sworn in, which shall occur within 20 days following the date of the general election.

2-1-4 Vacancies

Section 2-1-4 was amended by Ordinance 99.11

A. The council shall fill by appointment for the unexpired term any vacancy on the council that may occur for whatever reason, by the following procedure:

   1. Whenever a vacancy on the town council occurs, the town clerk shall advertise, post, and give public notice of the vacancy and availability of a seat on the town council.

   2. Those interested in filling the vacancy shall submit to the town clerk an application, resume, and other support materials as desired, and the town clerk shall distribute all the materials to all remaining council members.

   3. Thereafter, the council will fill the vacant seat by a majority vote. The vote will not be by nomination and election, rather it will be conducted by making a motion to appoint a certain individual to the vacant council seat to fulfill the remaining term, and if the motion fails for lack of a second or majority vote there may thereafter be a subsequent motion for a different or the same individual. The council may continue making motions until a motion to appoint an applicant to the vacant seat is successfully passed by a majority of the council.

Ordinance No 99.32 deleted former paragraph 3, which provided for interviews of council candidates at a public meeting, renumbered former paragraph 4 as paragraph 3, and replaced the words "At the same council meeting or any council meeting thereafter" with "Thereafter" at the beginning of paragraph 3

B. If there is a vacancy in the mayor's position, the council shall elect one council member willing to serve as mayor, who shall resign his or her council seat and become the mayor as provided below.

1. If the vacancy in the mayor's position occurs more than 18 months following the commencement of the terms, the appointed mayor shall complete the elected mayor's term.
2. If the vacancy in the mayor's position occurs within 18 months following the commencement of the term, then the town shall schedule a special election for mayor to occur at the next primary and general elections of the town, calling for the election of a mayor to complete the remaining two years of the term. The appointed mayor shall serve until the newly elected mayor takes office to complete the remaining two year mayoral term.

2-1-5 Oath of office

Ordinance 99.32 deleted the words "in public" between "shall" and "take" in section 2-1-5

Immediately prior to assumption of the duties of office, the mayor and each council member shall take and subscribe to the oath of office.

2-1-6 Bond

Ordinance 2013.016 split section 2-1-6 into subparagraphs and added the first clause to each subparagraph.

A. Unless bonded pursuant to a blanket bond as provided in paragraph B of this section, prior to taking office, the mayor and every council member shall execute and file an official bond, enforceable against the principal and their sureties, conditioned on the due and faithful performance of their official duties, payable to the state and to and for the use and benefit of the town or any person who may be injured or aggrieved by the wrongful act or default of the officer in the officer's official capacity. A person so injured or aggrieved may bring suit on the bond under provisions identical to those contained in A.R.S. § 38-260. Bonds shall be in the amount provided by resolution, and the premium for the bonds shall be paid by the town.

B. In lieu of the requirements of paragraph A above, the town may obtain a blanket bond pursuant to the provisions of A.R.S. § 9-302.

2-1-7 Financial disclosure statement

Each member of the council shall file a financial disclosure statement in a form and with the information as provided by resolution of the council.

2-1-8 Compensation

Section 2-1-8 was rewritten by Ordinance 2002.23. The previous version provided for no compensation except expense reimbursement. Resolution 2008-86 fixed the monthly salaries at $1,875 for the Mayor and $1,767 for the Vice Mayor, effective July 1, 2011, and $1,742 for Council members, effective July 1, 2009

The compensation of elective officers of the town shall be fixed from time to time by resolution of the council.

CHAPTER 2-2. COUNCIL ELECTION

2-2-1 Primary election; date; declaration of elected candidate

Ordinance 2013.019 split section 2-2-1 into subparagraphs, added subparagraph A, and modified the section title, to conform to the 2012 revisions to A.R.S. § 16-204

A. The date of the primary election of the town shall be the tenth Tuesday before the first Tuesday after the first Monday in November of even-numbered years.

B. Any candidate who receives at the primary election a majority of all the votes cast shall be declared elected to the office for which he or she is a candidate effective as of the date of the general election, and no further election shall be held as to that candidate, provided that if more candidates receive a majority of the votes than there are offices to be filled, then those equal in number to the offices to be filled receiving the highest number of votes shall be declared elected.

2-2-2 Non-political ballot

Nothing on the ballot in any election shall be indicative of the support or political party affiliation of any candidate.

2-2-3 General election; date; candidates

Ordinance 2013.019 split section 2-2-3 into subparagraphs, added subparagraph A, modified subparagraph B, and modified the section title, to conform to the 2012 revisions to A.R.S. § 16-204

A. A general election of the town shall be held on the first Tuesday after the first Monday in November of even-numbered years.

B. If at any primary election there is any office for which no candidate is elected, then as to that office the election shall be considered to be a primary election for nomination of candidates for that office, and a general election of the town shall be held to vote for candidates to fill that office. Candidates to be placed on the ballot at the general election shall be those not elected at the primary election, and shall be equal in number to twice the number to be elected to any given office or less than that number if there are less than that number named on the primary election ballot. Persons who receive the highest number of votes for the respective offices at the primary election shall be the only candidates at the general election, provided that if there is any person who, under the provisions of this section, would have been entitled to become a candidate for any office except for the fact that some other candidate received an equal number of votes for it, then all those persons receiving an equal number of votes shall likewise become candidates for that office.

2-2-4 Election to office

The candidates equal in number to the persons to be elected who receive the highest number of votes shall be declared elected.

2-2-5 Assumption of office

Ordinance 2013.019 added section 2-2-5 and renumbered the remaining sections in chapter 2-2 to conform.

Upon election, the mayor and council members shall assume the duties of office at the next regularly scheduled council meeting following the date of the canvass of the general election or, if no general election is held, at the next regularly scheduled council meeting following the date the general election would have been held.

2-2-6 Candidate financial disclosure

Each candidate for the office of council member shall file a financial disclosure statement on a form prescribed by the town clerk when the

candidate files a nomination paper. The statement shall contain such information as required by state law and resolution of the council.

2-2-7 Initiative and referendum

Section 2-2-7 was added by Ordinance 97.26, which also renumbered the remaining sections of chapter 2-2 to conform

A. There is reserved to the qualified electors of the town the power of the initiative and the referendum as prescribed by the state constitution. Any initiative or referendum matter may be voted on at the next ensuing primary or general election, or at a special election called by the council.

Ordinance 99.32 deleted "Power Reserved; Time of Election" from the beginning of paragraph A

B. Number of signatures

1. The total number of registered voters qualified to vote at the last municipal election, whether regular or special, immediately preceding the date upon which any initiative petition is filed shall be computed.
2. The basis upon which the number of qualified electors of the town required to file a referendum petition shall be as determined by state law.

C. Time of filing

1. Initiative petitions shall be filed at least 120 days prior to the election at which they are to be voted upon.
2. Referendum petitions shall be filed within 30 days of the adoption of the ordinance or resolution to be referred. If the town clerk is unable to provide petitioners with a copy of the ordinance or resolution at the time of application for an official number or on the same business day of the application, the 30-day period shall be calculated from the date the ordinance or resolution is available.

D. The following procedures relating to sample ballots and publicity pamphlets are hereby adopted for conducting elections at which an initiative or referendum is to be voted upon:

Ordinance 99.32 deleted "Sample Ballots and Publicity Pamphlets" from the beginning of paragraph D

1. A publicity pamphlet, containing the entire text of the official ballot, shall be mailed by the town clerk to each household within the town in which a registered voter resides, not less than eight days prior to the election to which the sample ballot pertains.
2. The pamphlet shall contain the proposition as it will appear on the ballot together with a summary of each proposition. Each summary shall be followed by any arguments supporting the proposition followed by any arguments opposing the proposition.
3. Arguments supporting and opposing propositions appearing on the ballot shall be filed with the office of the town clerk by 5:00 p.m. not less than 90 days prior to the election at which the propositions are to be voted upon. Arguments supporting or

Ordinance 2011.25 inserted 90 days in place of 60 days in paragraph (D)(3). See Ordinance 98.15 for prior history.

opposing propositions appearing on the ballot shall meet the following requirements:

a. Arguments must relate to the propositions proposed by initiative or referred by referendum which will appear on the ballot.

b. Arguments must identify the proposition to which they refer and indicate whether the argument is in support of or in opposition to the proposition.

c. Arguments may not exceed 300 words in length.

d. Arguments must be signed by the person submitting them. Arguments submitted by organizations shall be signed on behalf of the organization by an officer of the organization authorized to take the action. All persons signing documents shall indicate their residence or post office address.

e. No person or organization shall submit more than one argument for each proposition to be voted upon.

f. Each argument shall be accompanied by a deposit to offset proportional costs of printing, in an amount established by a fee schedule adopted by the council and amended from time to time. This requirement shall not be waived on any account.

Ordinance 2009.11 amended subparagraph (D)(3)(f) by adding reference to the comprehensive fee schedule and deleting the specific printing cost fee amount

2-2-8 Automatic recount

A. When the canvass of returns in a special, primary or general town election shows that the margin between the successful candidate receiving the least number of votes and the unsuccessful candidate receiving the greatest number of votes for council, or the margin between the number of votes cast for and against initiated or referred measures, does not exceed five votes, a recount of the vote upon those candidates, measures or proposals shall be required.

B. When the canvass shows that a recount is required, the council shall forthwith certify the facts requiring a recount to the Pima County superior court.

C. Upon the court announcing the results of the election recount and entering an order setting forth its determination as required under A.R.S. § 16-665, the town clerk shall forthwith deliver to the candidate entitled to them, as certified by the court, the certificate of election.

2-2-9 Eligibility for office

A person shall not be a member of the town council unless, at the time of election, the person is 18 years old or older, is a qualified elector residing within the town at the time of election, and has resided in the town for one year next preceding the election, or if an area has been annexed to the city or town for a period of less than one year next preceding the election has resided in the area for one year next preceding

the election. If an annexed area is subject to the provisions of this subsection, a person may meet the residency requirements if he or she has resided within the existing limits of the town for a one-year period.

CHAPTER 2-3. MAYOR AND VICE MAYOR

Chapter 2-3 was amended by Ordinance 99.11

2-3-1 Vice mayor

Ordinance 2009.10 amended the first sentence of section 2-3-1 by expanding the time for selection from 20 days to June 30. Ordinance 2013.019 revised it to December 31.

After their election and qualification, but in any event not later than December 31 following the date of the general election, or, if no general election is held, following the date the general election would have been held, the council members shall choose a vice mayor from among their number by majority vote. The vote will not be by nomination and election, rather it will be conducted by making a motion to appoint a certain council member as vice mayor, and if the motion fails for lack of a second or majority vote there may thereafter be a subsequent motion for a different or the same individual. The council will continue making motions until a motion to appoint a council member as vice mayor is successfully passed by a majority of the council. The vice mayor shall assume the duties of the mayor in the absence, disqualification or resignation of the mayor.

2-3-2 Acting mayor

Ordinance 99.32 amended section 2-3-2 by adding the words "the mayor, the vice mayor shall act as the mayor. In the absence of"

In the absence or disability of the mayor, the vice mayor shall act as the mayor. In the absence of both the mayor and vice mayor, the council may designate another of its members to serve as acting mayor who shall have all the powers, duties and responsibilities of the mayor during the absence or disability.

2-3-3 Term of the vice mayor; removal

The vice mayor shall be selected as set forth in section 2-3-1, and shall serve at the pleasure of the council, but in no event longer than a two-year term unless he or she is re-appointed as set forth in section 2-3-1. The vice mayor may be removed prior to the expiration of his or her term by an affirmative vote of the council, provided that no matter how many council members are present at the meeting at which the vote to remove is taken, it shall require an affirmative vote of at least four council members to effectuate a removal. In the case of the removal of the vice mayor the council shall select a replacement as provided in this chapter.

2-3-4 Powers and duties of the mayor

The powers and duties of the mayor shall include the following:

A. The mayor shall be the chief executive officer of the town.

B. The mayor shall be the chairman of the council and preside over its meetings. The mayor may make and second motions and shall have a voice and vote in all its proceedings.

C. The mayor shall execute and authenticate by his or her signature the instruments as the council or any statutes, ordinances or this code shall require.

D. The mayor shall make those recommendations and suggestions to the council as he or she may consider proper.

E. The mayor may, by proclamation, declare a local emergency to exist due to fire, conflagration, flood, earthquake, explosion, war, bombing or any other natural or man made calamity or disaster or if there is the threat or occurrence of riot, rout or affray or other acts of civil disobedience which endanger life or property within the town. After declaration of an emergency, the mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the town, including but not limited to:

1. Imposition of a curfew in all or any portion of the town.
2. Ordering the closing of any business.
3. Closing to public access any public building, street or other public place.
4. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.

F. The mayor shall perform the other duties required by state statute and this code as well as those duties required as chief executive officer of the town.

2-3-5 Failure to sign documents

If for five consecutive days the mayor fails or refuses to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring his or her signature, then a majority of the members of the council may, at any regular or special meeting, authorize the vice mayor or, in his or her absence an acting mayor, to sign the ordinance, resolution, contract, warrant, demand or other document or instrument which when so signed shall have the same force and effect as if signed by the mayor.

CHAPTER 2-4. COUNCIL PROCEDURE

2-4-1 Regular and special council meetings

Ordinance 2012.09 amended section 2-4-1 to conform to open meeting law revisions and current council practice. Ordinance 2011.08 amended paragraph A by establishing procedures to cancel and reschedule meetings. Capitalizations in the last three sentences of paragraph A were revised as scrivener's errors by the town attorney by authority of section 1-4-5 to conform to the stylistic conventions set forth in Ordinance 2005.22

A. All meetings of the council shall be public meetings and shall be conducted in accordance with A.R.S. § 38-431 *et seq*. (the "open meeting law") and all other federal, state and local laws. The council shall hold its regular meetings on the first and third Tuesday of each month, except that when the day fixed for any regular meeting of the council falls upon a day designated by law as a legal holiday or election day, the meeting shall be held on the next succeeding day which is not a holiday, unless otherwise set by action of the council. Upon consultation between the mayor and the town manager, any meeting which is determined to be unnecessary may

be cancelled. The town clerk shall issue a notice of cancellation which shall be posted in the usual manner. Additional meetings, including, without limitation, special meetings and study sessions, shall be scheduled as needed upon request to the town clerk by the mayor, three council members or the town manager. Additional meetings shall be noticed and agendized in accordance with the provisions of this code and applicable state statutes.

B. All meetings of the council shall be held at the Marana Town Hall, 11555 West Civic Center Drive, Marana, Arizona, unless otherwise designated.

Ordinance 2005.22 revised the address

C. Members of the council and the public shall be given at least 24 hours' notice of all council meetings as set forth in the open meeting law, except in the case of an actual emergency. Notice shall be posted on the town's website and in such other locations as listed on the town's website and as are reasonable and practicable. In the case of an actual emergency, a meeting may be held upon such notice as is reasonable under the circumstances. Notice in this paragraph is intended to mean a complete agenda of the meeting, including the type of meeting, and the location, date and time of the meeting.

D. Written minutes shall be taken of each council meeting, and if recording equipment is available, each council meeting shall also be recorded. These provisions shall not apply to executive sessions, which are governed elsewhere in this code.

Ordinance 2005.22 deleted "tape" before "recorded"

2-4-2 Agenda preparation and distribution

Section 2-4-2 was rewritten by Ordinance 99.32

A. Agendas for town council meetings shall be prepared by the agenda committee, which shall be made up of the mayor (or his or her designee), town manager, town clerk, town attorney, and any other person designated by the mayor or town manager. In the absence of the mayor, the vice mayor shall serve in his or her stead. The agenda committee shall review, adjust and agree to the items on each agenda. Although the agenda committee shall formulate each agenda, the final determination of what will be placed on an agenda will be in the sole discretion of the mayor, except as provided in the following subsections.

B. Notwithstanding the mayor's discretion of what items to place on the agenda, if three or more council members request an item to be placed on the agenda, it must be placed upon the agenda for the second regular town council meeting after the date of the request.

The wording of paragraph B was simplified by Ordinance 2005.22

C. Except in an emergency (as determined by the mayor or town manager), any person desiring to place an item on the agenda shall prepare and deliver a summary of the issue a reasonable time prior to the agenda committee meeting. If the request is made by an employee or staff member, it shall be delivered to the town manager, and if the request is made by a council member or member of the public, it shall be delivered to any member of the agenda committee.

D. All blue sheets, reports, communications, ordinances, resolutions, contract documents, and other documents to be included in the "council packet" shall be submitted to the town manager for review a reasonable time prior to the agenda committee meeting, and the town manager will work with the department preparing the materials to ensure that all final materials are submitted to the town clerk or his or her designee prior to the final preparation of the council packet. The final agenda will be prepared by the town clerk, approved as to form by the town attorney, and signed by the mayor or, in his or her absence, the vice mayor. Council packets will be delivered to all council members at least 24 hours prior to the council meeting. These deadlines may be waived for any particular item by the mayor or town manager only if it is determined that it is impossible to meet the deadline.

E. The agenda format as approved by resolution of the council will generally be used for all regular town council meetings, although variations may be made from time to time. For special meetings, study sessions, and other meetings, such as joint meetings with other entities, retreats, subcommittee meetings, and task force meetings, a relaxed format may be used which excludes many of the unnecessary items, as long as the format used complies with the open meeting law.

Paragraph E was revised by Ordinances 2012.09 and 2005.22. The currently used agenda format was approved by Resolution 2012-66, adopted on August 7, 2012.

F. Agenda items requiring action by the council which are generally routine items, not believed to be controversial, not requiring council discussion, or issues already discussed or heard at public hearing for which final adoption by resolution or ordinance is needed may be contained in a consent agenda. A single motion and affirmative vote "to approve the consent agenda" will approve all items in the consent agenda, including any resolutions or ordinances included in the consent agenda. Prior to a motion to pass the consent agenda, and upon the request of any council member, any item on the consent agenda can be removed from the consent agenda and considered immediately following the consent agenda. If the consent agenda is not passed, the council may discuss and vote upon each item listed on the consent agenda immediately after the vote fails to pass the consent agenda.

Ordinance 2005.22 inserted "after the vote fails to pass the consent agenda" for "thereafter"

G. In formulating the agenda, items for which there is attendance of speakers, presenters or members of the public, may be placed higher on the agenda to allow those individuals to leave after the item is completed.

2-4-3 Duties at meetings

A. The mayor shall be the presiding officer of the council and the committee chairman shall be the presiding officer of the committee. If the mayor is absent, the vice mayor shall be the presiding officer until the return of the mayor. If both the mayor and vice mayor are absent, the town clerk shall call the meeting to order and a temporary presiding officer shall be elected by a majority of

those council members present, and that person shall serve until the return of the mayor or vice mayor. Upon the return of the mayor or vice mayor, the temporary presiding officer shall relinquish the chair when the business immediately before the council is completed. The word "mayor" as used in this section shall mean the presiding officer of the meeting.

B. The mayor shall call the meeting to order, and lead or designate the leading of the pledge of allegiance and, if desired, an invocation/moment of silence. The mayor shall preserve strict order and decorum at all regular and special meetings of the council. The mayor may move, second and debate from the chair, subject only to those limitations of debate imposed on all members. The mayor shall not be deprived of any of the rights and privileges of a council member.

Ordinance 99.32 inserted the words "if desired" before "an invocation/moment of silence" in paragraph B

C. The town clerk shall take the roll call. The town clerk shall announce each agenda item, reading into the record the item as listed on the agenda, sufficiently to advise the council and public as to what business is about to be considered by the council. The town clerk shall also read motions into the record as set forth in this section and perform other duties as set forth in this section or as directed by the mayor.

D. The mayor may appoint a sergeant-at-arms at the council meetings, who shall carry out all orders and instructions given by the mayor for the purpose of maintaining order and decorum at the council meeting. Upon instructions of the mayor, it shall be the duty of the sergeant-at-arms to remove any person who violates the order and decorum of the meeting, as set forth below.

2-4-4 Procedures for meetings

The following procedures will generally apply to all regular town council meetings. For special meetings, study sessions and other meetings, such as joint meetings with other entities, retreats, subcommittee meetings, and task force meetings, relaxed procedures may be used which exclude any unnecessary items, as long as all procedures comply with the open meeting law.

Ordinances 2012.09 and 99.32 revised the unnumbered introductory paragraph of section 2-4-4

A. Call to order: the mayor shall call the meeting to order.

B. Pledge of allegiance: the mayor or his or her designee shall lead the pledge.

C. Invocation/moment of silence: if desired, the mayor or his/her designee shall lead the invocation/moment of silence.

Ordinance 99.32 added the words "if desired" to paragraph C

D. Roll call: roll shall be called by the town clerk. Any absence which has been explained to the mayor, town manager, or town clerk in advance shall constitute an "excused absence", and any absence which has not been explained in advance shall be an "unexcused absence". At the time of taking roll, the mayor shall place into the record whether a council member's absence is "excused" or "unexcused".

E. Approval of agenda: the council shall vote to approve the agenda as written, or shall modify the agenda by moving items or deleting items, and shall approve the modified agenda. The council may, by majority vote, delete agenda items or consider items out of sequence from the printed agenda, so long as public notice is adhered to.

Ordinance 99.32 deleted two sentences from the end of paragraph E restricting an item from being considered again at the same meeting in some situations

F. Approval of minutes: the town clerk shall present minutes of previous meetings to the council for approval. Council members who were not present at a previous meeting may abstain from the vote approving those minutes, although this is not required. The council may approve multiple minutes by one vote, and if one or more council member expressed a desire to abstain from the vote on one set of minutes, the motion may be to approve the minutes "except as noted by council member(s) _____". Minutes may be considered as part of the consent agenda.

Ordinance 99.32 added the words "of previous meetings" and "although this is not required" and inserted "may" for "shall" in paragraph F. Ordinance 2005.22 added the last sentence.

G. Call to the public: persons wishing to address the council on any issue within the jurisdiction of the council, except for items scheduled for a public hearing at the same meeting, may do so during the call to the public. Each speaker is limited to three minutes. The mayor or council may limit the total time offered speakers. At the conclusion of call to the public, individual members of the council may respond to criticism made by those who have addressed the council, may ask staff to review the matter or may ask that the matter be placed on a future agenda.

Paragraph G was amended by Ordinances 2012.09, 2000.21, and 99.32

H. Staff reports: a council member may ask a staff member about a particular issue in his or her report, but discussion of any item mentioned in a staff report may not be held unless that item is properly placed on the agenda.

Ordinance 99.32 deleted the words "a general" before "discussion" in paragraph H

I. Order of business: the town clerk, if directed by the mayor, shall announce each order of business, and the mayor shall then ask the council its pleasure on the item. A motion need not be made in order for an item to be discussed. Unless the council determines that no report is necessary, staff shall have an opportunity to report on the issue and will respond to council questions. The council may take action on any item listed on the agenda, and at any time that agenda item is before the council a motion may be made as provided in this chapter.

J. Town manager's and mayor's reports: the town manager's and the mayor's reports may be written or oral. Any council member may ask the town manager or mayor about a particular item in his or her report, but discussion of any item mentioned in the report may not be held unless that item is properly placed on the agenda.

Ordinance 99.32 deleted the words "a general" before "discussion" and made other minor wording revisions in paragraph J

K. Future agenda items: any council member may request that an item be placed on a future agenda. If any other council member agrees, he or she will show his or her support. Any item which is suggested and has support from at least two other council members must be scheduled for the second regular town council meet-

Ordinance 99.32 inserted "must be scheduled" in place of "will be scheduled" and "suggested item" for "item which is suggested" in paragraph K

ing following that meeting unless otherwise provided, and any suggested item which does not receive support from at least two other council members may be placed on a future agenda at the discretion of the mayor or the agenda committee.

2-4-5 Executive sessions

A. Executive sessions may be placed on an agenda under the same circumstances as any other agenda item; however, approval of the town attorney of all executive sessions shall be required to assure compliance with the open meeting law. Executive sessions may only be placed on the agenda if the issue is allowed to be considered in an executive session pursuant to A.R.S. § 38-431.03.

B. Under normal circumstances, executive sessions will be attended by the mayor and council, town manager, town attorney and town clerk. The mayor may direct or a majority of the council may vote to have other individuals attend the executive session.

Ordinance 99.32 inserted "will" for "shall" in the first sentence and added "The mayor may direct or" at the beginning of the second sentence of paragraph B

C. Executive sessions are not to be recorded, but the town clerk or another individual appointed by the mayor shall take written minutes of executive sessions to document the nature and extent of the discussions. All minutes of executive sessions shall be sealed and retained by the town clerk. Only those individuals who were present at a particular executive session or others specifically permitted by law may review the minutes of that session.

Ordinance 2005.22 deleted "tape" before "recorded" and inserted "the Town clerk or another" for "an" in the second clause of paragraph C" Ordinance 99.32 inserted "or others specifically permitted by law" in paragraph C

2-4-6 Public hearing procedure

A public hearing may be placed on the agenda under the same agenda item as the discussion and action of the council. The normal procedure for public hearings shall be as set forth below.

Ordinance 2005.22 inserted "below" for "hereafter" in the introductory paragraph

A. Calling agenda item: The agenda item shall be called by the town clerk as any other agenda item.

B. Declaration of public hearing: the mayor shall declare that the council is now in public hearing.

C. Proponent presentation: the proponent may make an opening statement to explain the item to the council and public. The mayor or council may limit the time for this statement as necessary.

D. Staff report: staff shall have an opportunity to report on the issue and answer questions by the council.

E. Written comments: written communications filed with the town or staff shall be presented to the council or read into the record.

F. Public comments: testimony from members of the public shall be permitted. Members of the public shall be limited to five minutes per person, or less as designated by the mayor or council. The total time allotted to the public on any issue may be limited by the mayor or council, but in no event will the public testimony be limited to less than one hour.

G. Council discussion: discussion by council members may be held at this time, or reserved until the council has come out of public hearing.

H. Proponent closing statement: the proponent may be allowed a brief closing statement to rebut the statements made by the public, to offer a compromise, or to otherwise address the issue.

Ordinance 99.32 inserted "may" for "shall" in paragraph H

I. Declaration of end of public hearing: Unless a majority of the council members object, the mayor shall declare the termination of the public hearing.

Ordinance 99.32 inserted "the termination of the public hearing" for "public hearing as ended" in paragraph I

J. Council discussion and vote: the agenda item will then be discussed and action taken as on any other agenda item.

2-4-7 Discussion and voting procedure

A. A quorum must be present in order for the council to consider or act upon any business. A quorum shall consist of a majority of the members of the council, excluding vacancies. If a quorum is not present, the meeting shall be called to order, and the only motion that can be made, considered and passed is a motion for adjournment.

Ordinance 99.32 inserted "A quorum must" in place of "It will be necessary for a quorum to" and added "excluding vacancies" in paragraph A

B. Each council member has a responsibility for compliance with A.R.S. § 38-501 *et seq*., concerning conflicts of interest. Any member of the council who believes he or she has a conflict of interest, shall, immediately upon determining that a conflict exists, declare the conflict of interest and explain the basis for the conflict. That council member may then leave the room and shall refrain from taking any part in the meeting, discussion, consideration or determination of that issue. If that issue is not resolved at that meeting, that council member shall not discuss the matter with any other council member until the matter is finally resolved. The member who declared the conflict may return to his or her seat when that agenda item is completed.

Ordinance 99.32 inserted "may then leave" for "shall then leave" in paragraph B

C. Every council member desiring to speak shall address the mayor, and upon recognition by the mayor, shall confine himself or herself to the question under debate, avoiding all personalities and indecorous language.

D. A council member, once recognized, shall not be interrupted when speaking unless it is to call him or her to order. If a council member, while speaking, is called to order, he or she shall cease speaking until the question of order is determined, and, if in order, he or she shall be permitted to proceed.

E. While the council is in session, the council members must preserve order and decorum. A member shall not, by conversation or otherwise, delay or interrupt the proceedings or the peace of the council or disturb any member while speaking or refuse to obey the orders of the council or mayor, except as otherwise provided in this title.

F. If a person in the audience wishes to address the council on an issue on the agenda which is not a public hearing, the mayor may permit the person to speak or may present the request to the council. If a majority of the council wishes to hear from the public on the issue, that person shall be permitted to speak; however, any public address shall be limited to five minutes per person and as otherwise restricted by the mayor or council. Written communications delivered to the mayor before the agenda item was called will either be read into the record or a copy delivered to each council member.

Ordinance 99.32 inserted "may permit the person to speak or may" for "shall," "five minutes" for "three minutes," and deleted "by the mayor" after "into the record" in paragraph F

Ordinance 2005.22 rewrote the last sentence of paragraph F

G. Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous while addressing the council, or who interferes with the order of business before the council, and who fails upon request of the mayor to cease that activity, shall be barred from further audience before the council for the remainder of that meeting unless permission to continue is granted by a majority vote of the council.

H. A motion shall be made by beginning the statement with words such as, "I move that...." A motion must be stated clearly, and specifically state the contents of the motion. There can be no discussion after a motion is made until there is a second or the motion dies for lack of a second. If there is not a second, the mayor shall announce that the motion failed for lack of a second, and the discussion may continue, or the council may move on to the next agenda item.

I. After the motion is made and seconded, the town clerk should read back the motion from the official record. The mayor may then call for discussion.

Ordinance 99.32 inserted "should" for "shall" and "may" for "shall" in paragraph I

J. At any time before the question is called on a pending motion, the council member who made the motion may ask that his or her motion be amended. At the time of the amendment, he or she shall clearly state the amendment, and the amendment shall be read back by the town clerk. If the council member who seconded the vote agrees, then the motion shall be considered amended voluntarily.

Ordinance 99.32 amended paragraphs J and K by deleting a sentence at the end of each that stated: "No more than one amendment to an amendment shall be permitted."

K. At any time before the question is called on a pending motion, a council member may make a motion to amend the motion. At that time the discussion of the underlying issue will stop. If there is no second to the motion to amend, then discussion on the underlying issue will continue. If there is a second to the motion to amend, then all discussion will be confined to the motion to amend, and there shall be a vote on the motion to amend. If the motion to amend is adopted by a majority of the council, discussion will continue on the motion as amended. If the motion to amend fails, discussion will continue on the original motion on the floor.

L. At any time before the question is called on a pending motion, the council member who made the motion may ask that his or her mo-

tion be withdrawn. The motion will be withdrawn only if the council member who seconded the motion agrees with withdrawal of the motion.

M. Discussion shall end when the question is called or when the mayor determines there is no further discussion desired by any council member. The mayor shall direct the town clerk to read the motion, and the town clerk shall read the motion as made or amended. The only persons who can object to the form of the motion at this time are the council members who made and seconded the motion. If there is a conflict as to whether the motion as read is the motion as intended, the matter will revert to further discussion until the discrepancy is corrected.

N. The mayor shall ask council members to designate their individual votes by announcing "aye" or "nay." If, prior to the vote or after the vote, any council member requests a roll call vote, the town clerk shall call roll, and each council member shall state his or her vote aloud.

Ordinance 99.32 inserted "their" for "his or her" in the first sentence of paragraph N

O. After the vote, the town clerk shall announce whether the motion failed or passed. If the vote was unanimous the town clerk shall so state, and if it was not, the town clerk shall state the individual votes for the record, stating the number of "aye" and "nay" votes. If any council member disagrees with the vote as read back by the town clerk, he or she shall immediately request a clarification or roll call vote. After the town clerk reads back the individual votes, silence by any council member displays his or her agreement with the vote as read.

P. A motion passes if it receives more "aye" votes than the combined number of "nay" votes plus the number of council members abstaining from voting on the motion, except for abstentions based on conflict of interest. In the case of a tie on any motion, the motion fails.

Ordinance 99.32 amended paragraph P by adding the first sentence, and deleted former paragraph Q defining "Emergency." Ordinance 2005.22 rewrote paragraph P.

2-4-8 Motions to reconsider

A. Reconsideration of any action taken (or not taken) by the town council may be requested only by a council member who was on the prevailing side of the vote. Such a council member may request that the issue of reconsideration be placed on the agenda for discussion and possible action, although this request must be made prior to the start of the next regular town council meeting following the meeting at which the action was taken. If such a request is made, reconsideration will be placed on the agenda for the second regular town council meeting following the meeting at which the original action was taken. The agenda will list reconsideration of the vote as one item, and the re-vote on the issue as a separate item.

B. When that agenda item is called, the council may discuss the reconsideration, but a motion to reconsider may only be made by a council member who voted with the prevailing side of the vote. A

Ordinance 2005.22 rewrote paragraph B

motion to reconsider may be seconded by any council member. The discussion and vote of the motion to reconsider shall be as for any other business before the council.

C. If the motion to reconsider fails, the council will skip the discussion and vote of the original issue. If the motion to reconsider passes, the council will discuss and vote on the original issue as for any other business before the council, and any council member may make motions on the original issue.

Ordinance 2005.22 rewrote paragraph C

CHAPTER 2-5. ORDINANCES, RESOLUTIONS AND CONTRACTS

2-5-1 Prior approval

Before presentation to the council, all ordinances, resolutions and contract documents shall have been reviewed as to form by the town attorney and shall, when there are substantive matters of administration involved, be referred to the person who is charged with the administration of the matters. That person shall have an opportunity to present his or her objections, if any, prior to the passage of the ordinance, resolution or acceptance of the contract.

2-5-2 Introduction

Ordinance 99.32 amended section 2-5-2 by inserting "Town" in four places and deleting the words "otherwise, they shall not be considered" at the end of the paragraph

Ordinances, resolutions, and other matters or subjects requiring action by the council shall be introduced and sponsored by a member of the council, except that the town attorney or the town manager may present ordinances, resolutions and other matters or subjects to the town council, and any member of the town council may assume sponsorship of them by moving that the ordinance, resolution, matter or subject be adopted.

2-5-3 Reading of proposed ordinance

Ordinances shall be read, prior to adoption, but may be read by title only, provided that the council is in possession of printed copies of the ordinance. A member of the council may request that the ordinance under consideration be read in full, and in that case the ordinance shall be read in full.

2-5-4 Requirements for an ordinance

Each ordinance should have but one subject, the nature of which is clearly expressed in the title. Whenever possible, each ordinance shall be introduced as an amendment to this code or to an existing ordinance, and, in that case, the title of the sections to be amended shall be included in the ordinance.

2-5-5 Effective date of ordinances, resolutions and franchises

Section 2-5-5 was rewritten by Ordinance 99.32. Ordinance 2010.06 modified the title to add "resolutions and franchises" and modified paragraph A to add "which is subject to voter referendum"

A. No ordinance, resolution or franchise which is subject to voter referendum shall become operative until 30 days after its passage by the council, except measures immediately necessary for the preser-

vation of the peace, health or safety of the town. Such an emergency measure shall only become immediately operative if it states in a separate section the reason why it is necessary that it should become immediately operative and only if it is approved by the affirmative vote of three fourths of all the members elected to the council.

B. In addition to the provisions of subsection A of this section, the town clerk shall certify the minutes of any council meeting at which an ordinance, resolution or franchise, except an emergency measure, is passed.

2-5-6 Signatures required

Every ordinance passed by the council shall, before it becomes effective, be signed by the mayor, attested by the town clerk, and acknowledged that it has been approved as to form by the town attorney.

2-5-7 Publishing required

Only those orders, ordinances, resolutions, motions, regulations or proceedings of the council shall be published as may be required by state statute or expressly ordered by the council.

2-5-8 Posting required

Every ordinance imposing any penalty, fine, forfeiture or other punishment shall, after passage, be posted by the town clerk in three or more public places within the town and an affidavit of the person who posted the ordinance shall be filed in the office of the town clerk as proof of posting.

CHAPTER 2-6. SPECIAL AND STANDING BOARDS, COMMISSIONS AND COMMITTEES

2-6-1 Creation and dissolution

A. The council may create and dissolve those special and standing boards, commissions or committees as it deems necessary upon a majority vote of the council, except as otherwise provided in this code or as required by statute.

B. Unless already prescribed elsewhere in the applicable law, the motion or resolution creating a board, commission or committee shall describe its powers and purpose and establish the number and qualifications of its membership.

C. The motion or resolution creating a special board, commission or committee may provide for its dissolution after a period of time or upon completion of its assigned task.

D. The board, commission or committee shall exercise its powers and purpose with respect to matters within or affecting the jurisdictional boundaries of the town, unless the motion or resolution creating the board, commission or committee provides otherwise.

2-6-2 Application, recommendation, appointment and removal

Ordinance 2009.18 substantially rewrote section 2-6-2. See Ordinance 96.13, 99.32, 2006.25 and 2008.15 for prior history.

A. Except for the initial appointment of a new board, commission or committee, the council shall establish a regular schedule for appointment and reappointment of board, commission or committee members.

B. The town manager and/or designee shall be responsible for developing an application process, application forms and management of the recruitment process for vacancies that exist on boards, commissions or committees established by the town council. The recruitment and application process developed by the town manager or designee shall include a public announcement and invitation for applications and establish a minimum timeframe for receipt of applications. If the minimum number of applications needed is not received by the established deadline the town manager or designee shall continue to receive applications until enough have been received to fill the vacancy or vacancies.

C. The town manager and/or designee shall review the applications, investigate the qualifications of the applicants, and forward all applications to the town council.

D. The town council shall receive the applications at a public meeting not more than thirty days after the town manager's (or designee's) receipt of the applications. The town clerk shall mail each citizen applicant notice of the public meeting concerning the appointment.

E. At the public meeting concerning the appointment, the town council may do one or more of the following:

1. Interview one or more applicants either in public or in an executive session scheduled for that purpose.
2. Make one or more appointments.
3. Order the solicitation of additional applications.
4. Take any other action it deems appropriate.

F. Citizen members of boards, committees and commissions shall serve without compensation, except for reimbursement of town-approved necessary and reasonable expenses incurred in accomplishing the purposes of the board, committee or commission.

G. A member of any board, commission, or committee may be removed from office with or without cause by a majority vote of the town council.

2-6-3 Terms of office

Section 2-6-3 was added by Ordinance 2006.25 and revised by Ordinance 2008.15, 2009.18, and 2011.28

A. All terms of office for members of standing boards, commissions and committees shall be for four years, except that the initial terms of office for members of any new standing board, commission or committee shall be staggered so that the terms of no more than a simple majority of members ends every two years.

B. The terms of office for members of any special boards, commissions and committees shall be as determined by the town council based on the purpose of the special board, commission or committee. The motion or resolution creating the special board, commission or committee shall establish the terms of office for its members.

2-6-4 Modification by motion or resolution

Section 2-6-4 was added by Ordinance 2006.25

The town council may by motion or resolution modify any of the procedures set forth in this chapter where it deems appropriate for a particular vacancy, board, commission or committee.

2-6-5 Applicability of this chapter

Section 2-6-5 was added by Ordinance 2006.25

Except as they may later be modified by motion or resolution pursuant to section 2-6-4, the procedures set forth in this chapter shall apply to all new or existing boards, commissions and committees.

CHAPTER 2-7. [RESERVED]

CHAPTER 2-8. [RESERVED]

CHAPTER 2-9. [RESERVED]

Ordinance 2006.25 deleted chapters 2-7 ("special committees"), 2-8 ("planning and zoning commission"), and 2-9 ("board of adjustment")

CHAPTER 2-10. INDEMNIFICATION OF OFFICERS AND EMPLOYEES

2-10-1 Persons covered

Section 2-10-1 was rewritten by Ordinance 99.32

All of the protections and benefits conferred by this chapter shall be enjoyed by any present or former mayor and each and all of the present or former members of the council, town officers, town magistrates, town employees, and all members of all town boards, committees, subcommittees, advisory committees and commissions which protected parties are referred to individually as a "town officer" and collectively or jointly as "town officials."

2-10-2 Indemnification and protection of town officials

A. Any town officer and all town officials shall be exonerated, indemnified and held harmless by the town from and against any liability or loss in any manner arising out of, or occasioned by, his or her service as a town officer or official and based upon any claim by any third party that the town or any town officer or official, by any action or failure to act, damaged the property or infringed the rights of that third party, or of any other person on whose behalf that third party brings a claim or legal action, provided the officer or official acted, or failed to act, in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the town.

B. The right to indemnification provided for in subsection A of this section shall extend as well to any claim brought by, or on behalf

of, the town to recover damages alleged to have been occasioned to it or any of its property, by any act or failure to act of any town officer or official, except that no indemnification or exoneration shall be made in respect of any claim, issue or matter as to which the town officer or official shall have been adjudged to be liable to the town unless and only to the extent that the court in rendering judgment determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, the officer or official is fairly and reasonably entitled to indemnity for those expenses as the court may deem proper. The court in which any such action or suit was brought may determine upon application that, in view of all of the circumstances of the case, indemnity for amounts paid in settlement is proper and may order indemnity for the amount so paid in settlement.

C. In any case where indemnification is required under the provisions of subsections A or B of this section, the town treasurer shall pay, on behalf of the town officer or official, any money judgment and shall perform the onerous provisions of any court order which may be entered against him or her when the judgment or order has become final and no longer appealable, or has not been stayed pending appeal.

D. In any case where any town officer or official is or may be entitled to be exonerated, indemnified and held harmless pursuant to the provisions of subsection A of this section, the town shall protect and defend the officer or official from and against any litigation commenced against him or her, by engaging and compensating competent legal counsel to conduct his or her defense, and by paying all court costs and any fees of opposing legal counsel taxed or imposed by the court having jurisdiction.

E. In any case where any town officer or official is or may be entitled to be exonerated, indemnified and held harmless pursuant to the provisions of subsection B of this section, the town shall pay the expenses, including attorneys' fees and the cost of a bond or other security pending appeal, incurred in defending the civil action, suit or proceeding by the officer or official in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the town officer or official to repay that amount if it is ultimately determined that he or she is not entitled to be indemnified by the town as authorized in subsection B of this section.

F. The coverage afforded by this section shall not apply in any case where indemnification is not permissible pursuant to any state statute or any determination that the indemnification would be contrary to public policy.

2-10-3 Insurance coverage

The town shall at all times procure insurance policies providing the maximum coverage and limits procurable at reasonable rates to pro-

tect its interests and to indemnify and protect all town officials and any town officer entitled to indemnification and protection pursuant to this chapter. Acceptance of coverage and undertaking of protection by any insurance carrier shall be deemed to satisfy the requirements of this chapter on the part of the town. however, in any case or instance where an insurance carrier does not in fact accept coverage and defend any town officer or officials, or where the insurance policy limits are insufficient to cover any judgment entered against any town officer or officials, the town shall be bound by the provisions of this chapter to protect and indemnify pursuant to the provisions of section 2-10-2.

2-10-4 Notice of claims

Ordinance 99.32 amended section 2-10-4 by deleting "together with such Town officer's or official's request for indemnity and protection hereunder" from the end of the first sentence. The wording of this section was simplified by Ordinance 2005.22.

It shall be a precondition to the assertion of any claim for protection and indemnity under this chapter that any town officer or officials, after having been served with process commencing litigation against him, her or them, or after having received written notice of a possible claim alleged to be covered under the provisions of section 2-10-2 A or B, shall promptly give notice to the town clerk that the action is pending or that a claim has been presented. The town clerk shall in turn present the action or claim to the council. It shall further be a precondition to coverage under this chapter 2-10 that a town officer or official claiming the protection and benefits conferred by this chapter shall at all times, and in every way, cooperate fully with legal counsel appointed by the town to defend against any threatened or pending litigation under the provisions of section 2-10-2 D.

Title 3

Administration

3

TITLE 3. ADMINISTRATION

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CHAPTER 3-5. CLAIMS AND SETTLEMENT 3-17

TITLE 3. ADMINISTRATION

Title 3 was adopted by Ordinance 2000.07. Earlier versions were adopted by Ordinance 96.14 and 98.22.

CHAPTER 3-1. OFFICERS AND EMPLOYEES

Ordinance 2014.018 changed the title of chapter 3-1. Section 3-1-1 was amended by Ordinances 2005.22, 2006.14, and 2014.018. Ordinance 2005.22 added "assistant town manager" and combined "town clerk" and "town marshal." Ordinance 2006.14 added "deputy town manager" and deleted "town marshal." Ordinance 2014.018 revised the wording of paragraph A and added subparagraphs 7, 8, and 9.

3-1-1 Town officers

A. There are hereby created, in addition to the mayor and town council members, the following officers of the town. An officer is defined as an employee who holds an office of trust, command and authority, and who is part of a responsive management team that exists to carry out the goals and policies of the town.

1. Town manager
2. Deputy town manager
3. Assistant town managers
4. Town clerk
5. Town engineer
6. Town attorney
7. Department heads
8. General managers
9. Such other officers as from time to time may be provided for by ordinance or resolution

B. These officers shall be appointed from time to time as set forth in this code.

Section 3-1-2 was revised by Ordinances 2000.20, 2001.06, 2001.08, 2003.13, 2006.14, 2011.03, and 2014.018, reflecting various changes in administrative positions, how they are appointed, and to whom they report

3-1-2 Positions appointed by the town council, town manager, deputy town manager, assistant town managers, general managers & department heads; definition

A. The position of town manager shall be appointed from time to time by the town council, and shall be employed at the will of the town council. This position shall have no term of office, shall be at-will, and shall report directly to the town council. The town manager's employment shall be governed by the terms set forth in this title and in any employment agreement approved by the council.

B. The town magistrate shall be appointed by the town council in accordance with section 5-2-1. The town magistrate's employment shall be governed by the terms set forth in this title and in any employment agreement approved by the council.

C. The following positions shall report to the town manager, shall be appointed from time to time by the town manager, shall have no term of office, shall be at-will, and shall work at the pleasure of the town manager.

1. Deputy town manager
2. Assistant town managers
3. Town attorney

D. All other officers shall report to the town manager, except that the town manager may designate in writing that an officer shall report to the deputy town manager, an assistant town manager, a general manager or a department head. The town manager serves as the department head for the town manager's office. Each officer shall be appointed from time to time by the town manager, shall have no term of office, shall be at-will, and shall work at the pleasure of the town manager.

E. All other positions in the town shall be hired by the general manager or department head, with the approval of the town manager, deputy town manager or assistant town manager to whom the general manager or department head reports, and shall work at the pleasure of the town manager, the general manager or department head, as provided in this code and the town personnel policies.

F. For purposes of this chapter, "at-will" means employment that may be terminated upon the will of the employer or employee at any time with or without cause.

3-1-3 Position status

Section 3-1-3 was amended by Ordinances 2000.20, 2001.08, 2003.13, 2005.22, 2006.14, 2008.19, 2011.03, 2011.14, 2013.015, and 2014.018

All positions in the town are categorized as classified, unclassified, or temporary positions. The extent to which certain personnel policies, rules or provisions apply to particular positions will depend upon the categorization of the position.

A. Classified positions. All positions not specifically identified in the salary schedule implemented by the town manager as unclassified or temporary positions shall be classified positions. Different rules and policies, however, may be established for different groups of classified positions.

   1. Notwithstanding paragraph A above, an employee may be hired in a classified position, but on a temporary basis. When this occurs, the employee will be considered to be in a temporary position, and will be subject to the policies, rules, and regulations governing temporary positions.

B. Unclassified positions. All town officers shall be in unclassified positions. Any other unclassified positions shall be identified as such in the salary schedule implemented by the town manager. Employees in unclassified positions are at-will employees. Employees in unclassified positions shall receive all benefits afforded to classified employees, except those specifically excluded by this code or by town personnel policies.

C. Temporary positions. This category of employment is comprised of term-limited temporary positions and short-term temporary positions. Employees in temporary positions are at-will employees. Temporary positions shall be identified as such in the salary schedule implemented by the town manager. Additionally, an employee will be considered to be in a temporary position when the

employee is hired in a classified position, but on a temporary basis, as set forth in this section.

1. Term-limited temporary positions. Term-limited temporary positions are positions with work related to a specific grant, project, or other significant or substantial non-routine body of work, for a term of six to 36 months. The town manager or designee shall determine when a position may be designated as a term-limited temporary position in accordance with this section. Employees in term-limited temporary employees shall receive any general salary increases that may be granted from time to time and shall receive all benefits afforded to classified employees, except those specifically excluded by this code or by town personnel policies.

2. Short-term temporary positions. Short-term temporary positions are positions used to augment the workforce due to seasonal and other specific temporary workload needs that require additional staffing. Employees in short-term temporary positions shall work for a time period that does not exceed six months or 1040 hours in a rolling 12-month period. The town manager or designee shall determine when a position may be designated as a short-term temporary position in accordance with this section. Employees in short-term temporary positions may not receive all general salary increases granted to town employees from time to time and shall not receive benefits provided to other employees of the town, unless specifically stated otherwise in this code or in the town's personnel policies.

3-1-4 Non-employee positions

Section 3-1-4 was amended by Ordinances 2008.19 and 2014.018

The following positions are not considered to be employment positions:

A. All elected officials and members of boards, committees, and commissions

B. Volunteer personnel and personnel appointed to service without pay

C. Those engaged by the town on a contractual basis

3-1-5 Compensation and benefits

Section 3-1-5 was amended by Ordinance 2014.018

The compensation and benefits of town employees shall be as fixed from time to time by the town council through adoption of the annual budget.

3-1-6 Bond

The town council shall require each officer of the town to furnish bond for the due discharge of his or her duties in an amount and with that security as it may direct and approve as determined by resolution. The town shall pay the costs of the bond. At the discretion of the town

council, the bond may be in the form of a blanket bond with coverage the council deems necessary.

3-1-7 Vacancies; holding more than one office

Any vacancy that shall occur in any town position shall be filled by appointment of the appointing authority (town council, town manager, or department head). One person may hold more than one position and the functions of a town official may be validly performed and discharged by a deputy or another town official, or an otherwise qualified individual not holding elected office, but employed at the pleasure of the town council.

3-1-8 Additional powers and duties

In addition to any powers and duties prescribed in this code, each employee shall have those further powers, perform those further duties and hold any other office as may be provided by that employee's direct supervisor.

CHAPTER 3-2. ESTABLISHMENT, COMPENSATION, AND POWERS AND DUTIES OF TOWN OFFICERS

The title of chapter 3-2 was revised by Ordinance 2014.018

3-2-1 Town manager

Section 3-2-1 was revised by Ordinances 2000.20, 2003.13, 2005.22, 2006.14, and 2014.018

A. Office established. The position of town manager is hereby created and established. The town manager shall be appointed by a majority of the town council on the basis of his or her executive and administrative qualifications and his or her knowledge of accepted practice in respect to the duties of the office as set forth below. The town manager shall serve at the pleasure of the town council.

B. Ineligibility of town council member. No town council member shall be appointed town manager during the term for which he or she has been elected to the town council.

C. Temporary absence. During the temporary absence or disability of the appointed town manager, the deputy town manager shall perform the duties of town manager. If the deputy town manager is absent, unable or unwilling to perform the duties of town manager, the town council shall designate an assistant town manager to perform the duties of town manager.

D. Permanent absence. If a town manager is not employed by the town for any period of time due to resignation, discharge, or for any other reason, all duties designated in this code to the town manager shall be performed by the deputy town manager or any individual selected by the town council.

E. Removal from office. The town manager may be removed by the town council by a majority of its members. The town manager must give 30 days written notice of his or her intention to resign, provided that the town council, upon a majority vote of its members, may waive this requirement.

F. Compensation. The town manager shall receive such compensation as the town council shall from time to time determine and fix by ordinance, resolution or motion, and the compensation shall be a proper charge against those funds of the town as the town council shall designate. The town manager shall be reimbursed for all sums necessarily incurred or paid by him or her in the performance of his or her duties, or incurred when traveling on business pertaining to the town as approved by the town council by the adoption of its budget. Reimbursement shall be made only when a verified itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented.

G. Powers and duties. Except as otherwise provided in this code, the town manager shall be the chief administrative officer and head of the administrative branch of the town government and shall be responsible to the town council for the proper administration of all affairs of the town. In addition to the general powers as the chief administrative officer and not as a limitation on them, it shall be the town manager's responsibility and authority to perform the following:

1. The town manager shall execute, on behalf of the town council, general administrative supervision and control of the affairs of the town;

2. The town manager shall attend all meetings of the town council with the duty of reporting on or discussing any matter concerning the affairs of the departments, boards, commissions, committees, services or activities under his or her supervision, upon which the town council should be informed. Exceptions to attending meetings of the town council may be granted upon written request by the town manager and approval by the mayor;

3. Pursuant to the provisions of section 3-1-2, the town manager shall appoint and, when necessary, suspend or remove the appointive officers and employees set forth in section 3-1-2. All appointments and removals shall be based upon merit and upon the qualifications or disqualifications of the officer or employee without regard to any political belief or affiliation, and in coordination with the appropriate department head. The power of appointment, suspension or removal of the town magistrate shall be expressly reserved to the town council;

Ordinance 2003.13 amended paragraph 3 by inadvertently deleting all but the first sentence. Ordinance 2005.22 restored the second and third sentences but removed "town attorney and" before "town magistrate" to conform to the establishment of the town attorney as a town manager-appointed officer under Ordinance 2003.13.

4. The town manager shall coordinate the administrative functions and operations of the various departments, boards, commissions, committees, divisions and services of the town government, and on its behalf carry out policies, rules, regulations and ordinances adopted by it, relating to the administration of the affairs of the various departments, boards, commissions, committees, divisions or services;

5. The town manager shall cause to be prepared and submitted to him or her by each department, board, commission, committee, division or service of the town government, itemized annual estimates of expenditures required by them for capital outlay, salaries, wages and miscellaneous operating costs, tabulate the same into a preliminary consolidated municipal budget and submit the same to the town council annually on the date specified by it, with his or her recommendations as to any increases, decreases, cancellations, transfers or changes in any of the items included in the preliminary budget;

Ordinance 2005.22 amended paragraph 6 to delete reference to the town manager as purchasing director, to conform to Ordinance 2002.22

6. The town manager shall supervise the expenditures of all departments, divisions or services of the town government;

7. The town manager shall analyze and supervise the functions, duties and activities of the various departments, boards, commissions, committees and services of the town government and all employees of the town;

8. The town manager shall develop and organize necessary improvement projects and programs and aid and assist the town council and the various departments, boards, commissions and committees in carrying them through to a successful conclusion;

9. The town manager shall serve as public relations officer of the town government, and follow through and endeavor to adjust all complaints filed against any employee, department or service of the town to the end. The town manager shall make every effort to satisfy all residents that their town government is being operated on their behalf with the highest degree of efficiency;

10. The town manager shall cooperate with all community organizations whose aims and purposes are to advance the interests of the town and its residents and provide them with all reasonable assistance obtainable through the town government within the limitations of the law;

11. The town manager shall make and keep an up to date inventory of all personal property owned by the town and recommend to the town council the purchase of new machinery, equipment and supplies whenever, in his or her judgment, the same can be obtained at the best advantage, taking into consideration trade in value of machinery, equipment, etc., in use;

12. The town manager shall make, or cause to be made, studies and surveys of the duties, responsibilities and work of the personnel in the various departments and services of the town government and recommend to the town council the appropriate level of budgetary positions and staffing through the annual budget adoption process. The town manager shall implement a pay structure or salary schedule for all positions in the

town which is consistent with approved budget capacity and authority and with the provisions of this title;

13. The town manager shall, in cooperation with the police department, see that all laws and ordinances of the town and the state are duly enforced;

14. The town manager shall devote his or her entire work effort to the discharge of his or her official duties. Exceptions to this requirement may be granted by the town council acting upon a written request from the town manager;

15. The town manager shall perform any other duties as may be required of him or her by the town council, not inconsistent with the laws of the state, this code or the ordinances of the town.

H. Limitations upon responsibility. The town manager shall not exercise any policy-making or legislative functions whatsoever, or attempt to commit or bind the town council or any council member to any action, plan or program requiring official action of the town council. It is not intended by this chapter to grant any authority to, or impose any duty upon, the town manager which is vested in or imposed by general law or town ordinances in any town commission, board, officer or employee except as specifically set forth in this code.

I. Conduct. In the discharge of his or her duties, the town manager shall at all times endeavor to exercise the highest degree of tact, patience, integrity and courtesy in his or her contact with the public and with all town boards, departments and employees and shall use his or her best efforts to establish and maintain a harmonious relationship between all personnel employed in the government of the town to the end that the highest possible standards of public service shall be continuously maintained.

3-2-2 Deputy town manager

Section 3-2-2 was added by Ordinance 2006.14

A. Office established. The position of deputy town manager is hereby created and established. The deputy town manager shall be appointed by the town manager and shall perform the duties of the office of the town manager when the town manager is absent and as delegated under the general and specific direction of the town manager from time to time.

B. Compensation. The deputy town manager shall receive such compensation as the town manager shall fix at the time of the deputy town manager's appointment, and the compensation shall be a proper charge against the funds of the town. The deputy town manager shall be reimbursed for all sums necessarily incurred or paid by him or her in the performance of his or her duties, or incurred when traveling on business pertaining to the town as approved by the town council by the adoption of its budget. Reimbursement shall be made only when a verified itemized claim, set-

ting forth the sums expended for which reimbursement is requested, has been presented.

C. Powers and duties. The deputy town manager shall be responsible to the town manager for the proper administration of all affairs delegated by the town manager. During the town manager's absence, the deputy town manager shall perform the duties of the town manager. The town manager may delegate to the deputy town manager any of the town manager's authority, but in no event shall the deputy town manager's authority exceed the town manager's powers and duties set forth in section 3-2-1 H.

D. Limitations upon responsibility. The deputy town manager shall not exercise any policy-making or legislative functions whatsoever, or attempt to commit or bind the town manager or town council or any council member to any action, plan or program requiring official action of the town council. It is not intended by this chapter to grant any authority to, or impose any duty upon, the deputy town manager that is vested in or imposed by general law or town ordinances in any town commission, board, officer or employee except as specifically set forth in this code.

E. Conduct. In the discharge of his or her duties, the deputy town manager shall at all times endeavor to exercise the highest degree of tact, patience, integrity and courtesy in his or her contact with the public and with all town boards, departments and employees and shall use his or her best efforts to establish and maintain a harmonious relationship among all personnel employed in the government of the town to the end that the highest possible standards of public service shall be continuously maintained.

3-2-3 Assistant town manager

Section 3-2-3 was added by Ordinance 2000.20 and amended by Ordinance 2003.13, 2006.14, and 2011.03

A. Office established. The position of assistant town manager is hereby created and established. One or more assistant town managers shall be appointed by the town manager, consistent with budget authority approved by the town council, and shall perform the duties of the office of the town manager as delegated under the general and specific direction of the town manager. At the town manager's discretion, one or more assistant town manager positions may be identified by their specifically delegated responsibilities and not as assistant town manager.

B. Compensation. Assistant town managers shall receive such compensation as the town manager shall fix at the time of appointment of the assistant town manager, and the compensation shall be a proper charge against the funds of the town. An assistant town manager shall be reimbursed for all sums necessarily incurred or paid by him or her in the performance of his or her duties, or incurred when traveling on business pertaining to the town as approved by the town council by the adoption of its budget. Reimbursement shall be made only when a verified itemized claim, set-

ting forth the sums expended for which reimbursement is requested, has been presented.

C. Powers and duties. Assistant town managers shall support the town manager and shall be responsible to the town manager for the proper administration of all affairs delegated by the town manager. The town manager may delegate to an assistant town manager any of the town manager's authority, but in no event shall an assistant town manager's authority exceed the town manager's powers and duties set forth in section 3-2-1 H.

D. Limitations upon responsibility. Assistant town managers shall not exercise any policy-making or legislative functions whatsoever, or attempt to commit or bind the town manager, deputy town manager, town council or any council member to any action, plan or program requiring official action of the town council. It is not intended by this chapter to grant any authority to, or impose any duty upon, an assistant town manager that is vested in or imposed by general law or town ordinances in any town commission, board, officer or employee except as specifically set forth in this code.

E. Conduct. In the discharge of his or her duties, an assistant town manager shall at all times endeavor to exercise the highest degree of tact, patience, integrity and courtesy in his or her contact with the public and with all town boards, departments and employees and shall use his or her best efforts to establish and maintain a harmonious relationship among all personnel employed in the government of the town to the end that the highest possible standards of public service shall be continuously maintained.

3-2-4 Town clerk

Section 3-2-4 was amended by Ordinances 2000.20, 2003.13, 2006.14, 2011.03, and 2014.020

A. Office established. The office of town clerk is hereby created and established. The town clerk shall be appointed by the town manager and shall perform the duties of the office of town clerk under the general and specific direction of the town manager, deputy town manager or assistant town manager to whom he or she reports.

B. Absence of town clerk. In the absence of the town clerk, the town manager or a person designated by the town manager shall be the acting town clerk. The acting town clerk shall have the duties and responsibilities of the town clerk as established by law, this code or other ordinance.

C. Compensation. The town clerk shall receive such compensation as the town manager shall fix at the time of appointment of the town clerk, and the compensation shall be a proper charge against the funds of the town. The town clerk shall be reimbursed for all sums necessarily incurred or paid by him or her in the performance of his or her duties, or incurred when traveling on business pertaining to the town as approved by the town council by the adoption of its budget. Reimbursement shall be made only when a verified itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented.

D. Powers and duties. The town clerk shall have those powers and duties set forth by state law as well as town ordinance, resolution, order or directive. In addition to the powers and duties set forth above, it shall be the town clerk's responsibility and authority to perform the following:

1. The town clerk shall keep a true and correct record of all business transacted by the town council and any other records that either pertain to the business of the town or that the town manager directs. The town clerk shall number, plainly label, and file separately in a suitable cabinet, all resolutions, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders and other documents of whatever nature;
2. The town clerk shall keep convenient for public inspection all public reports and public documents under the control of the town clerk, as provided by state statute;
3. The town clerk shall prepare and collect from town officers and employees monthly reports prepared in the manner and to include the information as directed by the town manager;
4. The town clerk shall prepare or cause to be prepared all minutes of town council proceedings and ensure their correctness and accuracy;
5. The town clerk shall process, record, file, publish and, if required by state statute, post all ordinances, resolutions, budgets and notices that may be passed by the town council;
6. The town clerk shall also be the treasurer of the town, and have the duties and responsibilities as prescribed by state law;
7. The town clerk shall be the town election official and perform those duties required by state statute and as directed by the town council;
8. The town clerk shall issue or cause to be issued all licenses that may be prescribed by state statute, town ordinance or this code, unless the town manager has designated another town employee as the license inspector for certain types of licenses under the provisions of this code;
9. The town clerk shall perform those administrative responsibilities and duties that are conferred upon the town clerk by the town manager in addition to those specified in town ordinances and this code.
10. The town clerk shall be the town marshal and shall perform duties of the town marshal required by law and as the town manager may deem necessary.

3-2-5 Town engineer

Section 3-2-5 was revised by Ordinance 2000.20, 2006.14, and 2011.03

A. Office established. The office of town engineer is hereby created and established. The town engineer shall be appointed by the town

manager and shall perform the duties of the office of town engineer under the general and specific direction of the town manager, deputy town manager, assistant town manager or general manager to whom he or she reports.

B. Compensation. The town engineer shall receive such compensation as the town manager shall fix at the time of appointment of the town engineer, and the compensation shall be a proper charge against the funds of the town. The town engineer shall be reimbursed for all sums necessarily incurred or paid by him or her in the performance of his or her duties, or incurred when traveling on business pertaining to the town as approved by the town manager. Reimbursement shall be made only when a verified itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented and approved by the town manager.

C. Powers and duties. The town engineer shall have those powers and duties set forth by state law as well as town ordinance, resolution, order or directive. Notwithstanding the above, the town engineer shall have charge of the town streets and public works and shall perform those duties as may be required by law and any other duties as the town manager may deem necessary.

3-2-6 Town magistrate

Section 3-2-6 was revised by Ordinance 2000.20.

A. Office established. The office of town magistrate is hereby created and established. The town magistrate shall be appointed by the town council.

B. Absence of town magistrate. In the absence of the town magistrate he or she shall be responsible for providing a judge pro tempore to act as the town magistrate during the absence of the magistrate.

C. Compensation. The town magistrate shall receive such compensation as the town council shall fix at the time of appointment of the town magistrate, and the compensation shall be a proper charge against the funds of the town.

D. Powers and duties. The town magistrate shall be the presiding officer of the municipal court and shall perform those functions necessary to the maintenance of the municipal court as provided by state statute and by title 5 of this code.

References to the municipal court were standardized by authorization of Ordinance 2007.32, Section 2

3-2-7 Town attorney

Section 3-2-7 was amended by Ordinance 2000.20, 2003.13, 2005.22, 2006.14, and 2013.005

A. Office established. The position of town attorney is hereby created and established. The town attorney shall be appointed by the town manager and shall be chosen on the basis of his or her qualifications and knowledge of accepted practice in respect to the duties of the office as set forth in this section, and shall perform the duties of the office of town attorney under the general and specific direction of the town manager.

B. Compensation. The town attorney shall receive such compensation as the town manager shall from time to time determine. The town

attorney shall be reimbursed for all sums necessarily incurred or paid by him or her in the performance of his or her duties, or incurred when traveling on business pertaining to the town as approved by the town manager. Reimbursement shall be made only when a verified itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented and approved by the town manager.

C. Powers and duties.

1. The town attorney is the administrative head of the legal department under the direction and control of the town manager.
2. The town attorney shall act as the legal counselor and advisor of the town council and other town officials, as designated by the town council, and as such shall give his or her opinions. When requested the opinion shall be in writing.
3. The town attorney shall draft all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments when requested by the town council or town manager.
4. The town attorney shall approve or disapprove as to form, in writing, all documents submitted to him or her.
5. The town attorney shall return within ten days all ordinances and resolutions submitted to him or her for consideration by the town council or town manager, with his or her approval or disapproval as to form noted on them, together with his or her reasons if disapproved.
6. The town attorney shall prosecute and defend all suits, actions or causes where the town is a party and report to the town manager the condition of any suit or action to which the town is a party.
7. The town attorney shall prosecute in the name of the town or the state of Arizona all violations of the town code and statutes of the state of Arizona within the original or concurrent jurisdiction of the Marana municipal court or lawfully referred to the town attorney, and any associated or related appeals.

Ordinance 2013.005 added subparagraph C.7 and paragraph D to section 3-2-7

D. Deputies and assistants. At the discretion of the town attorney, the powers and duties of the town attorney may be undertaken and carried out by deputy and assistant town attorneys (by whatever rank or title they may be called) licensed to practice law in the state of Arizona, who shall have the same authority as the town attorney, under the general supervision of the town attorney.

3-2-8 Department heads

Section 3-2-8 was amended by Ordinances 2000.20, 2001.08, 2003.13, 2006.14, 2011.03, and 2014.018

A. Offices established. The positions of department heads are hereby created and established. Each department head shall be appointed, suspended or removed as set forth in this title.

B. Compensation. Department heads shall receive such compensation as the town manager shall fix from time to time.

C. Duties. Each department head shall be charged with the responsibilities set forth by and shall perform the duties of his or her office under the general and specific direction of the town manager, deputy town manager, assistant town manager or general manager to whom he or she reports.

3-2-9 General managers

Section 3-2-9 was added as section 3-2-11 by Ordinance 2008.19, amended by Ordinance 2011.03, and amended and renumbered by Ordinance 2014.018

A. Offices established. The positions of general managers are hereby created and established. Each general manager shall be appointed, suspended or removed as set forth in this title.

B. Compensation. General managers shall receive such compensation as the town manager shall fix from time to time.

C. Duties. General managers shall be charged with the responsibilities set forth by and shall perform the duties of their office under the general and specific direction of the town manager, deputy town manager or assistant town manager to whom he or she reports.

CHAPTER 3-3. PERSONNEL POLICIES

3-3-1 Creation and scope of personnel policies

Section 3-3-1 was amended by Ordinance 2014.018

A. The town council shall adopt personnel policies for the employees of the town, the provisions of which shall apply to all employees of the town, unless specifically stated otherwise in this code, in the personnel policies or, in the case of the town manager and town magistrate, in an employment agreement. The town council may amend or repeal the personnel policies from time to time in its sole discretion.

B. In addition to the personnel policies, the town council or town manager may adopt rules, regulations, and directives to give effect to this title and to the personnel policies. The town council or town manager may amend or repeal these rules, regulations and directives from time to time in their sole discretion.

C. All personnel policies, rules, regulations, and directives adopted pursuant to this section shall follow the generally accepted principles of good personnel administration.

3-3-2 Conditions of employment

The appointment, promotion and tenure of every employee shall be conditioned solely on merit and fitness and the satisfactory performance of the duties and responsibilities assigned. No employee or applicant shall be discriminated against on the basis of race, color, national origin, religion, sex, disability, marital or familial status, veteran status or political affiliation.

3-3-3 Political contributions

Section 3-3-3 was renumbered by Ordinance 2014.018

No officer, official or employee of the town shall use any influence or pressure upon any employee to obtain any assessment or contribution of money or time, either direct or indirect, for any political campaign or personal gain.

CHAPTER 3-4. PURCHASING

3-4-1 Scope of chapter

This chapter shall govern the purchase of any goods or services for or on behalf of the town except as otherwise indicated. This chapter is intended to supplement state law; however should applicable state law provide stricter provisions regarding any proposed transaction, those more stringent provisions shall apply.

3-4-2 Town council approval; when required

Notwithstanding other provisions of this chapter, no purchases shall be made by or on behalf of the town without first obtaining town council approval in the following instances:

A. Where prior approval is required by state law or town code;

B. Where funds for the purchase are not provided in the budget as adopted.

3-4-3 Purchasing director; duties

Section 3-4-3 was amended by Ordinance 2002.22, which replaced "town manager" with "finance director"

A. The finance director shall serve as the purchasing director and shall direct and control all purchases of goods and services made by or on behalf of the town. The purchasing director may delegate his or her administrative function.

B. The purchasing director shall approve or deny all purchase requests and shall report to the town council on any purchase requiring town council approval.

3-4-4 Emergency purchases; procedure

In case of an emergency which requires immediate purchase of supplies or services and when time is of the essence and applicable state law does not provide otherwise, the mayor shall be empowered to authorize the purchasing director to acquire goods or services without complying with the requirements and procedures in this chapter. A full report of the circumstances of the emergency and the goods or services obtained shall be made to the town council at its next regular meeting.

3-4-5 Purchases in general; bids

Section 3-4-5 was amended by Ordinance 2002.21.

A. Purchases under $1,000. Whenever the contemplated purchase or contract for building services is for the sum of less than $1,000, upon completion of a requisition form and purchase order form, the

purchasing director may obtain the goods or services without further formality.

B. Over $1,000 but under $10,000 inclusive. Whenever any contemplated purchase or contract for building services is for the sum of at least $1,000 but not more than $10,000, the purchasing director is authorized to let contracts on an "informal bid" process, by obtaining at least three bids by phone or in writing. The purchasing director may then award the purchase or contract of service to the lowest responsible bidder.

C. In excess of $10,000. Whenever any contemplated purchase or contract for building services is for a sum exceeding $10,000, the purchasing director shall cause to be published in two issues of a newspaper of general circulation in the town, notice inviting bids, which notice shall be published at least ten days prior to the date set for the receipt of bids. The notice required by this paragraph shall include a general description of the purchase or services to be performed and the time and place for opening bids. In addition, the purchasing director shall post a notice inviting bids in the town hall and may also mail to all responsible prospective suppliers a copy of the notice inserted in the newspaper. The bid shall be awarded by the purchasing director as provided in this chapter.

3-4-6 Exceptions

A. Exclusive service. If there is only one firm or company or individual capable of providing a particular service or commodity and the services or commodities cannot be secured from other persons or companies, the bidding procedures set forth in section 3-4-7 shall not be applicable, and the services or commodities may be secured without bidding. The town manager shall report to the town council at the next regularly scheduled meeting any such purchases.

B. Used equipment. Upon recommendation of the town manager, the town council may elect to waive the bid procedures with respect to the purchase of used equipment.

C. Cooperative purchasing. The purchasing director may approve a purchase or contract for services made by, through, or with the state or its political subdivisions without a formal bidding process whenever other governmental units have done so for the same item or service, if in the opinion of the town manager a separate bidding process is not likely to result in a lower price for the items or services.

Ordinance 2005.22 rewrote paragraph C

3-4-7 Bidding procedure

Except as provided in state law, the purchasing director shall follow the procedure set forth in this section for all purchases and contracts subject to the formal bidding process:

A. A notice of solicitation for bids shall state the date, time and place of opening, and the place and time period within which bids shall be submitted.

B. The notice shall state with particularity the goods or services required and shall state the place where specifications may be examined.

C. Bids shall be submitted in a sealed envelope clearly identified as a bid on the front of the envelope. Any bid not received within the time period allowed shall be rejected.

D. All bids shall be opened in public at the time and place specified, and a tabulation of all bids shall be posted in town hall for public inspection.

E. All bidders shall be notified in writing of the award or rejection of any and all bids.

3-4-8 Lowest responsible bidder

A. Unless the purchasing director exercises the right of rejection, all goods and services shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, the town council or the purchasing director shall consider:

1. The ability, capacity and skill of the bidder to perform the contract or provide the services required in a timely manner;
2. The quality of performance in previous contracts with the town, together with previous and existing compliance with the ordinances of the town;
3. The financial resources and ability of the bidder;
4. The quality, availability and adaptability of the goods or service.

B. The purchasing director shall select providers of goods and services without regard to race, color, national origin, ethnicity, religion or creed, sex, disability, age, marital or familial status or political affiliation as required by the town policy of equal opportunity and non discrimination.

3-4-9 Performance bond

The purchasing director shall have the authority to require a performance bond, in an amount as the purchasing director may deem sufficient, to secure the execution of a contract for construction, provided, however, that in a contract for construction in excess of $10,000, a bond shall be required. In all cases of construction to which state law applies, any requirement for a bond shall be incorporated into the contract.

3-4-10 Purchases from mayor or town council members

Pursuant to A.R.S. § 38-503(C), the town, through its town council, may purchase supplies, materials and equipment not to exceed $300 in cost in any single transaction or a total of $1,000 annually from the mayor or any member of the town council without using competitive public bidding procedures according to an annually adopted town policy.

3-4-11 Professional and technical services

A. The provisions of this chapter shall not apply to professional or technical services.

B. No person or firm practicing in a professional or technical field for which a license is required by state law shall be engaged by the town unless possessing a current license in good standing.

C. C. Upon engagement, the town shall enter into a written agreement or memorandum of understanding for the performance of professional and technical services setting forth the scope of and the unit or total price for services.

3-4-12 Obsolete supplies and equipment

Section 3-4-12 was rewritten by Ordinance 2002.22.

All departments and offices shall submit to the purchasing director, at the time and in the form as shall be prescribed, reports showing all supplies and equipment that have become obsolete. The purchasing director shall have the authority to dispose of all supplies and equipment that have become obsolete, with the approval of the town manager.

3-4-13 Signatures on checks

Section 3-4-13 was amended by Ordinance 96.31 to delete a requirement for two signatures, and by Ordinance 98.18, 98.22 and 2000.18, addressing the signature of the finance director

All checks for expenditures of town monies shall bear one signature of either the town manager, town clerk, finance director, mayor or vice mayor.

3-4-14 State preemption

Notwithstanding any other portion of this chapter, if any purchase or contract falls within the definitions for limitations of A.R.S. § 34-201 *et seq.*, as amended, the provisions, requirements and specifications of the relevant portions of the Arizona Revised Statutes shall supersede this title and control any such bidding procedures.

CHAPTER 3-5. CLAIMS AND SETTLEMENT

3-5-1 Claims administration

A. The town attorney shall establish procedures to process, evaluate, investigate and report claims filed against the town.

B. The town attorney is authorized to file such claims, counter-claims, or third party claims, and to take such other legal action, as may be

necessary to seek subrogation and reimbursement or to collect for damages sustained by the town.

3-5-2 Settlement authority

A. Whenever any contemplated settlement of a claim by or against the town is for the sum of not more than $15,000, after due consideration and in the best interest of the residents of the town, the town manager, in consultation with the town attorney, is authorized to settle the claim.

B. No settlement of more than $15,000 shall be entered into except with the approval of the council or in accordance with the provisions of the town's coverage agreement with its insurance provider.

Title 4

Police Department

4

TITLE 4. POLICE DEPARTMENT

CHAPTER 4-1. POLICE DEPARTMENT.....4-1

TITLE 4. POLICE DEPARTMENT

Title 4 was adopted by Ordinance 96.11

CHAPTER 4-1. POLICE DEPARTMENT

4-1-1 Created; composition

There is hereby created a police department for the town which shall consist of a chief of police and as many police officers as may from time to time be deemed necessary by the town council for the safety and good order of the town.

4-1-2 Appointment of officers

The chief of police shall be appointed by the town manager. The chief of police shall appoint as many police officers as may from time to time be deemed necessary for the safety and good order of the town, consistent with approved budget capacity and authority.

Section 4-1-2 was amended by Ordinance 2014.018 to provide for appointment by the town manager and to add the phrase "consistent with approved budget capacity and authority" in place of "with the approval of the council"

4-1-3 Compensation of officers

The chief of police and the police officers of the town shall be compensated as determined by the council through adoption of the annual budget. The chief of police shall not receive any perquisites, commissions or compensation for his services as chief of police, except as the council may prescribe through adoption of the annual budget.

Section 4-1-3 was amended by Ordinance 2014.018 to add "through adoption of the annual budget" in two places

4-1-4 Departmental rules and regulations

The police department shall be operated and managed in accordance with the departmental rules and regulations as may from time to time be adopted by the chief of police. The chief of police shall ensure that the police department rules and regulations are in compliance with all federal and state laws, the provisions of this code and all town ordinances, personnel policies, administrative directives and other rules and procedures as established by the town council or the town manager. If any provision of the police department rules and regulations conflicts with federal or state law or any provision of this code or a town ordinance, personnel policy, administrative directive or other town rule or procedure, the federal or state law, this code and the town ordinance, personnel policy, administrative directive, rule or procedure shall control.

Section 4-1-4 was amended by Ordinance 2009.24, which removed a requirement for approval by the town council and added the last two sentences

4-1-5 Duties of chief of police

A. It shall be the duty of the chief of police to:

1. Enforce this code and state statutes by arresting and charging violators within jurisdictional limits;

Paragraph A(1) was rewritten by Ordinance 2005.22

2. Render any account of the police department, its duties and receipts as may be required by the council, and keep records of the office open to inspection by the council at any time, except those records as may be exempted by state or federal law. Investigate or direct the investigation of criminal acts occurring

within his jurisdiction and file or supervise the filing of necessary reports;

3. Direct and ensure the orderly flow of traffic and investigate and make reports of traffic accidents;
4. Inspect and ascertain the condition of traffic control devices of every description which have been erected within the town on the authority of the town engineer and to notify the town engineer of any defects found in them;
5. In the absence of the town clerk, collect all license fees of every nature levied within the town and pay over to the treasurer all monies received by him, taking receipts for it;
6. Supervise and control officers and personnel of the police department;
7. Perform any additional duties as may be required by the council or manager.

4-1-6 Animal control

The chief of police and members of the police department, in addition to their other powers, are hereby authorized and empowered to enforce any and all rules or regulations of the county board of health relating to animals.

4-1-7 Answering calls outside the town

The members of the police department of the town are duly authorized to answer calls for aid and assistance beyond the corporate limits of the town pursuant to mutual aid agreements and state statutes.

4-1-8 [Reserved]

Section 4-1-8, entitled "Public safety employee-employer relations; meet and confer," was added by Ordinance 2007.05 and deleted by Ordinance No. 2013.026

Title 5

Municipal Court

5

TITLE 5. MUNICIPAL COURT

CHAPTER 5-1. MUNICIPAL COURT ESTABLISHED; JURISDICTION 5-1

CHAPTER 5-2. MAGISTRATE DEPARTMENT 5-1

CHAPTER 5-3. COURT ADMINISTRATION DEPARTMENT 5-2

CHAPTER 5-4. PROCEEDINGS OF COURT 5-3

CHAPTER 5-5. JURY SYSTEM 5-3

CHAPTER 5-6. FEES 5-3

CHAPTER 5-7. CIVIL TOWN CODE VIOLATIONS 5-5

CHAPTER 5-8. HOME DETENTION PROGRAM 5-9

TITLE 5. MUNICIPAL COURT

Title 5 was adopted by Ordinance 96.10. See Ordinance 77-4 and 77-5 for prior history.

CHAPTER 5-1. MUNICIPAL COURT ESTABLISHED; JURISDICTION

5-1-1 Jurisdiction

There is hereby established in the town a municipal court which shall have jurisdiction of all violations of this code, other town ordinances, and jurisdiction concurrently with justices of the peace of precincts in which the town is located of violations of laws of the state committed within the limits of the town.

5-1-2 Municipal court departments

There are hereby established within the municipal court: a magistrate department, consisting of the town magistrate, the necessary support staff to the town magistrate, any assistant town magistrates, and all judges pro tempore; and a court administration department, consisting of the court administrator and all other court personnel.

Section 5-1-2 was added by Ordinance 2001.08.

CHAPTER 5-2. MAGISTRATE DEPARTMENT

Chapter 5-2 was renamed from "Presiding Officer" to "magistrate Department" by Ordinance 2001.08.

5-2-1 Town magistrate

There shall be appointed by the town council a town magistrate and those assistants as are necessary for the performance of the office. The town magistrate shall be appointed by the town council to a two year term. During said term, the town magistrate and assistant magistrates may be removed only for cause. The provisions of this chapter shall not apply to special magistrates or acting magistrates appointed by the council, for the purposes of hearing a particular case, or as a substitute for the town magistrate in the town magistrate's absence.

Section 5-2-1 was amended by Ordinance 2001.06, 2001.08, 2007.32, and 2010.14. Ordinance 2001.06 provided for the appointment of the Town magistrate in even-numbered years instead of odd-numbered years, and extended the sitting town magistrate's term of office by one year. Ordinance 2001.08 added a second sentence, appointing the town magistrate as the department head of the magistrate department, which was deleted by Ordinance 2007.32. Ordinance 2010.14 provided for the appointment of the town magistrate for a two year term from the date of appointment.

5-2-2 Powers and duties of town magistrate

The town magistrate shall be the presiding officer of the municipal court. In addition to the powers and duties of a presiding officer, the powers and duties of the magistrate shall include:

Section 5-2-2 was rewritten by Ordinance 2001.08 and 2007.32.

A. The powers and duties set forth and conferred upon him or her under the provisions of the state constitution and statutes, this code and the ordinances and resolutions of the town.

B. The supervision of the assistant town magistrates, judges pro tempore, magistrate's assistants, court administrator and other personnel of the municipal court.

C. The responsibility for fixing all bonds, bails and other monies as provided by law.

D. Preparation of a schedule of traffic violations not involving the death of a person, listing specific bail for each violation.

E. Designation of a deputy other than a law enforcement officer and a specific location where the deputy shall, during hours when court

Paragraph E was rewritten by Ordinance 2005.22

is not open, set and collect the amount of bail in accordance with the foregoing schedule, or accept proper bail bonds in lieu of bail, for and on behalf of the court.

F. Preparation of a schedule of civil traffic violations listing a specific deposit for each violation.

5-2-3 Hearing officers

Section 5-2-3 was modified by Ordinance 2006.15 to add civil code violation cases

The magistrate, with the approval of the council, may appoint one or more hearing officers to preside over civil code violation cases and civil traffic violation cases when the appointment of hearing officers is necessary to assure prompt disposition of the cases. Hearing officers may hear and dispose of civil code violation cases and civil traffic violation cases under supervision of the presiding officer of the municipal court which are appealable to the superior court pursuant to title 22, chapter 2, article 4, Arizona revised statutes.

CHAPTER 5-3. COURT ADMINISTRATION DEPARTMENT

Chapter 5-3 was adopted by Ordinance 2001.08

5-3-1 Court administrator

Section 5-3-1 was modified by Ordinance 2007.32 to place the court administrator under the direction of the town magistrate

There shall be appointed by the town magistrate a court administrator. The court administrator shall provide administrative supervision of the municipal court, under the direction of the town magistrate.

5-3-2 Powers and duties of court administrator

The introductory paragraph and paragraph E of Section 5-3-2 were modified by Ordinance 2007.32

Paragraph A was rewritten by Ordinance 2005.22

The powers and duties of the court administrator shall include:

A. The supervision of the court clerk in keeping a docket where each action and the proceedings of the court in each action shall be entered.

B. The responsibility for receiving all bonds and bails fixed by the town magistrate and receiving all fines, penalties, fees and other monies as provided by law.

C. Payment of all fees, fines, penalties and other monies collected by the court to the town treasurer, including JCEF funds.

D. Supervision of all personnel within the court administration department.

E. Other reasonable duties as established by job description or as determined by the town magistrate.

5-3-3 Personnel

The introductory paragraph and paragraph C of Section 5-3-3 were modified by Ordinance 2007.32

The municipal court shall employ the following personnel, under the supervision of the court administrator:

A. The clerk of the court, who shall be responsible for maintaining the court's docket and who shall receive all bonds, bails, fines, penalties, fees and other monies as provided by law that are paid to the court.

B. The court bailiff and/or marshal, who shall be responsible for maintaining the order of the court.

C. Any other personnel necessary to the functioning of the municipal court.

CHAPTER 5-4. PROCEEDINGS OF COURT

5-4-1 Rules of court

Section 5-4-1 was amended by Ordinance 2001.08.

The proceedings of the court shall be conducted in accordance with the state constitution, the applicable state statutes and rules of the state supreme court pertaining to municipal courts. The proceedings shall also be conducted in accordance with the rules of criminal procedure for the superior court, unless otherwise prescribed, and providing this code and resolutions of the town are not in conflict therewith.

5-4-2 Complaint

The municipal court proceedings shall be commenced by complaint under oath and in the name of the state setting forth the offense charged with and those particulars of time, place, person and property necessary to enable the defendant to understand distinctly the character of the offense complained of and to answer the complaint.

CHAPTER 5-5. JURY SYSTEM

5-5-1 Formation of jury

The formation, summoning, drawing, disposition of names and the impaneling of jurors in the municipal court shall be accomplished in the same manner as provided for in courts of record as more fully set forth in title 21, chapter 3, of the Arizona revised statutes.

5-5-2 Selection of jurors

For the selection of potential jurors, the list of registered voters shall be furnished by the clerk of the Board of Supervisors of Pima County.

CHAPTER 5-6. FEES

5-6-1 Fee schedule for court costs

Section 5-6-1 was amended by Ordinance 2007.32, which standardized references to the municipal court, and by Ordinance 2009.11, which replaced specific fee amounts with references to the comprehensive fee schedule

A. Fees in amounts established by a fee schedule adopted by the council and amended from time to time shall be assessed to recover costs associated with the fees charged to the town treasury for returned checks and additional costs incurred due to court non-appearance.

Paragraphs B, C and D were added by Ordinance 99.01 and paragraphs B and D were rewritten by Ordinance 2006.08

B. The following municipal court fees are established, the amounts of which are set forth in a fee schedule adopted by the council and amended from time to time, to be imposed in addition to fees otherwise assessable by statute.

1. Any person who has been convicted of a misdemeanor criminal offense in the municipal court and sentenced to a term of

incarceration in any detention facility authorized by law shall be required to pay a jail reimbursement fee in the amount actually paid by the town for that incarceration.

2. Upon a defendant's conviction at trial or conviction by plea agreement the municipal court shall impose a prosecution fee against each defendant, unless a higher or lower amount is imposed by a written plea agreement based upon the actual cost of prosecution services and the indigent status of the defendant.

Ordinance 2007.21 modified subparagraph 2 by increasing the fee, which Ordinance 2009.11 moved to the comprehensive fee schedule.

3. An administrative warrant fee shall be imposed to cover the municipal court's costs for processing warrants when a municipal court magistrate issues a warrant for failure to comply with a court order, failure to pay a fine, failure to pay restitution or failure to appear.

4. The municipal court shall impose a court improvement fee which shall be applied by the court on all fines, sanctions, penalties and assessments imposed by the court.

Ordinance 2007.21 modified subparagraph 4 by increasing the fee, which was then moved to the comprehensive fee schedule by Ordinance 2009.11

5. A jury cancellation fee shall be imposed on a party who requests a jury trial and then decides, within five days before the trial and after the court has arranged for a jury to be impaneled, not to proceed with the jury trial. The jury cancellation fee shall equal the actual costs incurred to cancel the jury (typically $100 to $400).

6. Each defendant allowed to complete community service in lieu of paying any fine, fee or surcharge shall be charged a fee to cover part of the cost of monitoring his or her progress on completing the community service.

7. A fee shall be imposed for service of process on an order of harassment, subject to the limitations set forth in A.R.S. § 12-1809(D).

8. In addition to any other remedy allowed by law, the town attorney is authorized to institute any appropriate action for recovery of any and all monies owed or due to the municipal court including, but not limited to, restitution, fees, sanctions, surcharges, assessments, penalties, bonds, costs, and fees. A defendant who defaults in his or her obligation for the payment of monies owed or due to the court is liable for all costs of collection including attorney fees and costs, and fees and charges assessed by a collection agency licensed pursuant to title 32, chapter 9, Arizona revised statutes, that is engaged to collect and enforce that obligation.

C. The magistrate shall retain the power to waive all or any part of fee assessments if any of the following conditions apply:

1. The defendant is found by the municipal court to be indigent;

2. The fee imposed upon a defendant causes a hardship on the defendant or the defendant's immediate family; or

3. In the opinion of the magistrate the waiver would be in the interest of justice.

D. There is hereby established a court improvement fund which shall be used exclusively to enhance the technological, operational and security capabilities of the municipal court. The court improvement fund shall be established as a designated fund account with the town treasurer. The court shall collect the court improvement fees as defined in this section and deposit them in the court improvement fund account. Half of the court improvement fund shall be available for use as determined by the court for training, additional contract work, temporary court help, and other similar purposes, as documented in a manner requested by the town manager. The town treasurer shall invest the monies in the fund in the same manner as town funds. Interest earned on fund monies shall be deposited in the fund.

5-6-2 Probation fees

Section 5-6-2 was added by Ordinance 2007.12

A. When granting court-monitored probation to a defendant, the court shall, as a condition of probation, assess a monthly probation monitoring fee.

B. The monthly probation monitoring fee shall reflect the actual costs of the monitored probation, including probation intake sessions, any necessary testing, court-ordered treatment and any other necessary costs. The monthly probation monitoring fee shall not be less than the sum specified in A.R.S. § 13-901(A) or any successor provision, except that the court may assess a lesser fee after determining that the probationer is unable to pay the fee.

C. The monthly probation monitoring fee shall only be assessed when a defendant is placed on monitored probation.

CHAPTER 5-7. CIVIL TOWN CODE VIOLATIONS

Chapter 5-7 was added by Ordinance 2006.15 and substantially amended by Ordinance 2010.02

5-7-1 Town code violations treated as civil matters

Violations of the town code, the land development code or a town ordinance for which a civil sanction is imposed shall be treated as civil matters as provided in this chapter.

Ordinance 2010.02 added into section 5-7-1 reference to the land development code or a town ordinance

5-7-2 Commencement of action; jurisdiction of Marana municipal court

Section 5-7-2 was revised by Ordinance 2013.029 and Ordinance 2010.02. The Town Attorney made a January 17, 2014 scrivener's revision to remove unnecessary capitalization.

A. A civil code violation case shall be commenced within one year of the alleged violation.

B. A peace officer may commence a civil code violation case by issuing and personally serving an Arizona traffic ticket and complaint as provided in A.R.S. § 13-3903.

C. A code compliance officer, as defined in chapter 1-9 of this code, may commence a civil code violation case by issuing a uniform civil code complaint pursuant to this chapter.

D. The town attorney or designee may commence a civil code violation case by filing a long form civil code complaint with the Marana municipal court. Upon receipt of the long form civil code complaint, the Marana municipal court shall issue a summons.

E. The Marana municipal court shall have jurisdiction over all civil violations of the town code, the land development code or other town ordinances.

5-7-3 Service of uniform or long form civil code complaint

Ordinance 2010.02 revised the title of section 5-7-3 by adding "or long form," substantially rewrote paragraph B, and added paragraphs C and D

A. A uniform civil code complaint may be served by delivering a copy of the uniform civil code complaint to the person charged with the violation or by any means authorized by the Arizona rules of civil procedure.

B. The original uniform civil code complaint shall be filed in the Marana municipal court within five days after it is issued.

C. The long form civil code complaint and summons may be served by delivering a copy of the long form civil code complaint and summons to the person charged with the violation or by any means authorized by the Arizona rules of civil procedure.

D. If service cannot be accomplished by the methods set forth in this section, the uniform civil code complaint or long form civil code complaint may be served by certified or registered mail, return receipt requested. If service of either the uniform civil code complaint or the long form civil code complaint is made by certified or registered mail, the return receipt shall be prima facie evidence of service.

5-7-4 Authority to detain persons to serve civil code complaint; failure to provide evidence of identity; penalty

Ordinance 2013.029 added "uniform" and "or Arizona traffic ticket and complaint" to paragraph A. Ordinance 2010.02 revised paragraphs A and B of section 5-7-4 by replacing "duly authorized agent of the town" with "a code compliance officer" and adding "the land development code or a town ordinance." The Town Attorney made a January 17, 2014 scrivener's revision to remove unnecessary capitalization.

A. A peace officer or a code compliance officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of the town code, the land development code or a town ordinance and to serve a copy of a uniform civil code complaint or Arizona traffic ticket and complaint.

Ordinance 2007.32 added "class 1" before "misdemeanor" in paragraph B

B. A person who fails or refuses to provide evidence of his or her identity to a peace officer or a code compliance officer upon request, when the officer has reasonable cause to believe the person has committed a violation of the town code, the land development code or a town ordinance, is guilty of a class 1 misdemeanor and upon conviction shall be punished by a fine not to exceed $2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

Ordinance 2010.02 revised section 5-7-5 to add "uniform and long form" to the title, added numbering to and substantially rewrote paragraph A, and added paragraphs B and C

5-7-5 Form for uniform and long form civil code complaints

A. The uniform civil code complaint shall be in the form of the document marked "town of Marana uniform civil code complaint" reproduced in and made a part of this section by this reference.

B. The long form civil code complaint and summons shall be in a form determined by the town attorney or designee and shall contain at a minimum the date and place of the alleged violation, a reference to the town code or land development code section or town ordinance provisions alleged to have been violated and the time, date and place for the defendant to appear.

TOWN OF MARANA UNIFORM CIVIL CODE COMPLAINT

COMPLAINT NO.	DRIVER'S LICENSE NO.	STATE	SOCIAL SECURITY NO.	IN THE MUNICIPAL COURT TOWN OF MARANA
TOWN OF MARANA V. DEFENDANT:	FIRST	MIDDLE	LAST	THE UNDERSIGNED SAYS THE DEFENDANT NAMED IN THIS COMPLAINT:
RESIDENCE ADDRESS:	STREET	CITY/TOWN	STATE ZIP	ON THE _____ DAY OF _____, 20____ AT THE HOUR OF _____ __.M., DID THEN AND THERE AT (LOCATION)
MAILING ADDRESS:	SAME AS ABOVE ☐ STREET	CITY/TOWN	STATE ZIP	
BUSINESS ADDRESS:	STREET	CITY/TOWN	STATE ZIP	IN MARANA, ARIZONA, COMMIT THE FOLLOWING CIVIL INFRACTION(S) IN VIOLATION OF THE MARANA TOWN CODE:
RESIDENCE PHONE:		BUSINESS PHONE:		
OWNER OCCUPIED: YES NO	OWNER'S NAME: FIRST	MIDDLE	LAST	
OWNER'S ADDRESS:	STREET	CITY/TOWN	STATE ZIP	
YOUR DATE AND TIME TO APPEAR IS:	MONTH	DAY YEAR	TIME AM PM	
MARANA MUNICIPAL COURT 11555 W. CIVIC CENTER DRIVE MARANA AZ 85653	IF I FAIL TO APPEAR AS DIRECTED IN THIS COMPLAINT, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST ME, A CIVIL SANCTION WILL BE IMPOSED, AND AN ORDER TO ABATE WILL BE ISSUED _____			I HEREBY CERTIFY THAT I HAVE REASONABLE GROUNDS TO BELIEVE AND DO BELIEVE THAT THE PERSON NAMED IN THIS COMPLAINT COMMITTED THE CIVIL VIOLATION DESCRIBED IN THIS COMPLAINT. _____

C. The uniform and long form civil code complaint shall contain notice that default judgment will be entered and a civil sanction and order to abate the violation will be imposed on a person who is cited and fails to appear as directed in the complaint.

5-7-6 Certification of uniform and long form civil code complaints

Ordinance 2010.02 revised section 5-7-6 to delete the word "false" and add "uniform and long form" in the title, add "uniform" in paragraph A, add paragraph B, and renumber paragraph C

A. A uniform civil code complaint need not be sworn to if it contains a form of certification by the issuing officer in substance as follows: "I hereby certify that I have reasonable grounds to believe and do believe that the person named in this complaint committed the civil violation described in this complaint."

B. The town attorney or designee shall swear to the contents of the long form civil code complaint under oath and sign the complaint in the presence of the magistrate.

C. A false certification under this section constitutes perjury.

5-7-7 Admission or denial of allegations in complaint; hearings; findings of court; civil sanction; order to abate

On March 31, 2010, the town attorney corrected, as a scrivener's error under the authority of section 1-4-5, the numbering of sections 5-7-7 through 5-7-11. They had been inadvertently and incorrectly renumbered to 5-7-8 through 5-7-12 by Ordinance 2010.02

A. A person named in a civil code complaint shall appear at the time and place stated in the complaint or may appear prior to the time if so authorized by the court and upon the directions contained in the complaint and admit or deny the allegations of the complaint. Allegations not denied at the time of appearance are admitted. No fee shall be charged for appearance in a civil code violation case.

B. If the person named in a civil code complaint admits the allegations in the complaint, the court shall enter judgment for the town and impose a civil sanction.

C. Allegations in a civil code complaint may be admitted with an explanation. When this occurs, the court shall enter judgment for the town and impose a civil sanction determined with the court's due consideration of the explanation submitted.

D. If the person named in a civil code complaint denies the allegations of the complaint, the court shall set the matter for hearing. All civil code violation hearings are informal and without a jury, and the town is required to prove the violation by a preponderance of the evidence. Technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. A person who elects to be represented by counsel shall notify the court of this fact at least ten days prior to the hearing date. Hearings may be recorded. If the court finds in favor of the person, the court shall enter an order dismissing the civil code violation case. If the court finds in favor of the town, the court shall enter judgment for the town and impose a civil sanction.

E. If the person served with a civil code complaint fails to appear on or before the time directed to appear or at the time set for hearing by the court, the allegations in the complaint shall be deemed admitted and the court shall enter judgment for the town and impose a civil sanction.

F. A civil sanction imposed pursuant to this chapter shall not exceed $1,000 unless otherwise designated in this code, the land development code, a town ordinance or under state law.

Ordinance 2010.02 revised paragraph F to add "unless otherwise designated in this code, the land development code, a town ordinance or under state law," added paragraph G, and renumbered paragraph H.

G. Each day that a violation continues shall be considered a separate offense.

H. In addition to civil sanctions, upon finding that a violation exists, the court shall order the person to perform whatever action is reasonably necessary to correct and abate the violation. An order to abate shall remain in effect for one year. When issuing an order to abate, the court shall advise a violator that additional fines will be imposed for failure to abate a violation and that the town may bring criminal charges for failure to obey the order to abate.

5-7-8 Appeal

Any party may appeal the judgment of the court. The appeal may be to the superior court in the same manner as promulgated by the supreme court. The posting of an appeal bond stays enforcement of the judgment.

Ordinance 2010.02 revised section 5-7-8 by deleting the sentence "Commissioners of the superior court may hear and determine appeals"

5-7-9 Subpoena of witnesses; inapplicability of rules of civil procedure

A. The town and the person charged with a civil code violation may subpoena witnesses as provided by A.R.S. § 13-4072. Witnesses are

not entitled to fees for appearing in connection with a civil code violation case.

B. Except as otherwise provided in this chapter, the rules of civil procedure do not apply.

5-7-10 Failure to pay civil sanction; collection procedure

All civil sanctions imposed pursuant to this chapter shall be paid within 30 days from entry of judgment, except that the court may extend the time for payment or provide for installment payments if the court finds that payment within 30 days will impose an undue economic burden on the defendant. A civil sanction may be collected in the same manner as any other judgment in favor of the town.

5-7-11 Failure to obey order to abate violation; penalty

Section 5-7-11 was revised by Ordinance 2007.32, which added "class 1" before "misdemeanor," and Ordinance 2010.02, which deleted "special magistrate, or special limited magistrate" after "magistrate"

Any person who fails to obey an order to abate a violation issued by a magistrate, is guilty of a class 1 misdemeanor. A violation of this section is punishable by up to a maximum six months in jail and by a maximum fine of $2,500; and by probation up to three years.

CHAPTER 5-8. HOME DETENTION PROGRAM

Chapter 5-8 was added by Ordinance 2007.11

There is hereby established in the municipal court a home detention program for offenders who are sentenced to jail confinement under A.R.S. §§ 28-1381 and 28-1382. The home detention program is governed by the provisions of A.R.S. § 9-499.07, subsection M through subsection R, and will be administered in compliance with those provisions.

Title 6

Animal Control

6

TITLE 6. ANIMAL CONTROL

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TITLE 6. ANIMAL CONTROL

Title 6 was adopted by Ordinance 96.01. See Ordinance 90.02, 91.20 and 94.01 for prior history. Ordinance 2005.22 standardized all references to enforcement by referencing the town animal enforcement agent. Land use regulations relating to animals may be found in the Land Development Code.

CHAPTER 6-1. DEFINITIONS

6-1-1 [Reserved]

Ordinance 2005.22 deleted section 6-1-1 entitled "General rule regarding definitions," a duplication of section 1-3-1

6-1-2 Definitions

A. The following definitions shall apply throughout this title unless the context clearly indicates otherwise.

1. "Altered dog" means a spayed female or neutered male dog.

"Altered dog" definition was added by Ordinance 2006.21

2. "Animal" means every non human mammalian species of animal, both domestic and wild.
3. "At-large" means being neither confined by an enclosure nor physically restrained by a leash.
4. "Bite" means any penetration of the skin by the teeth of any animal.
5. "Biting animal" means any animal that bites or otherwise injures human beings or other animals without provocation.
6. "Collar" means a band, chain, harness or suitable device worn around the neck of a dog to which a dog license tag may be affixed.

Ordinance 2011.26 amended the "Collar" definition by changing "license" to "dog license tag"

7. "Destructive animal" means any animal that has a propensity to destroy, damage or cause damage to the property of a person other than the animal's owner.
8. "Dog" means any member of the canine species.
9. "Domestic animal" means any of various animals that have been tamed and made fit for a human environment.

Ordinance 2011.26 added the "Domestic animal" definition

10. "Household" means all those persons who regularly dwell together at the same place of residence.

Ordinance 2006.21 added the "Household" definition

11. "Impound" means the act of taking or receiving an animal into custody for the purpose of confinement at the town animal enforcement agent's facility.
12. "Leash" or "lead" means a chain, rope, leather strap, cord or similar restraint attached to a collar or harness or otherwise secured around an animal's neck.
13. "Licensed dog" means any dog having a current license.
14. "Livestock" means neat animals, horses, sheep, goats, swine, mules and asses.
15. "Owner" means any person owning, keeping, possessing, harboring, maintaining or having custody or otherwise having control of an animal within the town limits.
16. "Peace officer" includes any animal control officer.

"Peace officer" definition was added by Ordinance 2006.21

17. "Police dog" means any dog belonging to any law enforcement agency service dog unit.
18. "Property line" means the line which represents the legal limits of property (including an apartment, condominium, room or other dwelling unit) owned, leased or otherwise occupied by a person, business, corporation or institution. In cases involving sound from an activity on a public street or other public right-of-way, the "property line" shall be the nearest boundary of the public right-of-way.
19. "Provocation" means any behavior toward an animal or its owners or its owner's property which is likely to cause a defensive reaction by the animal.
20. "Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purpose of this definition. A dog does not necessarily require certification in order to be a service animal for purposes of this definition; however, to be eligible for no cost licensing pursuant to this title, the dog must be certified in writing as a service animal.

Ordinance 2011.26 added the "Service animal" definition

21. "Tie out" means a chain, leash, wire cable or similar restraint attached to a swivel or pulley.
22. "Town enforcement agent" means the Pima Animal Care Center director or his or her designee.

Ordinance 2006.21 added the "Town enforcement agent" definition

23. "Vaccination" means an anti rabies vaccination using a type of vaccine approved by the state veterinarian and administered by a state licensed veterinarian.

Ordinance 2011.26 deleted the "Under restraint" definition

24. "Vicious animal" means any animal that bites, attempts to bite, endangers or otherwise injures or causes to be injured, human beings or other animals.

CHAPTER 6-2. VACCINATION AND LICENSING OF DOGS

Chapter 6-2 was added by Ordinance 2006.21. See Ordinance 90.02, 91.20, 94.01 and 96.01 for prior history.

6-2-1 Vaccination required; classification

A. It shall be unlawful to own, keep, possess, harbor or maintain a dog over the age of three months unless it is vaccinated in accordance with the requirements of this chapter.

B. Any person who fails to comply with this section is guilty of a class 2 misdemeanor.

6-2-2 Type of vaccination

The type or types of anti-rabies vaccination that may be used for vaccination of dogs, the period of time between vaccination and revaccination, and the dosage and method of administration of the vaccine shall be in accordance with the rules and regulations designated by the state veterinarian.

6-2-3 Vaccination certificate, contents

The person causing a dog to be vaccinated shall demand and be given an official certificate of vaccination that includes the owner's name and address, a brief description of the dog, the date and type of vaccination, the manufacturer and serial number of the vaccine used, and the date the dog is due for revaccination.

6-2-4 Impoundment, vaccination of unvaccinated dogs

The town enforcement agent is hereby authorized to have a licensed veterinarian vaccinate and issue a vaccination certificate for an impounded unvaccinated dog at a cost to be borne by the dog's owner.

6-2-5 License required; classification

A. It shall be unlawful to own, keep, possess, harbor or maintain a dog over the age of three months in the town for more than 30 days without having the dog licensed in accordance with the requirements of this chapter.

B. Any person who fails to comply with this section is guilty of a class 2 misdemeanor.

6-2-6 Vaccination certificate prerequisite to license

No license shall be issued for any dog until the owner has presented a vaccination certificate signed by a licensed veterinarian containing the information required by this chapter.

6-2-7 Vaccination outside the county

A dog vaccinated in any area outside of the county prior to entry into the town may be licensed in the town, provided that, at the time of licensing, the dog's owner presents a vaccination certificate signed by a duly licensed veterinarian and the certificate contains the information required by this chapter.

6-2-8 License fees; rebate; exemptions; delinquency penalties

The fees in section 6-2-8 were modified by Ordinance 2007.13 and 2008.17, and were moved to the comprehensive fee schedule by Ordinance 2009.11

A. No dog license shall be issued by the town enforcement agent until the dog owner has paid a license fee, in an amount established by a fee schedule adopted by the council and amended from time to time.

B. Any person who presents to the town enforcement agent an affidavit or veterinarian's certificate stating either that the dog is already altered, that the dog is at least ten years old, or that the dog

cannot be altered for health reasons, shall be eligible for the altered dog fee.

C. Any person 65 years of age or older shall be eligible for the senior citizen license fee. The town enforcement agent shall establish reasonable standards of proof for eligibility. No more than four dogs per household shall be licensed at the senior citizen rate.

D. Any person who presents to the town enforcement agent a statement from a qualified health care professional certifying that the person has a disabling condition as defined by the Americans with Disabilities Act shall be eligible for the disabled citizen license fee.

E. Any person who has paid the license fee for an unaltered dog who, during the license year, presents to the town enforcement agent a statement from a veterinarian certifying that the licensed animal has been altered shall be entitled to a rebate. The rebate shall be the difference between the fee paid and the fee for an altered dog.

F. Service animals certified in writing as having been trained to the standards of a service animal by a nationally recognized service animal training agency shall be licensed without payment of the license fee.

Ordinance 2011.26 modified paragraph F

G. Any person who fails to license a dog when the dog reaches three months of age or who fails to timely renew a license upon expiration of a license previously issued under this chapter, shall be charged a delinquent penalty in an amount established by a fee schedule adopted by the council and amended from time to time.

Ordinance 2013.010 modified paragraph G

6-2-9 Transfer of license; fee; classification; sanction

A. Whenever the ownership of a dog changes, the new owner shall secure a transfer of the dog's license.

B. The releasing owner shall provide the new owner's name, address and phone number and the dog's age, sex and license number to the town enforcement agent within ten days of transfer.

C. A transfer fee in an amount established by a fee schedule adopted by the council and amended from time to time shall be charged to transfer any license.

The transfer fee was modified by Ordinance 2007.13 and 2008.17, and moved to the comprehensive fee schedule by Ordinance 2009.11

D. Failure to comply with this section is a civil infraction.

E. Any person found responsible for violating this section shall be sanctioned by a fine of not more than $300.

F. Any individual having received a notice of violation and failing to appear at the hearing time designated in the notice of violation, or time designated for hearing by the court, shall be deemed to have admitted the allegations of the complaint, and the court shall enter judgment for the town and impose a civil sanction in accordance with the provisions of this section.

G. If any penalty ordered to be paid by the court or forfeited pursuant to default is not paid within 30 days of the magistrate's order, the

town attorney may institute appropriate civil proceedings seeking legal and/or equitable relief to enforce the order, and the magistrate may institute judicial proceedings as provided by law to collect the penalty. All penalties collected pursuant to this section shall be paid to and become the property of the town.

6-2-10 Issuance, contents of dog license tag

Ordinance 2011.26 modified section 6-2-10 and its title

The town enforcement agent shall issue a durable dog license tag, imprinted with the license number, to the owner of each dog licensed under this chapter.

6-2-11 Tag required; exceptions; impoundment; classification

A. The dog tag provided by the town enforcement agent shall be affixed to a collar provided by the dog's owner and worn at all times by the dog.

B. Properly vaccinated and licensed dogs need not wear a collar with the license tag affixed in the following circumstances:

1. While being exhibited at or transported to and from an American Kennel Club approved show;
2. While engaged in or transported to and from races approved by the Arizona Racing Commission; or
3. While acting as a police dog.

C. The town enforcement agent or a peace officer may apprehend and impound, or cause to be impounded, any dog found without a license tag for the current year.

D. Failure to comply with this section is a class 2 misdemeanor.

6-2-12 Duplicate tags, fee

The duplicate tag fee was modified by Ordinance 2007.13 and 2008.17, and moved to the comprehensive fee schedule by Ordinance 2009.11

Whenever a dog license tag is lost, a duplicate tag will be issued upon application by the owner and the payment of a fee to the town enforcement agent in an amount established by a fee schedule adopted by the council and amended from time to time.

6-2-13 Counterfeiting or transferring of tags prohibited; classification

A. It shall be unlawful to counterfeit or attempt to counterfeit an official dog license tag, or to remove a dog's license tag and place it on another dog.

B. Violation of this section is a class 2 misdemeanor.

6-2-14 Violations; penalties

A. Any person violating the provisions of this chapter shall be guilty of a separate offense for each and every day or portion of a day during which any violation of this chapter is committed or permitted.

B. In addition to any other penalties allowed by law, the magistrate shall order abatement as necessary.

CHAPTER 6-3. DOGS AT LARGE; DOGS ON SCHOOL GROUNDS; IMPOUNDMENT; DOG WASTE REMOVAL

Chapter 6-3 was added by Ordinance 2006.21. See Ordinance 90.02, 91.20, 94.01, 96.01 and 2005.22 for prior history.

6-3-1 Dogs at large prohibited; exceptions; impoundment; classification

A. Any dog owned, possessed, harbored, kept or maintained on public streets, sidewalks, alleys, parks or other public property shall be restrained by a leash, chain, rope, cord or similar device.

B. Any dog owned, possessed, kept, harbored or maintained upon or about the private property of any person, including the property of the dog's owner, shall be confined inside a house or other building, or confined by a fence or similar enclosure of sufficient strength and height, to prevent the dog from escaping from the property.

C. Dogs may be at large as an exception to this section under the following circumstances:

1. While participating in field trials, obedience classes or kennel club events, or while engaging in races approved by the Arizona Racing Commission, provided that the dog is accompanied by and under the control of the dog's owner or trainer.
2. While being used or trained for legal hunting or for control of livestock.
3. While assisting a peace officer engaged in law enforcement duties.
4. While confined within a county- or town-maintained temporary or permanent dog run located within a park.
5. While acting as a service animal and assisting an individual with a disability and only if the individual with a disability is unable because of the disability to restrain the service animal by leash, chain, rope, cord or similar device, or the use of a leash, chain, rope, cord or similar device would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the individual's control, by voice control, signals or other effective means.

Ordinance 2011.26 added subparagraph 5

D. The town enforcement agent or a peace officer is authorized to impound, or cause to be impounded, any dog running at large contrary to the provisions of this section.

E. Violation of this section is a class 2 misdemeanor.

Ordinance 2011.26 modified paragraph E

6-3-2 Dogs on school grounds prohibited; exceptions; classification

A. It shall be unlawful to bring a dog onto the grounds of any school, regardless of whether the dog is on a leash.

B. Dogs may be on school grounds as an exception to this section under the following circumstances:

1. While participating as part of a formal school activity or event.
2. While acting as a service animal to an individual with a disability, as defined in this title.
3. While assisting a peace officer engaged in law enforcement duties.

Ordinance 2011.26 modified subparagraph 2

C. Violation of this section is a class 2 misdemeanor.

Ordinance 2011.26 modified paragraph C

6-3-3 Violations; penalties

A. Any person violating the provisions of this chapter shall be guilty of a separate offense for each and every day or portion of a day during which any violation of this chapter is committed or permitted.

B. In addition to any other penalties allowed by law, the magistrate shall order abatement as necessary.

6-3-4 Impoundment time, notice and fees

A. The town enforcement agent shall promptly notify the dog's owner in person or by written notice when a licensed dog is impounded. The owner may reclaim the dog within seven days from the date of the actual notice or mailing of notice, upon proof of ownership and payment of all costs and fees, including veterinary fees, incurred to remove, impound, board, care for and/or microchip an animal under the authority of this title.

B. When an unlicensed dog is impounded, the owner may reclaim the dog within three days of impoundment by securing a vaccination and a license for the dog and providing proof of ownership and payment of all costs and fees, including veterinary fees, incurred to remove, impound, board, care for and/or microchip an animal under the authority of this title.

C. Impoundment fees shall be determined by the town enforcement agent.

D. Any licensed dog unclaimed within seven days of notice to the owner, as described in subsection A, may be placed for adoption or humanely destroyed within the discretion of the town enforcement agent.

E. Any unlicensed dog unclaimed within three days may be placed for adoption or humanely destroyed within the discretion of the town enforcement agent.

6-3-5 Dog waste removal; exceptions; sanctions

A. It shall be a civil infraction for the owner or person having custody of any dog to fail immediately to remove and dispose of in a sanitary manner any solid waste deposited by the dog on public property or on private property without the consent of the person in control of the property.

B. It shall be a civil infraction for the owner, proprietor, agent or occupant of any premises where dogs are kept to deposit, cause to be deposited or allow to accumulate, within or about the premises, any solid wastes from dogs for a period of time longer than 72 hours. This paragraph applies to private property, including property owned, leased or controlled by the owner of the dog.

Paragraph B was added by Ordinance 2007.14, which also renumbered the following paragraphs renumbered to conform

C. Paragraph A shall not apply to blind persons, persons with mobility disabilities, or police officers or other law enforcement officers accompanied by police dogs while on emergency.

D. Any person found responsible for violating this section shall be sanctioned by a fine of not more than $300.

E. Any individual who receives notice of violation and fails to appear at the hearing time designated in the notice, or at the time designated for hearing by the court, shall be deemed to have admitted the allegations of the complaint, and the court shall enter judgment for the town and impose a civil sanction in accordance with the provisions of this section.

F. If any penalty ordered to be paid by the court or forfeited pursuant to default is not paid within 30 days of the magistrate's order, the town attorney may institute appropriate civil proceedings seeking legal and/or equitable relief to enforce the order, and the magistrate may institute judicial proceedings as provided by law to collect the penalty. All penalties collected pursuant to this section shall be paid to and become the property of the town.

CHAPTER 6-4. CRUELTY AND NEGLECT OF ANIMALS

6-4-1 Cruelty prohibited; classification; penalty

Ordinance 2011.26 amended section 6-4-1 and its title

A. It shall be unlawful for a person having care, control, charge, or custody of any animal, either as owner or otherwise, to:

1. Overdrive, overload, overwork, torture, torment, cruelly beat, mutilate or unlawfully kill the animal.
2. Cause or procure an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, cruelly beaten, mutilated or killed.
3. Inflict unnecessary cruelty upon the animal.
4. Cruelly drive or work the animal when unfit for labor.
5. Cruelly abandon the animal.

6. Carry or cause the animal to be carried in or upon a vehicle or otherwise, in an unnecessarily cruel or inhumane manner.

7. Knowingly and willfully authorize or permit the animal to be subjected to unreasonable or unnecessary torture, suffering or cruelty of any kind.

B. Violation of this section is a class 1 misdemeanor. In addition to any other penalty imposed by the magistrate, as a condition of probation, the magistrate may order that the owner of the animal shall not be permitted to own or control any animal for a period of up to three years and that the animal(s) which is the subject of this action be forfeited to the Pima animal care center to be placed by adoption in a suitable home or humanely destroyed.

6-4-2 Neglect prohibited; classification; penalty

Ordinance 2011.26 modified the title of section 6-4-2, split off paragraph B from A, modified paragraph B, and added paragraph C

A. The purpose of this section is to guarantee that animals under human custody or control are housed in healthy environments and are provided with proper food, water, shelter, medical care, exercise space and ventilation.

B. Any person having care, control, charge, or custody of any animal, either as owner or otherwise, shall provide:

1. That the animal receives daily, food that is free from contamination and is of sufficient quantity and nutritive value to maintain the animal in good health;

2. That potable water is accessible to the animal at all times, either free-flowing or in a clean receptacle;

3. That except for livestock, all animals have convenient access to natural or artificial shelter throughout the year. Any such artificial shelter shall be structurally sound and maintained in good repair to protect the animal from injury and from the elements and of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. Any shelter which does not protect the animal from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, does not comply with this chapter. Any shelter, all bedding and any spaces accessible to the animal shall be maintained in a manner which minimizes the risk of the animal contracting disease, being injured or becoming infested with parasites;

4. That the animal receives care and medical treatment for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering;

5. That the animal is given adequate exercise space either:

a. Within an enclosure that shall be constructed of material, and in a manner, to minimize the risk of injury to the animal, and shall encompass sufficient usable space to keep the animal in good condition, or

b. On a tie out, consisting of a chain, leash, wire cable or similar restraint attached to a swivel or pulley. A tie out shall be so located as to keep the animal exclusively on the secured premises. Tie outs shall be so located that they cannot become entangled with other objects. Collars used to attach an animal to a tie out shall not be of a choke type. No tie out shall employ a restraint that is less than ten feet in length;

6. That the animal has access to adequate ventilation and is protected from temperature extremes at all times. In this connection, it is unlawful for any person to keep any animal in a vehicle or other enclosed space in which the temperature is either so high or so low, or the ventilation is so inadequate, as to endanger the animal's life or health.

C. Violation of this section is a class 1 misdemeanor. In addition to any other penalty imposed by the magistrate, as a condition of probation, the magistrate may order that the owner of the animal shall not be permitted to own or control any animal for a period of up to three years and that the animal(s) which is the subject of this action be forfeited to the Pima animal care center to be placed by adoption in a suitable home or humanely destroyed.

6-4-3 Duty to obtain or render aid to animal struck by vehicle

Ordinance 2011.26 added section 6-4-3

A. The driver of a vehicle that collides with an animal that is readily identifiable as a domestic animal shall make a reasonable effort to obtain aid for the animal or to render aid and assistance to the animal. A person may discharge his or her duty under this section by reporting the incident to 911 or to other appropriate authorities.

B. Violation of this section is a class 1 misdemeanor.

6-4-4 Protection, removal, and impoundment of animals by town; waiver of provisions; production of animal

Ordinance 2011.26 renumbered section 6-4-4, modified its title, and deleted paragraphs F and G, which provided general penalties for violation of this chapter

A. Any peace officer or town animal enforcement agent is authorized to use whatever force is reasonable and necessary to remove any animal from a vehicle or other enclosed space whenever it appears that the animal's life or health is endangered by extreme temperatures or lack of ventilation within the vehicle or other enclosed space.

B. No peace officer or town animal enforcement agent shall be liable for damages to property caused by the use of reasonable force to remove an animal from such a vehicle or other enclosed space under those circumstances.

C. Any peace officer or town animal enforcement agent is authorized and empowered to remove and impound any animal in plain view and suffering from life threatening exigent circumstances. The owner of any animal removed and impounded under the provi-

sions of this chapter shall be liable for any impoundment, boarding or veterinary fees incurred in connection therewith.

D. Any of the provisions of this chapter may be waived as dictated by treatment under the direction of a licensed veterinarian.

E. An owner of an animal charged with a violation of this chapter shall produce that animal for inspection or impoundment upon the request of the town animal enforcement agent. All owners shall be responsible for any and all applicable impoundment and boarding fees in connection therewith.

CHAPTER 6-5. VICIOUS OR DESTRUCTIVE ANIMALS

6-5-1 Keeping vicious or destructive animals prohibited

It is unlawful for any person to keep, control, harbor or otherwise have under control any animal which is vicious or destructive. This chapter shall not apply to zoos, wild animal parks or animal shelters, or to persons who are in compliance with an order of the town magistrate, issued pursuant to this chapter.

6-5-2 Violations; penalty

A. The owner of any animal that bites, attempts to bite, endangers or otherwise injures or causes injury to human beings or other animals, or destroys, damages or causes damage to the property of another person is guilty of a class 1 misdemeanor.

B. An owner of an animal charged with a violation of this chapter shall produce that animal for inspection or impoundment upon the request of the town animal enforcement agent. All owners shall be responsible for any and all applicable impoundment and boarding fees in connection therewith.

C. It is unlawful for any person to fail to comply with an order of the magistrate regarding a vicious or destructive animal. It is a separate offense for each day that the person fails to comply with the magistrate's order.

D. In addition to any other penalty, if the victim suffers economic loss as a result of a violation of this chapter, the magistrate shall order the owner to pay restitution to the victim, in the full amount of the victim's economic loss, as determined by the magistrate. This remedy shall not abridge any civil cause of action by the victim.

Paragraphs D and E were rewritten by Ordinance 2007.13

E. In addition to any other penalty, upon the declaration of an animal as vicious or destructive, the magistrate shall order one or more of the following:

1. That the animal be kept in an enclosure that is high enough so that the animal cannot bite, harm or injure anyone outside the enclosure. The enclosure and property where it is located shall be posted with conspicuous warning signs, and at no time shall the animal leave the enclosure unless it is muzzled, leashed and under the control of an adult human being; or

2. That the animal be banished from the town limits; or
3. That the animal be spayed or neutered at the owner's expense; or
4. That the animal be humanely destroyed.

F. It shall be an affirmative defense to the provisions of this chapter if the animal is:

1. Not at-large and there is provocation; or
2. The dog is a police dog under the command of its trainer.

G. In any proceeding brought to enforce a violation of this chapter, the following procedure shall be used.

1. A peace officer or town animal enforcement agent, upon determining that any animal within the town limits is vicious and is an immediate danger to the safety of any person or other animal, may impound the animal immediately.
2. Within ten days of the date of impoundment, the town magistrate shall conduct a hearing provided under chapter 6-6.
3. The owner of the animal shall be notified of this hearing by the court. Upon proof of notification, the hearing may proceed in the owner's absence.

The cross-reference in paragraph G.2 was revised by Ordinance 2007.13

CHAPTER 6-6. DANGEROUS ANIMALS

6-6-1 Definitions

A. A dangerous animal means one which has been declared to be vicious or destructive pursuant to this title or displays or has a tendency, disposition or propensity, as determined by the town animal enforcement agent, to:

1. Injure, bite, attack, chase or charge, or attempt to injure, bite, attack, chase or charge a person or domestic animal in a threatening manner; or
2. Bare its teeth or approach a person or domestic animal in a threatening manner.

B. A dangerous animal does not include an animal used in law enforcement, nor does this chapter apply to animals in custody of zoos or wild animal parks, animals placed in animal shelters, animals under care of veterinarians or wild animals.

6-6-2 Declaring an animal dangerous; notice

A. The town animal enforcement agent shall develop guidelines to determine if an animal is a dangerous animal.

B. Whenever the town animal enforcement agent has reason to believe an animal may be dangerous, an evaluation of the animal shall be conducted.

C. If the town animal enforcement agent declares that an animal is dangerous, the owner shall be notified and issued an order of compliance. Once an animal is declared dangerous, the animal is dangerous until a hearing officer or judge determines otherwise. If the owner is known, he shall be provided with a written notice of his right to file, within five days of receipt of the notice, a written request with the town animal enforcement agent for a hearing to determine if the animal is dangerous. If the owner's whereabouts cannot be determined or the animal poses a threat to public safety or domestic animals, the animal shall be impounded and notice shall be posted on property or mailed forthwith to him at his last known address by registered or certified mail, return receipt requested.

6-6-3 Hearing; burden of proof; appeal

A. The owner of the animal may request a hearing to contest the declaration of dangerousness or contest the confinement conditions ordered by the town animal enforcement agent.

B. If the owner of an impounded animal fails to appear at a hearing or fails to request a hearing, the animal shall be forfeited to the town animal enforcement agent to be humanely destroyed.

C. If the owner of a non-impounded animal fails to appear at a hearing or fails to request a hearing, the animal is declared to be dangerous and the order of compliance shall remain in effect.

D. After request for a hearing, the town animal enforcement agent shall set a hearing date within five working days at a time and place designated by the town animal enforcement agent. The hearing shall be conducted by a hearing officer selected by the town animal enforcement agent.

E. The hearing shall be held in an informal manner and a record of the hearing shall be made by stenographic transcription or by electronic tape recording. The rules of evidence do not apply, and hearsay is admissible.

F. It is the burden of the owner of the animal to establish by a preponderance of the evidence that the animal is not dangerous. The owner may be represented by counsel and present witnesses at the animal owner's cost.

G. The hearing officer shall make a written decision within five working days of the hearing and notify the owner of the animal of the decision.

H. If the decision of dangerousness is sustained by the hearing officer, the owner of the animal shall obey the order of compliance issued by the town animal enforcement agent within the time given by the order of compliance or ten days whichever is more.

I. If the animal is found not to be dangerous, the order of compliance is null and void. The finding that an animal is not dangerous does

not prevent the town enforcement agent from declaring an animal dangerous again if the agent has additional reasons to believe the animal is dangerous after a new evaluation of the animal is conducted.

J. Appeal of the decision of the hearing officer shall be by way of special action to the superior court on the record of the hearing. If either party claims the record to be incomplete or lost, and the hearing officer who conducted the hearing so certifies, a new hearing shall be conducted before that officer. The appealing party shall bear the cost of preparing the record of the hearing on appeal. No appeal shall be taken later than thirty days after the decision.

6-6-4 Order of compliance

A. When an animal is declared dangerous, the town animal enforcement agent shall issue an order of compliance requiring the owner within 30 days to:

1. Confine the animal sufficiently to prevent the animal's escape as follows:

   a. The town animal enforcement agent shall determine the appropriate fencing requirements for the size and nature of the animal. The town animal enforcement agent may require a fence including gates to be six feet in height; the fence from five feet in height to six feet in height to incline to the inside of the confinement area at a forty-five degree angle from the vertical; or that the confinement area be wholly covered by a material strong enough to keep the animal from escaping.

   b. The town animal enforcement agent may require the bottom of the confinement area to be of concrete, cement or asphalt, or of blocks or bricks set in concrete or cement; or if the bottom is not provided, then a footing of such material shall be placed along the whole perimeter of the confinement area to a depth of one foot below ground level, or deeper if required by the town animal enforcement agent.

   c. The gates to the confinement area shall be locked at all times with a padlock except while entering or exiting.

   d. The town animal enforcement agent may require temporary confinement measures until the order of compliance has been obeyed or the hearing officer determines that the animal is not dangerous. If the owner does not immediately comply with the temporary confinement requirements, the animal shall be impounded.

2. Muzzle and restrain the animal outside the confinement area with a leash, chain, rope or similar device not more than six feet in length sufficient to restrain the animal and under the control of a person capable of preventing the animal from engaging in any prohibited behavior.

3. Post a sign on every gate or entry way to the confinement area stating "beware of dangerous animal, per Marana animal control title 6."

4. Obtain and maintain liability insurance in a single incident amount of $50,000, unless the animal has been declared to be vicious or destructive pursuant to this title, in which case the amount of insurance shall be no less than $250,000, to cover any damage or injury that may be caused by the dangerous animal. The town animal enforcement agent shall maintain a registry of the animals, owners and insurance carrier for each dangerous animal.

5. Pay the reasonable cost to the town animal enforcement agent to tattoo the animal with an identification number. The town animal enforcement agent shall maintain a registry of the numbers and the owners of the animals.

6. Have a licensed veterinarian spay or neuter the animal at the owner's expense. The owner shall obtain written certification signed by the veterinarian that the spaying or neutering has been performed.

6-6-5 Consent to inspection; inspection; order of compliance; seizure

A. By continuing to own an animal declared dangerous, an owner gives consent to the town animal enforcement agent or any law enforcement officer to inspect the animal declared dangerous, the premises where the animal is kept, the liability insurance documents required for the animal, and the veterinarian's certificate of spaying or neutering for the animal.

B. The town animal enforcement agent may seize and impound the dangerous animal if the owner fails to obey the order of compliance. Five days after the seizure, the town animal enforcement agent may humanely destroy the animal unless the owner has demonstrated obedience to the order of compliance. The owner of the animal is responsible for any impound fees. If the owner of the animal demonstrates proof that the order of compliance has been obeyed, then the animal will be returned to the owner after payment of impound fees. Any action taken under this chapter shall be in addition to any available criminal penalties.

6-6-6 Required acts and unlawful activities

A. An owner of an animal declared dangerous shall obey the order of compliance.

B. An owner of an animal declared dangerous shall not sell, give away, abandon or otherwise dispose of the animal without notifying the town animal enforcement agent in writing in advance.

C. An owner of an animal declared to be dangerous shall provide proof of liability insurance and the veterinarian's certificate of

spaying or neutering to the town animal enforcement agent upon demand.

D. An owner of an animal declared dangerous shall not prevent or try to prevent inspection of the animal or the premises where the animal is kept.

E. When the owner of an animal is notified that the town animal enforcement agent is evaluating an animal or wants to evaluate an animal to determine if the animal is dangerous, the owner of the animal shall present the animal for inspection within 24 hours of a request by the town animal enforcement agent. The owner shall not sell, give away, hide or otherwise prevent the town animal enforcement agent from making an evaluation of the animal.

F. The owner of an animal declared to be dangerous shall prevent the animal from running at-large as defined in this title.

G. The owner of an animal declared to be dangerous shall prevent the animal from biting, injuring or attacking any person or domestic animal outside of the confinement area.

6-6-7 Minimum penalties; enhancement

A. Wherever in this chapter any act is prohibited or declared to be unlawful or the doing of any act is required or the failure to do an act is declared to be unlawful, the violation of that provision is a misdemeanor punishable, except for the penalties already set forth in this title, by a fine of not less than $100 and not more than $1,000 and/or by imprisonment for not more than six months. No judge may grant probation to or suspend the imposition of the minimum fine prescribed in this paragraph. In addition, a person may be placed on probation for not more than three years. This shall not be construed to affect, in any way, the imposition of the minimum mandatory penalties provided in this paragraph.

B. Each day any violation continues or occurs shall constitute a separate offense.

CHAPTER 6-7. EXCESSIVE NOISE CAUSED BY ANIMALS OR BIRDS

6-7-1 Excessive noise prohibited

It is unlawful to own, possess, harbor or control any animal or bird which frequently or for continuous duration howls, barks, meows, squawks or makes other sounds, if they are clearly audible sounds beyond the property line of the property on which they are conducted and they disturb the public peace, quiet or comfort of the neighboring inhabitants.

6-7-2 Violations; penalty

A. The provisions of this chapter shall be enforced and administered by the town animal enforcement agent and appropriate local law enforcement.

B. A violation of any provision of this chapter is a civil infraction and will be adjudicated by the town magistrate.

C. If the owner of the animal or bird which has engaged in an activity prohibited by this chapter cannot be determined, the owner, lessee or occupant of the property on which the activity is located shall be deemed responsible for the violation.

D. Each days' continuance of a violation under this chapter shall be determined a separate offense.

E. A fine of not less than $50 or more than $300 shall be imposed for each violation.

6-7-3 Exemptions

Persons wishing to continue activities which constitute a violation of this chapter but were commenced prior to January 4, 1994 may seek an exemption from the town magistrate. The exemption may be granted if the magistrate finds that strict application of this chapter would cause undue hardship and that there is no reasonable or productive alternative method of engaging in the activity.

CHAPTER 6-8. AUTHORITY TO ENFORCE, REMOVE AND IMPOUND

6-8-1 Authority to enforce

Pima County Animal Care officers have been designated the town animal enforcement agent by intergovernmental agreement

Any peace officer or town animal enforcement agent is hereby authorized and empowered to enforce the provisions of this title and to issue citations for violations of it.

6-8-2 Authority to remove, impound and microchip; costs

Section 6-8-2 was substantially modified by Ordinance 2006.21, which among other things added the microchip authorization

A. A peace officer or town animal enforcement agent who has probable cause to believe violation of this title or of the Arizona revised statutes has occurred and reasonably believes that the violation will continue is authorized and empowered to remove and impound the animal.

B. The town enforcement agent is authorized and empowered to place an identity-tracing microchip in an animal impounded under this chapter.

C. All fees, including veterinary fees, incurred to remove, impound, board, care for and/or microchip an animal under the authority of this title shall be paid by the animal's owner.

CHAPTER 6-9. RULES OF PROCEDURE

All civil proceedings under this title shall be governed by the 17B A.R.S. traffic violation cases civ. proc. rules, as amended.

Title 7
Building

7

TITLE 7. BUILDING

CHAPTER 7-1. BUILDING CODES 7-1

CHAPTER 7-2. BUILDING PERMITS 7-2

CHAPTER 7-3. [RESERVED] 7-3

CHAPTER 7-4. SOLAR ENERGY UTILIZATION CREDIT 7-3

CHAPTER 7-5. SPECIAL CONSTRUCTION SITE REQUIREMENTS 7-3

TITLE 7. BUILDING

Title 7 was adopted by Ordinance 95.32. Ordinance 2007.22 changed "building department" to "building safety department" throughout Title 7.

CHAPTER 7-1. BUILDING CODES

7-1-1 Purpose

A. The Marana building code shall have the following purposes:

1. Regulate the site preparation and construction, alteration, moving, demolition, repair, use and occupancy of buildings, structures and building service equipment within the jurisdiction;
2. Provide for the issuance of permits and collection of fees;
3. Provide for a building codes advisory board;
4. Provide for penalties for the violation of building codes.

7-1-2 Building codes adopted

Section 7-1-2 was adopted by Ordinance 2001.04 and revised by Ordinances 2006.16, 2006.33, 2007.22, and 2013.007. For prior history, see Ordinance 95.32 and 96.34. The local amendments are found here.

A. The Marana building code consists of the following code documents incorporated by this reference in this title, all of which are on file with the town clerk's office:

1. The 2012 international building code, with local amendments.
2. The 2012 international plumbing code, with local amendments.
3. The 2012 international residential code, with local amendments.
4. The 2012 international mechanical code, with local amendments.
5. The 2012 international property maintenance code, with local amendments.
6. The 2012 international energy conservation code, with local amendments.
7. The 2011 national electric code, with local amendments.
8. The 2012 international fire code, with local amendments.
9. The 2012 international fuel gas code.

B. The Marana building code adopts by reference the following local ordinances and codes, which are on file with the town clerk's office:

The 2006 Marana pool and spa code and the 2008 Marana outdoor lighting code are found here.

1. The 2006 Marana pool and spa code.
2. The 2008 Marana outdoor lighting code.

Section 7-1-2(B)(2) was revised by Ordinance 2008.18

7-1-3 Copies on file

Three copies of the Marana building code are on file in the office of the town clerk and available for public inspection during regular working hours.

7-1-4 Building official designated

Section 7-1-4 was revised by Ordinance 2006.16

The building official, or his or her duly authorized representative, is the authority charged with the administration and enforcement of the Marana building code. The building official may appoint an assistant building official, inspection team leaders and other employees as shall be authorized from time to time.

7-1-5 Violation a civil infraction

Section 7-1-5 was revised by Ordinance 2006.16

It shall be a civil infraction for any person, firm or corporation to violate any of the provisions of this title. Civil infractions shall be enforced as provided in chapter 5-7 of this code. Each day a violation continues shall be considered a separate offense.

7-1-6 Administrative appeal process

Section 7-1-6 was revised and simplified by Ordinance 2006.16.

A. Whenever a violation of this building code is determined, whether during construction or at the plan review stage, and the applicant wishes to appeal the decision of the staff because of code interpretation, unreasonable hardship or other acceptable reasons, the applicant may appeal to the building official as follows:

   1. The applicant shall file a written appeal on the forms provided by the building official. If the building official rules in favor of the applicant, the issue is closed.

   2. If an appeal is denied by the building official, the applicant shall either comply with the decision or appeal to the board of appeals in accordance with the building code.

CHAPTER 7-2. BUILDING PERMITS

7-2-1 Application requirements

Section 7-2-1 was revised by Ordinance 2006.16.

A. Any person, partnership, firm or corporation desiring to construct, erect, enlarge, substantially modify or move any residential building or mobile home or other structure shall first make application for a building permit to the building safety department and shall not commence that construction without first obtaining a building permit from the town.

B. Any person, partnership, firm or corporation desiring to erect, construct, enlarge, move or substantially modify any commercial, industrial, quasi-public or public building or structure shall first make application to the building safety department for a separate building permit for each building or structure and shall not undertake that construction, enlargement, movement or modification without first obtaining a building permit from the town.

C. All applications for a building permit shall be accompanied by plans which have been drawn to scale and which show the actual dimensions of the lot to be built upon, the size and location of existing buildings with respect to front, rear and side property lines, and the location and layout of proposed off-street parking areas.

D. Plans shall provide sufficient details of proposed structural features, and electrical, plumbing, and mechanical installations for review by the town plans examiner to permit evaluation of their adequacy by the town building inspector.

E. The term "substantially modify" means the installation or removal of any interior or exterior wall or the addition or replacement of any element of a plumbing, mechanical or electrical system.

CHAPTER 7-3. [RESERVED]

Chapter 7-3, formerly entitled "fees," was superseded by Ordinance 2005.16, which adopted various development-related fees by separate ordinance. See Ordinance 82.05 and 89.10 for prior history.

CHAPTER 7-4. SOLAR ENERGY UTILIZATION CREDIT

Chapter 7-4 was adopted by Ordinance 2001.23 and amended by Ordinance 2006.16 to remove water conservation credit. Chapter 7-4 sunsets on May 1, 2008 or when cumulative credits of $300,000 are given. Chapter 7-4 was revised by Ordinance 2005.22. Former chapter 7-4 ("Fiber Optics code") was deleted by Ordinance 99.28.

7-4-1 Purpose

The purpose of this chapter is to encourage the use of solar energy utilization within the town by reducing the permit fee for permits in accordance with the currently adopted permit fee schedule.

Ordinance 2005.22 amended section 7-4-1 by adding the section number and heading and correcting a reference to now-superseded chapter 7-3 relating to fees. Ordinance 2006.16 removed the words "and water conservation"

7-4-2 Credit program

A. All single family residences within the town are eligible to apply for solar energy utilization credits. Approval by the building official will be based on the nature of the technologies to be used and if appropriate for the site.

B. Solar utilization for new construction will include photo voltaic generation, whole house water heating and active solar heating. Passive solar heating will be considered when designed and certified by a professional engineer.

C. Existing single family residences may add solar heating systems and photo voltaic systems.

D. Other systems not mentioned above may be evaluated by the building official to receive credit. Decisions regarding credits may be appealed to the town manager.

E. The installations shall be reviewed and inspected per the building code. If the applicant fails to install the system, the credits given shall be paid to the town. The system shall be considered not installed if at the time of intermediate inspections the system is not roughed in or at final inspections the system is not operational. Final utility installation shall not be approved until the fee is paid or the system is installed and approved.

Ordinance 2005.22 amended section 7-4-2 by adding the section number and heading and inserting "town manager" for "development services director". Ordinance 2006.16 removed various references to water conservation credits

CHAPTER 7-5. SPECIAL CONSTRUCTION SITE REQUIREMENTS

Ordinance 2006.16 renamed Chapter 7-5 from "additional building requirements" and deleted section 7-5-1 entitled "location of gasoline pumps"

7-5-1 Sewage disposal

A. Septic tank systems shall be constructed in accordance with the standards of the Arizona department of health services and the Pima County health department, with compliance with those

Ordinance 2006.16 renumbered and renamed Section 7-5-1, deleted "sewerage systems and/or" from the beginning of paragraph A and added paragraph B

standards to be certified by the appropriate state or county agency or the town engineer.

B. Sewer systems shall be reviewed under the adopted plumbing code, Pima County wastewater management department, and Pima County department of environmental quality in accordance with local and state regulations. All connections to any sewer system must be approved in writing by Pima County wastewater management department prior to a building permit being issued. Pima County may waive this requirement when requested by the building official.

7-5-2 Sanitation and trash

Section 7-5-2 was added by Ordinance 2006.16.

A. Each construction site shall be provided with one portable toilet per site or one for every 15 workers in a commercial site or subdivision. Work performed on a residence by or under contract with the owner is exempt.

B. Construction debris shall be contained and controlled on each construction site. A roll-off or similar container shall be provided at each site. The permit holder shall collect debris that has blown off the construction site. Debris shall not be buried on site and shall be removed to a solid waste landfill registered with the Arizona department of environmental quality pursuant to A.R.S. § 49-747.

Title 8

Transaction Privilege Tax

8

TITLE 8. TRANSACTION PRIVILEGE TAX

CHAPTER 8-1. ADOPTION OF TAX CODE 8-1

TITLE 8. TRANSACTION PRIVILEGE TAX

Title 8 was adopted by Ordinance 96.03. See Ordinance 79-3 for prior history.

CHAPTER 8-1. ADOPTION OF TAX CODE

That certain document known as "the tax code of the town of Marana, Arizona", three copies of which are on file in the office of the town clerk and which has been made a public record by resolution, and any amendments to it, is hereby referred to, adopted and made a part of this town code as if fully set out in this title.

Click on the following hyperlink to see the full text of Title 8. (Note: This may take a moment to download.)

Title 9

Business Regulations

9

TITLE 9. BUSINESS REGULATIONS

CHAPTER 9-1. BUSINESS LICENSE 9-1

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TITLE 9. BUSINESS REGULATIONS

Title 9 was adopted by Ordinance 96.09. See Ordinance 93.02 for prior history. Ordinance 2009.14 made revisions throughout title 9 to transfer the licensing duties from the town clerk to the license inspector. See Appendix (Table of Revisions) for affected sections.

CHAPTER 9-1. BUSINESS LICENSE

Ordinance 2000.06 added the word "exceptions" to the title of section 9-1-1. On July 24, 2013, the town attorney corrected a scrivener's error in the section heading, changing "licensed" to "license"

9-1-1 License required; exceptions

A. It is unlawful for any person, whether as principal or agent, either for himself or for another person, or for any corporation, or as a member of any firm or partnership, to commence, practice, transact or carry on any trade, calling, profession, occupation or business within the town limits without first having procured a license from the town to do so and without complying with all regulations of that trade, calling, profession, occupation or business as specified or required by the United States government or the state and its political subdivisions. No license shall be issued without proof by the applicant of that compliance and verification by the town that no violation of the town's zoning or sales tax regulations will occur by that issuance.

B. The practicing or carrying on of any trade, calling, profession, occupation or business by any person, corporation or partnership without first having procured a license from the town to do so, or without complying with any and all regulations of that trade, calling, profession, occupation or business, as required by other law or by this chapter shall constitute a separate violation of this chapter for each and every day that the trade, calling, profession, occupation or business is practiced, carried on or conducted within the town.

C. The only exceptions to the licensing requirements of this chapter shall be:

1. Non profit educational institutions, fraternal and service clubs, bona fide religious organizations, and agencies of any federal, state or local governments.
2. Non profit private clubs where a basic membership fee covers the cost of the use of the facilities.
3. Community organizations/events upon approval of the license inspector.
4. Businesses and trades which are exempt from licensing and tax regulations under federal and state statutes.
5. Persons selling personal property within the confines of that person's residential premises, so long as the activity neither exceeds three consecutive days or is performed more than four times within a one-year period.

Ordinance 2000.06 added paragraph 5

9-1-2 Application and issuance

A. It shall be the duty of the license inspector upon receipt of a properly completed application for a business license and verification of the data contained on it, to prepare and issue a license un-

der this chapter for every person, corporation or partnership required to pay a license fee under this chapter and to state in each license the amount charged for the same, the period of time covered, and the trade, calling, profession, occupation or business licensed, and the location or place of business where the trade, calling, profession, occupation or business is to be carried on, transacted or practiced.

B. In no case, shall any mistake made by the town in issuing any license or collecting the amount of fee for any license or the amount actually due from any person required to pay for a license as provided in this chapter, prevent, prejudice or stop the town from collecting the correct amount of fee or charge for any license or the amount actually due from any person required to pay for a license as provided in this chapter, or revoking any license erroneously issued and refunding the fee collected.

C. It shall be a condition precedent to licensing that all ordinances and regulations affecting the public peace, health and safety be complied with in full.

9-1-3 Fees; payment; term of licenses; annual renewal required

Section 9-1-3 was rewritten by Ordinance 2000.06; and amended by Ordinance 2009.11, which moved specific fees to the comprehensive fee schedule, and by Ordinance 2014.021, which deleted former paragraph B regarding liquor license fees (now found in chapter 9-7). See Ordinances 98.12 and 2010.13 for prior history.

Ordinance 2002.07 added what is now paragraph B

A. The fee for any business license or business license renewal issued under this chapter shall be in an amount established by a fee schedule adopted by the council and amended from time to time.

B. The fee for any license issued to a person, firm, corporation or other entity operating a surface mining operation, as defined in chapter 9-10, including a renewal license, shall be in an amount established by a fee schedule adopted by the council and amended from time to time. An increased fee is necessary to:

1. support town staff and other efforts to monitor, inspect, and enforce the provisions of chapter 9-10, surface mining and land reclamation, and chapter 10-1, transportation and dumping of garbage or aggregate material as it relates to aggregate material,

2. ensure that surface mining operations as defined in chapter 9-10 are maintained to standards of repair, orderliness, neatness, sanitation, and safety acceptable to industry standards and the town, and

3. ensure that surface mining operations as defined in chapter 9-10 carry out all mining operations in an organized manner and in compliance with all federal and state laws and the regulations of appropriate state and federal agencies, having due regard for the health and safety of workers and other employees, and safeguard with fences, barriers, fills, covers, or other effective devices, any shafts, pits, tunnels, cuts, and other excavation which otherwise would unduly imperil life, safety or property of other persons.

C. All charges for a license required by this chapter shall be paid in advance and in lawful money of the United States of America at the office of the license inspector.

D. Any license issued pursuant to this chapter shall expire and a renewal charge for all licenses provided in this chapter shall become due and payable on the anniversary date of the issuance of the license and every anniversary date thereafter. Any new license charge shall become due and payable and be paid on or before the day of commencing to carry on, transact, or practice the trade, calling, profession, occupation or business for which a license is required by this chapter.

E. Any person, firm, company or corporation who discontinues the business, trade, calling, profession or occupation during the period covered by the current license shall not be entitled to any refund of license fee for that portion of the period remaining after discontinuing the business, trade, calling, profession or occupation.

F. When the charge for any license required under this chapter shall remain unpaid for 15 days from and after the due date, the charge shall be delinquent and the license inspector, on the day upon which the charge becomes delinquent, shall add to it a late payment fee in an amount established by a fee schedule adopted by the council and amended from time to time as a penalty and no receipt or license shall be issued by the license inspector until the charge and penalty is paid in full.

9-1-4 Number of licenses required

A. A separate charge for a license shall be paid for each branch establishment or separate place of business in which any person, corporation or partnership shall carry on, transact or practice a trade, calling, profession, occupation or business.

B. When more than one trade, calling, profession, occupation or business is carried on, transacted or practiced by the same person, corporation or partnership at one fixed place of business, only one license shall be required and the charge for the license shall be the charge applicable to any of the activities, and all activities shall be listed on the license issued.

9-1-5 License to be exhibited

A. Each person, corporation or partnership having a license and having a fixed place of business shall keep the license, while in force, at some conspicuous place or location within the place of business.

B. Each person, corporation or partnership having a license and having no fixed place of business shall carry the license with him or her at all times, while engaged in any activity for which the license was issued, except that a person acting for any such corporation, firm or company and not being the only person acting for that corporation, firm or company may carry with him or her a copy of the

license which has been issued by the town and plainly marked or stamped "Duplicate".

C. Each person, corporation or partnership having a license shall produce and exhibit the same whenever requested to do so by the license inspector, any police officer or any agent or employee of the town.

Ordinance 2009.25 changed "town clerk" to "license inspector" and revised the last phrase in paragraph C

9-1-6 License inspector

Ordinance 2009.14 changed the title of section 9-1-6 (formerly "Inspector of licenses") and replaced "town clerk," in all instances, with "license inspector." Ordinance 2013.013 added code compliance officers to paragraph A.

A. The town manager shall designate a town employee who shall be the license inspector, and all police officers and code compliance officers of the town shall be assistant inspectors of licenses and, in addition to their several duties, are hereby required to see that all required licenses are obtained. The license inspector shall maintain a record for each license issued and shall record the reports of violations in it.

B. Each assistant inspector of licenses, immediately upon the facts coming to his or her knowledge, shall report to the license inspector the name of any person, corporation or partnership carrying on, transacting or practicing any trade, calling, profession or business within the town without first having obtained a license as required by this chapter.

9-1-7 Duties and powers of inspectors

Ordinance 2000.06 rewrote section 9-1-7

The inspector of licenses and the assistant inspectors, each in the discharge and performance of his or her duties, shall have and exercise the following powers:

A. To issue a citation through an officer of the Marana police department for any violation of the provisions of this chapter, and to issue a citation through a code compliance officer for any civil violation of the provisions of this chapter.

Ordinance 2013.013 added the final clause to paragraph A, concerning code compliance officer citations

B. To enter, free of charge and at any reasonable time, any place of business for which a license is required by this chapter and to demand exhibition of the license for the current period of time from any person, corporation or partnership engaged in carrying on, transacting or practicing any trade, calling, profession, occupation or business at that place of business and, if the person, corporation or partnership fails then and there to exhibit the license, that person, corporation or partnership shall be liable to the penalties provided for violation of this chapter.

9-1-8 Transfer of license

No license issued under the provisions of this chapter shall be assigned or transferred to any other person, corporation or partnership without first obtaining permission from the town.

9-1-9 Prorating prohibited

No license fee provided in this chapter shall be prorated.

9-1-10 Denial; restrictions; suspension; revocation

Ordinance 2000.06 rewrote section 9-1-10 to combine former sections 9-1-10 and 9-1-11.

A. Licenses issued under the provisions of this chapter may be denied, restricted, suspended or revoked by the town, after notice, for any of the following causes:

1. Fraud, misrepresentation or material false statement contained in the application for license;
2. Fraud, misrepresentation or material false statement made in the course of carrying on the business;
3. Any violation of this chapter;
4. Conducting business in violation of any town ordinance, county ordinance, state law or federal law, relating to the public health, safety and welfare; or
5. If deemed necessary in the interest of public safety, protection, health, or morals.

B. Upon notification of a violation, the business licensee shall have 30 days in which to remedy the violation before the license is suspended. Business activity shall be allowed to continue during this period, unless the violation threatens public health, protection, safety, or morals, in which case the business activity shall cease immediately upon notification of violation.

C. If after 30 days the violation has not been remedied or the remedial action not brought to the attention of the license inspector, the license inspector shall give written notice to the licensee or the person in control of the business within the town by personal service or registered mail that the license is suspended pending a hearing before the town manager, or his or her appointee, for the purpose of determining whether the license should be revoked. The notice shall state the time and place where the hearing is to be held, which shall be within 15 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation.

D. The licensee may take the necessary actions during the suspension period to remedy the violation(s), if allowable, and apply to the license inspector to have the license fully restored. The suspension notice shall be void, and the suspended license shall be promptly reinstated as soon as the licensee in violation receives notice in writing from the appropriate town official indicating the violation has been cured, removed or rectified.

E. During the period of the license suspension, or revocation but awaiting appeal, no business activity shall be conducted at, on, or in the premises or by any person, principal, agent, corporation, group, or member of any firm or partnership.

9-1-11 Appeal

Former section 9-1-12 was renumbered as section 9-1-11 by Ordinance 2000.06

A. Any person aggrieved by the denial of an application for license or by the restrictions placed upon the license or by the suspension or revocation of the license, and who is not satisfied with the decision of the town manager or his or her designee shall have the right to an appeal before the town council. An appeal shall be taken by filing with the town clerk, within 15 days after the decision of the hearing officer, a written statement requesting an appeal, and setting forth fully the grounds for the appeal. If an appeal is not requested within the time limit, no appeal shall be granted, and the decision of the hearing officer will become final and binding. The written statement of appeal must be delivered in person to the town clerk.

B. The town council shall hear the matter of the appeal at the next regularly scheduled meeting that provides sufficient notice to the licensee, and notice of the hearing shall be mailed to the appellant at least seven days prior to the meeting. Notice shall be deemed delivered upon mailing, whether received or not.

C. The decision and order of the town council on appeal shall be final.

9-1-12 Additional reporting requirements

Ordinance 2013.014 rewrote section 9-1-12, which was added by Ordinance 2000.10

To ensure compliance with the provisions of chapter 9-6 regarding sexually oriented businesses, whenever the license inspector has reason to believe that the sale or rental for any form of consideration of any merchandise defined in section 9-6-2 B is a principal business purpose of any business licensed under this chapter, the license inspector may require the business to provide to the license inspector statements, in a form prescribed by the license inspector, detailing the percentage of the business's total retail sales, total inventory and total retail floor space attributable to such merchandise. The license inspector may also request that the business provide supporting documentation or information reasonably necessary to verify any of the information provided in the detailed statements.

Former section 9-1-13 entitled "Penalty", adopted by Ordinance 96.09 and amended by Ordinance 98.12, was deleted by Ordinance 2000.06

CHAPTER 9-2. PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

9-2-1 Definitions

In this chapter, unless the context otherwise requires:

A. "Peddler" means any corporation, partnership, individual, firm, or other entity, whether resident of the town or not, who travels or whose agents travel from place to place, from house to house, from street to street or business to business carrying, conveying or transporting goods, wares, merchandise, edible foodstuffs or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers. It is further provided that a person who solicits orders and, as a separate transaction, makes delivery to purchasers as a part of the scheme or design to evade

the provisions of this title shall be deemed a peddler subject to the provisions contained in this chapter.

B. "Solicitor" means any person, corporate or individual, or firm, whether resident of the town or not, who travels, or whose agents move or travel from place to place, from house to house, from street to street or from business to business taking or attempting to take orders for sale of goods, wares and merchandise, edible foodstuffs, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether collecting advance payments on those sales or not, provided that the definition shall include any person or firm who, for himself or itself or for another person or firm, hires, leases, uses or occupies any building, structure, tent, hotel room, lodging house, apartment, shop or any other place within the town for the sole purpose of exhibiting samples and taking orders for future delivery.

C. "Transient merchant" means any person, corporate or individual, or firm, whether owner or otherwise, whether a resident of the town or not, who engages or whose agents engage, in a temporary business of selling and delivering goods, wares, merchandise, edible foodstuffs, services or provisions, within the town, and who, in furtherance of that purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, public room in a hotel, lodging house, apartment, shop, or any street, alley or other place within the town for the exhibition and sale of those goods, wares, merchandise and edible foodstuffs, either privately or at public auction. The person or firm so engaged shall not be relieved from complying with the provisions of this title merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting that transient business in connection with, as a part of or in the name of that local dealer, trader, merchant or auctioneer.

Ordinance 2000.06 added the word "services" to paragraph C

9-2-2 License required; prohibited activities

Ordinance 2000.06 rewrote section 9-2-2, incorporated the subject matter of former section 9-2-3 ("Registration required"), and renumbered the remaining sections to conform.

A. Subject to the provisions of A.R.S. § 3-563, any person operating as a solicitor, peddler, or transient merchant within the town shall register with the license inspector and obtain a license showing that registration.

B. When more than one trade, calling, profession, occupation or business shall be carried on, transacted or practiced by the same person, corporation or partnership without any fixed place of business, a separate license shall be required and a separate appropriate charge be paid for each activity for which a license is required by this chapter.

C. It is unlawful for:

1. Any peddler, solicitor or transient merchant to make exclusive use of any location on any street, alley, sidewalk or right-of-

way for the purpose of selling, delivering, or exhibiting goods or merchandise.

2. Any peddler, solicitor, or transient merchant to operate in a congested area where the operation may impede or inconvenience the public use of the street, alley, sidewalk, or right of-way. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, is conclusive as to whether the area is congested and the public impeded or inconvenienced.
3. Any person to exhibit or display any copy or facsimile of the original license issued under this chapter.
4. Any child or children under the age of 16 years to solicit or peddle within the town pursuant to a permit granted under this chapter unless supervised by a responsible adult holding a permit issued pursuant to this chapter.
5. Any solicitor or peddler to commence earlier than 9:00 a.m. or extend later than 9:00 p.m. on any day.
6. Any solicitor or peddler under the age of 16 years to solicit at any time other than between 9:00 a.m. and 7:00 p.m.

9-2-3 Exemptions

The terms of this chapter do not include the acts of persons conducting bona fide religious or charitable business, persons selling personal property at wholesale to dealers, news vendors, the acts of merchants or their employees in delivering goods in the regular course of business, or to persons conducting periodic sales of personal property upon their living premises (i.e. yard or garage sales). Nothing contained in this chapter prohibits any sale required by statute or by order of any court, or prevents any person conducting a bona fide auction sale pursuant to law.

Ordinance 2000.06 changed "to prevent" to "prevents"

9-2-4 Conducting business without license prohibited

Ordinance 2000.06 modified section 9-2-4 to refer to "license" instead of "registration card"

It is unlawful for any solicitor, peddler, or transient merchant to conduct or transact business without having registered with the license inspector and without having obtained a license for it; without having the license in possession; or to fail to exhibit the license upon request by any official of the town. Each violation of this chapter shall constitute a separate violation for each and every day that the activity occurred within the town.

9-2-5 Peddling on posted premises; refusal to leave premises

Ordinance 2005.22 rewrote section 9-2-5

It is unlawful for any peddler, solicitor, or transient merchant, their agents or representatives, to come upon any premises with a sign exposed to public view bearing the words "no peddlers" or "no canvassers" or "no solicitors" or any combination of those or similar terms or to remain on any premises after having been requested to leave by the owner or occupant of the premises whether they are posted as specified above or not.

9-2-6 Application and issuance

A. Applicants for a license under this chapter shall file with the license inspector a sworn application in writing, on a form to be furnished by the license inspector, which shall give the following information:

1. Name and physical description of the applicant;
2. Complete permanent home and local addresses of the applicant and, in the case of a transient merchant, the local address from which proposed sales will be made;
3. A brief description of the nature of the business and goods to be sold;
4. If employed, the name and address of the employer (no post office box address will be accepted);
5. The length of time for which the right to do business is desired;
6. The source of supply of the goods or property proposed to be sold or for which orders are to be taken, or services to be provided, where those goods, services or products are located at the time the application is filed, and the proposed method of delivery;

Ordinance 2005.22 rewrote paragraph A(6)

7. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than traffic violations, the nature of the offense and the punishment or penalty assessed for it;
8. The most recent counties, cities, or towns, if any, where applicant carried on business immediately preceding the date of application and the address from which business was conducted in those municipalities; and
9. Description of any vehicles, including license numbers, to be used in conducting business in the town.

B. Licenses issued pursuant to this chapter shall be given to all applicants who have complied with the requirements of this chapter, unless the town discovers through any investigation that the applicant, his or her agents, or representatives have been convicted of or have pending charges for any felony or misdemeanor affecting their truth, honesty or veracity, as provided for in section 9-2-12. In those cases the application shall be denied or revoked.

Ordinance 2000.06 rewrote paragraph B

9-2-7 Charitable, religious, patriotic or philanthropic organizations

Any organization, society, association or corporation desiring to solicit or have solicited in its name money, donations of money or property or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise to persons other than members of that organization upon the streets, in office or business buildings, by house-to-house canvass or in public places for charitable, religious,

patriotic or philanthropic purpose exclusively shall be exempt from the provisions of this chapter.

9-2-8 Fees

Ordinance 2000.06 amended paragraph A and added paragraphs B through F

Ordinance 2009.11 amended paragraphs A and F by adding reference to the comprehensive fee schedule and deleting specific fee amounts

A. Every applicant peddler, solicitor, or transient merchant under this chapter shall pay a license fee or license renewal fee in an amount established by a fee schedule adopted by the council and amended from time to time for each business endeavor conducted in the town.

B. No greater or lesser amount of money shall be charged or received by the town for any license provided for in this chapter, and no license shall be issued for any period of time other than as provided in this chapter.

C. All charges for a license required by this chapter shall be paid in advance and in lawful money of the United States of America at the office of the license inspector.

D. A license issued pursuant to this chapter shall expire and a renewal charge for all licenses provided in this chapter shall become due and payable on the anniversary date of the issuance of the license and every anniversary date thereafter. Any new license charge shall become due and payable and be paid on or before the day of commencing to carry on, transact, or practice the trade, calling, profession, occupation or business for which a license is required by this chapter.

E. Any person, firm, company or corporation who discontinues the activity during the period covered by the current license shall not be entitled to any refund of license fee for that portion of the period remaining after discontinuing the activity.

F. Fees provided for this chapter shall become delinquent 15 days after they become due and the license inspector, on the day upon which the charge becomes delinquent, shall add to the fees a late payment fee in an amount established by a fee schedule adopted by the council and amended from time to time as a penalty and no receipt or license shall be issued thereafter by the license inspector until the charge and penalty is paid in full.

9-2-9 Enforcement of chapter; record of licenses issued and violations

Ordinance 2000.06 changed "arrests" to "citations issued"

It shall be the duty of any police officer of the town to enforce this chapter. The chief of police shall report to the license inspector all citations issued for a violation of this chapter, and the license inspector shall maintain a record for each license issued and record the reports of violations in it.

9-2-10 Exhibition of license

Ordinance 2000.06 changed "registration card" to "license"

Peddlers, solicitors, and transient merchants are required to exhibit their original license at the request of any person. Exhibition of any

copy or facsimile of the original shall not be considered in compliance with this chapter.

9-2-11 Transfer of registration

Ordinance 2000.06 changed "registration card" to "license"

No license issued under the provisions of this chapter shall be assigned or transferred to any other person, corporation or partnership without first obtaining permission from the license inspector.

9-2-12 Denial; restriction; suspension; revocation

Ordinance 2000.06 rewrote section 9-2-12 (section 9-2-14 of Ordinance 96.09), incorporated the subject matter of former section 9-2-13 ("Revocation of registration cards"), and renumbered the remaining sections to conform.

A. A license issued under the provisions of this chapter may be denied, restricted, suspended or revoked by the license inspector for any of the following causes:

1. Fraud, misrepresentation or material false statement contained in the application for license;
2. Fraud, misrepresentation or material false statement made in the course of carrying on the business;
3. Any violation of this chapter, town ordinance, state or federal law;
4. Conviction of any felony or a misdemeanor involving moral turpitude;
5. Conducting business in an unlawful manner or in a way that constitutes a breach of the peace or a menace to the health, safety or general welfare of the public; or
6. If deemed necessary in the interest of public safety and protection.

B. If a license is revoked, the revocation shall be effective immediately and the applicant shall not conduct any business activity within the town.

C. At the time of denial or revocation the license inspector shall give written notice to the person in control of the business, by personal service or registered mail, that the license has been denied or revoked. The notice shall also advise that the licensee shall have 15 days to request a review hearing before the town manager or his or her appointee for the purpose of determining whether the license should have been denied or revoked.

D. If the licensee requests a review hearing, the hearing shall be scheduled within 15 days of the request and the licensee shall receive notice of the date, time and place of the review hearing by personal service or registered mail.

9-2-13 Appeal

Ordinance 2000.06 changed "licensee" to "appellant" and "hearing officer" to "Town manager or his or her appointee"

A. Any person aggrieved by the denial of an application for a license or by the restrictions placed upon the license or by the suspension or revocation of the license who is not satisfied with the decision of the town manager or his or her designee shall have the right to an

appeal before the town council. An appeal shall be taken by filing with the town clerk, within 15 days after the decision of the town manager or his or her appointee, a written statement requesting an appeal, and setting forth fully the grounds for the appeal. If an appeal is not requested within the time limit, no appeal shall be granted, and the decision of the town manager or his or her appointee will become final and binding. A written statement of appeal must be delivered in person to the town clerk.

B. The town council shall hear the matter of the appeal at the next regularly scheduled meeting that provides sufficient notice to the appellant, and notice of the hearing shall be mailed to the appellant at least seven days prior to the meeting. Notice shall be deemed delivered upon mailing, whether received or not.

C. The decision and order of the town council on appeal shall be final.

Ordinance 2000.06 deleted former section 9-2-16 ("Penalty")

CHAPTER 9-3. SWAP MEETS

9-3-1 Definitions

In this chapter, unless the context otherwise requires:

A. "Swap meet operator" means any person, organization or firm who operates or conducts a swap meet.

Ordinance 2000.06 added the word "organization" to paragraph A

B. "Swap meet" means a place of commercial activity, popularly known as a swap meet, flea market, park and-swap, which is:

1. Open to the general public for the purchase of merchandise on the premises;
2. Available to the general public who wish to sell merchandise on the premises, whether the sellers or vendors are in the business of vending or are making casual sales or some combination of them;
3. Composed of stalls, stands or spaces allotted to vendors who do not occupy the same allotted space or spaces on an uninterrupted continuous daily basis.

9-3-2 License required

Ordinance 2000.06 rewrote section 9-3-2

A. It is unlawful for any swap meet operator to engage in any swap meet business within the town without first complying with the licensing requirements of chapter 9-1.

B. It is unlawful for any vendor conducting or transacting business within the confines of a swap meet to engage in any swap meet business within the town without first complying with the licensing requirements of chapter 9-1 unless the appropriate swap meet operator is licensed and registered pursuant to chapter 9-1.

9-3-3 Exemptions

A. The terms of this chapter do not include acts of persons selling personal property within the confines of that person's residential

premises, so long as the activity does not exceed three consecutive days and is not performed more than four times a year.

B. Any vendor who conducts or transacts business at a swap meet and whose regular business activity subjects him or her to the licensing requirements set forth in chapter 9-1 shall have a business license for conducting regular business activity, but shall be exempt from the licensing requirements of this chapter.

Ordinance 2000.06 changed "their" to "conducting" in paragraph B and deleted former section 9-3-4 ("Penalty")

CHAPTER 9-4. MASSAGE ESTABLISHMENTS

Chapter 9-4 was adopted by Ordinance 2011.01. Former chapter 9-4 entitled "Massage Therapists and Establishments" was adopted by Ordinance 96.09, rewritten by Ordinance 2000.06, and repealed by Ordinance 2005.22 to conform to A.R.S. § 32-4201 et seq.

9-4-1 Purpose and intent

It is the purpose and intent of this chapter to enhance the professionalism of the massage service industry, to protect the health and safety of the public and to assure the integrity of the massage service industry by reducing unprofessional practices.

9-4-2 Definitions

Ordinance 2012.13 amended several definitions in section 9-4-2

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise.

Ordinance 2011.22 amended paragraph A to add everything after the first sentence

A. "Applicant" means a person who applies for a manager license or a massage establishment license. The applicant for a massage establishment license must be an owner of or a controlling person in the establishment or a person who has day-to-day operational control or responsibility for the establishment, such as a manager. If the applicant is a corporation, firm, partnership, association, organization or any other group acting as a unit, only one natural person need serve as the applicant for purposes of this chapter; however, that natural person must be an owner of or a controlling person in the establishment or a person who has day-to-day operational control or responsibility for the establishment, such as a manager.

B. "Client" means an individual who enters into an agreement for massage therapy, usually for a fee, income or compensation of some kind.

C. "Controlling person" means any individual who has a 20% or greater interest in the ownership or the earnings of the business.

D. "Designated agent" means the individual designated by the applicant or licensee who will be the responsible party to receive town notices pursuant to this chapter.

E. "Employ" means to hire, or to engage or authorize the services of, without regard to compensation, any individual, on a full-time, part-time, or contract basis, whether or not the person employed, hired or engaged is designated an employee, independent contractor, or sublessee.

F. "Employee" means any person who performs any service at a massage facility on a full-time, part-time or contract basis, whether or not the person is designated an employee, independent contractor, or sublessee. Employee does not include a person exclusively at

the massage facility for repair or maintenance of the massage facility or for the delivery of goods to the licensee.

G. "Knowingly" means with respect to conduct or a circumstance described by this chapter, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

H. "Licensee" means the person in whose name a massage establishment or manager license has been issued by the license inspector pursuant to this chapter. If the licensee is a corporation, firm, partnership, association, organization or any other group acting as a unit, each owner, controlling person and corporate officer shall be considered a licensee for purposes of this chapter.

Ordinance 2011.22 rewrote paragraph H

I. "Manager" means an individual authorized by the massage establishment licensee to exercise overall operational control of the business, to supervise employees, or to fulfill any of the functions required of a manager by this chapter.

J. "Massage or touching techniques" means any of the following named subjects and methods of treatment intended for use upon or in connection with the human body: oil rubs; alcohol rubs; salt glows; hot or cold packs; herbal wraps; and touching procedures upon the external parts of the body by use of the hands, forearms, elbows, knees or feet, or by any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement.

Upon codification of Ordinance 2011.01, the town attorney renumbered paragraphs J through O as a scrivener's error under the authority of section 1-4-5

K. "Massage establishment" means any place of business or establishment where any of the subjects or methods of treatment listed in paragraphs J or M are administered, practiced or used, or from which is dispatched a person for the purpose of administering, practicing or using any of the subjects or methods of treatment listed in paragraphs J or M.

On December 13, 2011, the town attorney corrected the cross-references in paragraph K as a scrivener's error under the authority of section 1-4-5

L. "Massage therapist" means a person who is licensed pursuant to chapter 42 of title 32 of the Arizona revised statutes to engage in the practice of massage therapy.

M. "Massage therapy" means any of the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement, or provide general or specific therapeutic benefits:

1. The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head.

2. The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical, electrical, water or vibratory devices.

3. Any combination of range of motion, directed, assisted or passive movements of the joints.

4. Hydrotherapy, including the therapeutic applications of water, heat, cold, wraps, essential oils, skin brushing, salt glows and similar applications of products to the skin.

N. "Person" means a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual. It includes a trustee, receiver, an assignee, or similar representative.

O. "Private anatomical areas" means the genitals, perineum and anal region of any person and the area of the breast that includes the areola and the nipple of any female person.

P. "Sexual activity" means any of the following:

1. Any direct or indirect touching, fondling or manipulating of the private anatomical areas by any part of the body or by any object.

2. Causing a person to engage in the conduct described in subparagraph 1 of this paragraph.

3. Offering to engage in the conduct described in subparagraph 1 of this paragraph.

4. Making sexual advances, requesting sexual favors or engaging in verbal conduct or physical contact of a sexual nature.

9-4-3 Duties of license inspector; appeals

A. It shall be the duty and responsibility of the town's license inspector, described in section 9-1-6, to administer the provisions of this chapter. Pursuant to this duty, the license inspector shall issue, renew, deny, suspend, or revoke massage establishment licenses or manager licenses as required by this chapter.

B. Any party aggrieved by a decision of the license inspector under this chapter may appeal as provided in this chapter.

Ordinance 2011.22 rewrote paragraph B

9-4-4 Classification; continuing violations; effect of revocation or suspension on prosecution

A. Whenever in this chapter any act is prohibited or declared to be unlawful or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of that provision is a class one misdemeanor.

B. Each day any violation continues shall constitute a separate offense.

C. Revocation or suspension of a license shall not be a defense against prosecution.

9-4-5 Massage therapist license required

It is unlawful for any person to practice or in any manner to claim to practice massage therapy without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage therapist license as required by Arizona revised statutes.

9-4-6 Massage establishment license required; non-transferability; exclusions

Ordinance 2011.22 added "non-transferability" to the title of section 9-4-6, added paragraph D, and renumbered paragraph E

A. It is unlawful for any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage establishment license as required by this chapter.

B. It is unlawful for any person licensed as provided in this chapter to operate under any name or conduct business under any designation not specified in the license.

C. It is unlawful for any massage establishment licensed as provided in this chapter to conduct business at any location not specified in the license.

D. All massage establishment licenses issued pursuant to this chapter are non -transferable. Upon the sale or transfer of any interest in a massage establishment, a new application must be submitted for that establishment and all provisions of this chapter shall apply to the new application.

E. The provisions of paragraph A shall not apply to a place of business or establishment where all persons offering massage or touching techniques or massage therapy are licensed as either a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona revised statutes, and who practice within the scope of that person's license.

9-4-7 Manager license required; non-transferability

Ordinance 2011.22 added "non-transferability" to the title of section 9-4-7, added paragraph B, and numbered paragraph A

A. It is unlawful for any person to exercise overall operational control of a massage establishment, to supervise employees, or to fulfill any of the functions required of a manager by this chapter without first obtaining and maintaining in effect a current, unrevoked and unsuspended manager license as required by this chapter.

B. All manager licenses issued pursuant to this chapter are non-transferable

9-4-8 New license application; fees; supplemental information

Ordinance 2012.13 added "supplemental information" to the title and added paragraph D of section 9-4-8. Ordinance 2011.22 revised the last sentence of paragraph A and rewrote paragraph C.

A. Any person desiring to obtain a massage establishment or manager license shall apply to the license inspector on the form provided by the license inspector for that purpose. The license inspector shall

refer the application to the appropriate town departments for investigation.

B. Each application shall be accompanied by a non-refundable application fee and a first year license fee as set forth by a fee schedule approved by the council and amended from time to time. If a license application is denied, the first year license fee will be refunded to the applicant.

C. In addition to the fees required by paragraph B, each person required to submit fingerprints pursuant to this chapter shall pay the license inspector the fee established by the director of the Arizona department of public safety for the processing of fingerprints pursuant to this chapter and A.R.S. § 41-1750.

D. The applicant has an affirmative duty to supplement a pending application with new information received subsequent to the date the application was submitted to the town.

9-4-9 Massage establishment license application; separate license; husband and wife; additional requirements

Ordinance 2012.13 amended section 9-4-9 by adding "additional requirements" to the title, adding subparagraphs (A)(20) and (21); deleting former paragraph B (requiring separate licenses in certain instances), renumbering former paragraph C to B, and adding paragraph C

A. Each application for a massage establishment license shall consist of, as applicable, the following:

1. The full legal name, business name, business phone number, legal form of applicant, current residential phone number and current residence or legal address of the applicant.
2. Physical description and date and place of birth of the applicant.
3. Any other names by which the applicant has been known.
4. The address at which the applicant desires to do business.
5. The applicant's mailing address for purposes of receiving town notices and other licensing correspondence relating to the applicant, the licensee, or the enforcement of this chapter.
6. The business hours for the establishment.
7. All residence addresses of the applicant for the five-year period prior to the date of application and the dates of residence at each.

Ordinance 2011.22 added "of the applicant" to subparagraphs 7 and 13

8. The name or names of all managers and the designated agent.
9. The name or names of all controlling persons.
10. The applicant's business, occupation and employment history for the five-year period immediately preceding the date of application, including addresses and dates of employment.
11. Written proof, in the form of a current driver's license with picture, or other current picture identification document issued by a governmental agency, that the applicant has reached the age of 18 years.

12. The business license history of the applicant; whether the applicant, while operating in this or another city or state under license, has had a previous license revoked or suspended, the reason for the revocation or suspension, and the business activity or occupation subsequent to the suspension or revocation.

13. All felony and misdemeanor convictions of the applicant, excluding those for civil traffic offenses, and the grounds for each conviction.

14. A full set of fingerprints on a standard fingerprint card, recorded by the police department for each of the following individuals:

    a. All applicants

    b. All owners of and controlling persons in the establishment

    c. The designated agent

Ordinance 2011.22 rewrote subparagraph 14

15. The articles of incorporation, articles of organization, or certificate of limited partnership, together with any amendments, for the applicant, as applicable.

16. A list of services to be offered by the massage establishment.

17. A site plan showing the configuration of the overall business premises and a floor plan containing the information required by this paragraph. The plans need not be professionally prepared but must be at least 8½ inches by 11 inches in size. The floor plan shall include the following:

    a. The location of all interior doors, walls, curtains and room dividers.

    b. A description of the use of each interior space or room, including a designation, by type of use, of each room or space available for massage or touching techniques or massage therapy by the applicant.

    c. A designation of each room or space that is being, or is intended to be, leased, subleased or licensed for use by any person other than the applicant and a description of its intended and actual use.

    d. A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant for purposes of offering massage or touching techniques or massage therapy and a description of its intended and actual use.

    e. The location of the business license required to be displayed pursuant to this chapter.

Ordinance 2011.22 rewrote the introduction to paragraph 17

18. One digital photograph of the applicant taken by the license inspector or designee at the time of application.

19. Any other identification and information the license inspector may require.

20. The name or names of all employees of the massage establishment.

21. Written proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed. If the persons identified as the fee owners of the tract of land are not also the owners of the massage establishment, then written proof evidencing the legally enforceable right of the applicant to have or obtain the use and possession of the tract of land for the purpose of the operation of the massage establishment, in the form of a lease, purchase contract, purchase option contract, lease option contract or other similar documents.

B. A single license shall be issued to an applicant that consists of a husband and wife.

C. In addition to any other application requirements, the applicant for any massage establishment to be located at the same location at which a massage establishment license was denied, revoked, suspended or denied renewal within the previous six months shall provide to the license inspector a sworn statement, in a form prescribed by the license inspector, verifying that no person involved in the ownership, control or management of the previous massage establishment is involved in the ownership, control or management of the applicant. The license inspector may also request such documents as are reasonably believed necessary to verify any of the information in the sworn statement.

9-4-10 Manager license application

Each application for a manager license shall consist of the following:

A. Full legal name, physical description, and date and place of birth.

B. Any other names by which the applicant has been know.

C. Current residence address, mailing address and telephone number.

D. All residence addresses for the five-year period immediately prior to the date of application and the dates of residence at each.

E. Employment history for the five-year period preceding the date of application with dates and addresses for each.

F. Written proof, in the form of a current driver's license with picture, or other current picture identification document issued by a governmental agency, that the applicant has reached the age of 18 years.

G. All felony and misdemeanor convictions, excluding those for civil traffic offenses, and the grounds for each conviction.

H. The business license history of the applicant; whether the applicant, while operating in this or another city or state under license, has had a previous license revoked or suspended, the reason for the revocation or suspension, and the business activity or occupation subsequent to the suspension or revocation.

I. One digital photograph of the applicant taken by the license inspector or designee at the time of application.

J. The applicant's full set of fingerprints on a standard fingerprint card, recorded by the police department.

K. Any other identification and information as the license inspector may require.

9-4-11 Additional application requirements

A. No license shall be issued to an individual if the individual does not present one or more of the following documents as requested by the license inspector indicating that the individual's presence in the United States is authorized under federal law and complies with the Arizona legal workers act:

1. An Arizona driver's license issued after 1996 or an Arizona non-operating identification license.
2. A driver license issued by a state that verifies lawful presence in the United States.
3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
4. A United States certificate of birth abroad.
5. A United States passport.
6. A foreign passport with a United States visa.
7. An I-94 form with a photograph.
8. A United States citizenship and immigration services employment authorization document or refugee travel document.
9. A United States certificate of naturalization.
10. A United States certificate of citizenship.
11. A tribal certificate of Indian blood.
12. A tribal or bureau of Indian affairs affidavit of birth.

B. This section does not apply to an individual, if all of the following apply:

1. The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.
2. The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

9-4-12 License application investigation; authority to receive criminal history record information; use of criminal history record information; authority to delay licensing decision

Ordinance 2012.13 amended section 9-4-12 by adding "authority to delay licensing decision" to the title, adding "owners" to paragraphs C and E, and adding paragraph F

A. Any applicant for a massage establishment license or a manager license issued pursuant to this chapter shall personally appear at the office of the license inspector and shall present the application containing the information required by this chapter.

B. The town shall have a reasonable time within which to investigate the application and the background of the applicant, all owners and controlling persons, the designated agent and the manager. The investigation shall include an inspection of the premises of the massage establishment or proposed massage establishment by the appropriate town departments, as well as any appropriate federal, state or county agencies, for the purpose of ensuring compliance with this chapter and any code, statute or regulation relating to human health, safety or welfare or structural safety. Based on the investigation, the departments shall recommend to the license inspector approval or denial of the license.

Ordinance 2011.22 rewrote paragraph B

C. Pursuant to A.R.S. § 41-1750, the town is hereby authorized to receive criminal history record information for the purpose of evaluating the fitness of current and prospective massage establishment licensees, including applicants, owners, controlling persons and designated agents, and current and prospective massage establishment manager licensees.

D. Pursuant to A.R.S. § 41-1750 and public law 92-544, the town shall submit all fingerprints obtained pursuant to this chapter to the Arizona department of public safety for the purpose of obtaining state and federal criminal history record information. The Arizona department of public safety is authorized to exchange this fingerprint data with the federal bureau of investigation.

E. Criminal history record information obtained by the town pursuant to this chapter shall be used only for the purpose of evaluating the fitness of current and prospective massage establishment licensees, including applicants, owners, controlling persons and designated agents, and current and prospective massage establishment manager licensees. The town shall comply with all relevant state and federal rules and regulations regarding the dissemination of criminal history record information.

F. Notwithstanding any other provision of this chapter, the license inspector may delay the granting or denial of a massage establishment license, upon the submission of a complete application, for a period of up to 90 days if there exists, or did exist within the 60-day period prior to the date the application was first submitted, an active massage establishment license at the location for which the application was submitted and there also exists a law enforcement report documenting a violation of this chapter at that establishment or a state prosecution of that existing establishment relating

to compliance with any of the provisions of this chapter. For purposes of this paragraph, an active massage establishment license includes a license that has been suspended or revoked, provided that a revoked license is no longer active after passage of the period of time for appeal with no appeal taken, or after the hearing officer has ruled in the event an appeal is taken and the decision is in the town's favor. Notwithstanding any other provision of this paragraph, any license subject to a judicial stay or injunction is an active license.

9-4-13 License renewal

A. Within one year of the issue date for the previously effective license, all licensees under this chapter wishing to remain licensed shall apply for renewal on a form established by the license inspector. The renewal form must be submitted at least 60 days prior to the renewal date with the applicable renewal fee, as set forth in the fee schedule approved by the council and amended from time to time. For a massage establishment license renewal, the licensee must submit a current listing of massage therapists working at the establishment, and each massage therapist's Arizona state license number with date of license expiration. The licensee must also submit a current listing of managers working at the establishment, and each manager's town license number with date of license expiration. The license inspector is authorized to investigate and obtain necessary information to update the original license application and to determine whether the license should be renewed. For a massage establishment license renewal, the investigation may include an inspection of the premises of the massage establishment by the appropriate town departments, as well as any appropriate federal, state or county agencies, for the purpose of ensuring compliance with this chapter and any code, statute or regulation relating to human health, safety or welfare or structural safety. No license shall be renewed unless the licensee complies with all provisions of this chapter.

On January 7, 2013, the town attorney corrected the spelling of "licensee" in the third sentence as a scrivener's error by authority of section 1-4-5 (B)

Ordinance 2012.13 inserted the third sentence to paragraph A. Ordinance 2011.22 inserted "investigate and" in the fifth sentence and added the sixth sentence to paragraph A

B. A licensee who fails to apply for renewal at least 60 days prior to the renewal date shall be subject to a late renewal penalty fee in accordance with the fee schedule approved by the council and amended from time to time. If the licensee fails to start the renewal process at least 30 days prior to the license renewal date, the license shall expire and become null and void. Licensees who fail to apply to renew their license yet who wish to continue operating or managing massage establishments must file a new application for license and may not operate or manage a massage establishment until a new license has been issued.

9-4-14 Denial, suspension, revocation or nonrenewal of license

A. The license of a massage establishment or license of a manager may be denied, revoked, suspended for a period not to exceed 60

Ordinance 2011.22 inserted "for a period not to exceed 30 calendar days" in paragraph A. Ordinance 2012.13 revised it to 60 calendar days and made various other changes to section 9-4-14, including adding subparagraphs (A)(16) through (26).

calendar days, or denied renewal upon any one or more of the following grounds:

1. The applicant, licensee, designated agent or controlling person is guilty of fraud in conducting the business of a massage establishment or of fraud or deceit in obtaining a license.
2. The applicant, licensee, designated agent or controlling person has been convicted within the past five years in a court of competent jurisdiction of a felony or misdemeanor offense having a reasonable relationship to the functions of a massage establishment or a massage therapist, including but not limited to any offense involving dishonesty, deceit, theft, assaultive conduct or sexual misconduct. The fact that the conviction is being appealed or has been set aside shall have no effect.
3. The applicant, licensee, designated agent or controlling person has been convicted within the last five years of any offense proscribed by title 13, chapters 14, 32, and 35.1 of the Arizona revised statutes, or any offense committed outside this state or town that if committed in this state or town would constitute a violation of any offense proscribed by title 13, chapters 14, 32, and 35.1 of the Arizona revised statutes. The fact that the conviction is being appealed or has been set aside shall have no effect.
4. The applicant, licensee, designated agent or controlling person is guilty of untrue, fraudulent, misleading, or deceptive advertising.
5. The applicant, licensee, designated agent or controlling person is engaged in the business of massage therapist, manager, or massage establishment under a false or assumed name, or is impersonating another therapist or manager of a like or different name.
6. Any violation of this chapter. This paragraph shall apply regardless of the location at which the violation occurred.
7. In the case of a massage establishment, any person who did not qualify as a controlling person at the time the license was issued has acquired a 20% or greater interest in the licensee.
8. In the case of a massage establishment, the massage establishment has operated at a location that has not been licensed for use by the town.
9. In the case of a massage establishment, the licensee has ceased to use the license for purposes of offering massage therapy. The failure to offer massage therapy at a massage establishment for 30 consecutive days shall create a rebuttable presumption that the licensee has ceased to use the license for purposes of offering massage therapy.

10. In the case of a massage establishment, the applicant or licensee has failed to maintain in the records of the license inspector the name of an individual as a designated agent.

11. The applicant, licensee, manager, any employee or the designated agent has photographed a customer while the customer was on the premises of a massage establishment and located within any treatment room, restroom, locker room or dressing room, without the express, written permission of that customer. For purposes of this subparagraph the word "photographed" shall mean the use of any electronic or mechanical device to record, reproduce or transmit an optical image.

12. The applicant, licensee, designated agent, manager or controlling person knows or should have known that prostitution, indecent exposure or pornographic acts are occurring or have occurred in the operation of the massage establishment.

13. The license application was falsified.

14. The applicant, licensee or a controlling person has an outstanding warrant for his or her arrest.

15. The applicant was a controlling person for a massage establishment license that was revoked within the previous five years for an act or acts that occurred while the controlling person was a controlling person for the licensee.

16. In the case of a massage establishment, the licensee has failed to maintain in the records of the license inspector the name and license number of each person employed as a manager at the massage establishment.

17. The applicant or licensee is under 18 years of age.

18. The license application is incomplete and the applicant fails to provide the missing information within the timeframe set forth in a written notice specifying the missing or incomplete information and provided to the applicant by the license inspector.

19. In the case of a massage establishment, business has been conducted in an unlawful manner.

20. In the case of a massage establishment, business has been conducted in such manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

21. The applicant, licensee, designated agent or controlling person is delinquent in payment to the town of taxes, fees, fines or penalties assessed against or imposed upon the applicant, licensee, designated agent or controlling person in relation to a massage establishment business or arising out of any other business activity of the applicant, licensee, designated agent or controlling person.

22. The applicant failed to provide the sworn statement or supporting information required by section 9-4-9 C.

The cross-reference in subparagraph 22 was corrected by the town attorney on December 13, 2012, by authority of town code section 1-4-5

23. In the case of a massage establishment, the establishment is not in compliance with the requirements listed in section 9-4-19.

24. In the case of a massage establishment, the application is for a massage establishment to be located in a physical space at which a licensed massage establishment is in operation. For purposes of this subparagraph, there shall be a rebuttable presumption that a location with an active massage establishment license has a massage establishment in operation.

25. In the case of a massage establishment, the application is for a massage establishment to be located on the same business premises whereon is also conducted or operated a sexually oriented business as defined in title 9 of the town code, or a bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater or telephone answering service.

26. Any other reason or reasons deemed sufficient by the license inspector, as long as the reason or reasons are based upon statutes, ordinances, codes or substantive policy statements which provide justification for the denial, suspension, revocation or nonrenewal of the license.

B. The massage establishment license shall be denied if any of the following persons would be disqualified under this chapter:

1. The president or other executive officers of a corporate applicant;

2. Each general partner of an applicant that is a limited partnership or any partner of a non-limited partnership applicant;

3. The managing member, officer or employee of the applicant;

4. Any controlling person of the applicant.

C. If a licensee appeals the suspension, revocation or nonrenewal of an existing license pursuant to the appeal provisions of this chapter, the licensee shall be permitted to continue operations under the previously effective license until resolution of the appeal.

Ordinance 2011.22 added paragraph C

9-4-15 Procedure for denial, suspension, revocation or nonrenewal; appeals

Ordinance 2011.22 added section 9-4-15 and renumbered the remaining sections of chapter 9-14 to conform. Ordinance 2012.13 made various clarifying revisions to section 9-4-15.

A. If the license inspector determines that grounds exist to deny, suspend or revoke an application or license, or to deny renewal of a license, the license inspector shall notify the applicant or licensee in writing of the denial, suspension or revocation. The notice shall include justification for the denial, suspension or revocation with references to the statutes, ordinances, codes or substantive policy statements on which the denial, suspension or revocation is based. The notice shall be personally served upon the licensee or upon any responsible person at the business address on file with the license inspector or at the actual business address, if different, or mailed by certified mail or other method for which proof of receipt may be obtained by the license inspector to the address of the ap-

plicant or licensee listed in the current year's license application or renewal application or to the business address of the applicant or licensee. The notice shall also include an explanation of the applicant's or licensee's right of appeal. The effective date of the notice shall be the date the notice is actually received.

B. Within ten business days after the effective date of the notice, the applicant or licensee may provide a written request for an appeal hearing to the license inspector, which shall include a statement of reasons why the license should not be denied, suspended or revoked. If the license inspector does not receive a request for appeal hearing within this time period, the denial, suspension or revocation shall be final.

C. Within seven business days after receipt of the applicant's or licensee's request for appeal hearing, the license inspector shall either grant the license or rescind the suspension or revocation or schedule an appeal hearing before the hearing officer, as designated by the town manager or the town council. The applicant or licensee shall be notified in writing by any of the means specified in paragraph A of this section of the date, time and location of the hearing. The hearing shall be scheduled not less than 15 and no more than 30 calendar days after receipt by the license inspector of the applicant's or licensee's request for hearing. The hearing shall be conducted in an informal manner and the rules of evidence shall not apply. The applicant or licensee may be represented by an attorney.

D. Within five business days after completion of the hearing, the hearing officer shall render a written decision and shall cause a copy of the decision to be mailed by certified mail to the address specified by the applicant or licensee. The hearing officer's decision shall be deemed final five business days after it is mailed and shall constitute final administrative action.

E. After a denial, suspension or revocation has been upheld by the hearing officer, the applicant or licensee may seek judicial review of the administrative action in any court of competent jurisdiction.

9-4-16 Application after denial, revocation or nonrenewal

Ordinance 2011.22 renumbered, inserted "or revocation" in the title of, and rewrote section 9-4-16. Ordinance 2012.13 inserted "or nonrenewal" in the title and deleted "suspension" from the body of this section.

No applicant may apply for a license within one year of the date of a denial, revocation or nonrenewal of the applicant's license, unless the cause of the denial, revocation, or nonrenewal has been remedied to the satisfaction of the license inspector and at least 90 calendar days have elapsed since the effective date of the denial, revocation or nonrenewal.

9-4-17 Change of location; change of services offered, configuration of premises, business hours, mailing address, manager or designated agent

A. Notwithstanding any other provision of this chapter, a massage establishment shall not be operated or maintained at a location that

has not been approved by the license inspector. A change of location of a massage establishment shall be approved by the license inspector if the applicant is in compliance with all town ordinances and regulations, completes the appropriate location change application and submits a fee as set forth by a fee schedule approved by the council and amended from time to time.

B. A massage establishment shall not change the services it offers, the use or configuration of its premises, its business hours, its mailing address or its manager or designated agent without first providing notice of the change to the license inspector on the form prescribed by the license inspector for that purpose.

C. Except as otherwise provided in this chapter, any change listed in this section shall be submitted to the license inspector within ten calendar days of the change.

9-4-18 Inspection of massage establishments

Ordinance 2012.13 added "or designated agent" to the introductory paragraph of section 9-4-18

An applicant for a massage establishment license, a controlling person or designated agent for a licensee, a manager, or a licensee shall permit representatives of the police department, any other town department and any other federal, state or county agency in the performance of any function connected with the enforcement of this chapter or any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by the agency, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law at any time it is lawfully occupied or open for business. The inspection authorized by this section shall be limited to:

A. All areas of the premises available to patrons, provided that no inspection shall be done of a room occupied by a patron until the patron has been given a reasonable opportunity to dress, gather his or her personal effects and exit the room.

B. All dressing, toilet, bathing and wash basin facilities.

C. Any location used to disinfect and sterilize equipment.

D. Any location used to store linens.

9-4-19 Massage establishment special requirements

Ordinance 2012.13 made various changes to section 9-4-19, including adding the last sentence to the introductory paragraph, adding paragraph J, renumbering paragraph K, deleting the last sentence of paragraph K, and making other minor revisions

An existing massage establishment shall comply with the following requirements and no massage establishment license shall be issued to an applicant unless inspection by a town department or, where appropriate, a federal, state or county agency indicates that the site of the establishment complies with each of the following requirements. The licensee, owner, controlling person, designated agent and/or manager shall ensure that the massage establishment is in compliance with the provisions of this section.

A. A readable sign shall be permanently affixed at the main entrance to the business identifying the business as a massage establishment.

B. Lighting consisting of a minimum of one 40 watt incandescent or equivalent bulb shall be provided, and used, in each room or enclosure where services are performed on patrons.

Ordinance 2011.29 modified the lighting requirements in paragraph B

C. Ventilation shall be provided in accordance with title 7 of the town code.

D. Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment administered or practiced by the establishment.

E. Closed cabinets shall be provided, and used, for the storage of clean linens.

Ordinance 2011.22 deleted former paragraph E, requiring hot and cold running water, and renumbered the remaining paragraphs to conform

F. Notwithstanding any other requirement of this chapter, a minimum of one shower or tub shall be provided for any establishment offering any hydrotherapy services including whirlpool baths, saunas, steam baths, and herbal wraps.

G. Any pool or spa shall be issued a permit and inspected as required by the Marana pool and spa code.

H. All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use.

I. Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron.

J. A hand wash basin shall be provided in each treatment room providing hydrotherapy services, including whirlpool baths, saunas, steam baths and herbal wraps.

K. All wash basins within an establishment, including hand wash basins, shall: have hot and cold running water, tempered by means of a mixing valve faucet at all times; provide sanitary towels placed in permanently installed dispensers or upon a permanently attached roll dispenser; and provide soap in a soap dispenser that is placed on or near the wash basin.

Ordinance 2011.22 inserted "at all times" in the first sentence of what is now paragraph K

9-4-20 Unlawful activities; definition; duty of manager

Ordinance 2012.13 revised section 9-4-20 by adding subparagraphs (A)(18) through (22) and making various other miscellaneous revisions

A. It is unlawful:

1. For any person to knowingly employ any other person to offer massage therapy who does not hold a current, unrevoked and

unsuspended massage therapy license issued by the state of Arizona.

2. For any person to employ a massage therapist whose true name and state-issued massage therapist license number has not been previously provided to the license inspector on the form prescribed by the license inspector for that purpose.

3. For any person to knowingly employ at a massage establishment a manager who has been convicted within the previous five years of any of the offenses listed in section 9-4-14 A. 2 or 3.

4. For any person to offer massage or touching techniques or massage therapy in any room or space of the business that has not been specifically identified as a room or space available for those services on the sketch or diagram required to be submitted to the license inspector pursuant to this chapter.

5. For any person to offer massage or touching techniques or massage therapy in a room or space designated as leased, subleased or licensed for use by any other person on the sketch or diagram required to be submitted to the license inspector pursuant to this chapter.

6. For any massage establishment to remain open for business, to provide services, to dispatch massage therapists, or to permit massage therapists to work off the premises on behalf of that massage establishment at any time between the hours of midnight and 6:00 A.M.

7. For any massage establishment to be open for business during hours that have not been provided to the license inspector as required by this chapter.

8. Except as provided in this chapter, for any person to employ any person to act as a manager at any massage establishment who is not licensed as a manager pursuant to this chapter.

9. For any person to knowingly conduct or operate a massage establishment on the same business premises, whereon is also conducted or operated a sexually oriented business as defined in title 9 of the town code, or a bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater or telephone answering service.

10. For any person, while on the premises of a massage establishment, to knowingly provide or offer to provide any service:

    a. In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires.

    b. In such a manner that the person touches the private anatomical areas of the individual receiving the treatment.

c. While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material.

11. For any person on the premises of a massage establishment to intentionally view a completely or partially disrobed massage establishment client if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the massage therapist or the massage establishment client.

12. For any person, while on the premises of a massage establishment, to knowingly ask, direct or allow a client to:

    a. Touch his or her own anus, genitals or breasts in the presence of another person.

    b. Touch the anus, genitals or breasts of any person on the premises.

    c. Expose his or her genitals, anus or breasts to any person on the premises with the intention of appealing to the prurient interest of the massage therapist or the massage establishment client.

13. For any person, while on the premises of a massage establishment, to knowingly place any part of the body of a client in direct or indirect contact with the anus, genitals or breasts of any other person on the premises.

14. For any person, while on the premises of a massage establishment, to knowingly offer a person any service in exchange for a gratuity or compensation of any description, that does not appear on the schedule of services required by this chapter.

15. For any person to knowingly operate or maintain a massage establishment at a location that has not been licensed by the license inspector.

16. For any person to knowingly use a massage establishment as living or sleeping quarters.

17. For any person to knowingly provide the services of a manager to a massage establishment without a manager license.

18. For any employee of a massage establishment, while on the premises of a massage establishment, to engage in any sexual activity with a client or other person.

19. For any employee of a massage establishment, while on the premises of a massage establishment, to allow a client to touch the private anatomical areas of the massage establishment employee.

20. For any person, while on the premises of a massage establishment, to knowingly provide or offer to provide any service to a

client or another person while the client's or other person's private anatomical areas are exposed.

21. For any person under 18 years of age to obtain massage therapy services unless that person is accompanied by his/her parent or legal guardian, has a physician's prescription for massage therapy, or has a notarized letter from his/her parent or legal guardian authorizing the massage therapy.

22. For any person to provide massage therapy services to any person under 18 years of age unless the person under 18 years of age is accompanied by his/her parent or legal guardian, has a physician's prescription for massage therapy, or has a notarized letter from his/her parent or legal guardian authorizing the massage therapy.

B. For purposes of this section, the word "touch" shall include physical contact that occurs through clothing or by means of any object.

C. The licensee, owner, controlling person, designated agent or manager shall not knowingly fail to ensure that a massage establishment is in compliance with the provisions of this section.

9-4-21 Display of license; update, retention and inspection of records

Ordinance 2012.13 made several miscellaneous revisions to section 9-14-21

A. Every on duty person to whom a massage establishment license, massage therapist license or manager license has been granted shall display the license along with the corresponding photograph in a conspicuous place upon the business premises that is clearly visible to the general public upon entry to the business. All massage therapists shall produce their license and produce a government-issued identification document upon request from an authorized agent conducting an inspection pursuant to this chapter.

B. A massage establishment shall report the name of any person whose employment at the massage establishment has terminated to the license inspector within ten calendar days after termination.

C. A massage establishment shall maintain records for each massage therapist employed by that massage establishment on the business premises during the time the massage therapist is employed at the establishment and for a period of 90 days after the date of last employment of each massage therapist. These records shall include:

1. A copy of the state-issued massage therapist license.

2. For every massage therapist who does not possess a state-issued massage therapist license that bears a photograph of the licensee, a clearly-legible copy of a current picture identification document issued by a governmental agency or such other identification as may be prescribed by the license inspector.

D. A massage establishment shall maintain on the business premises a copy of the most recent sketch or diagram required to be submitted to the license inspector pursuant to this chapter.

E. A licensee, owner, controlling person, designated agent, manager or employee of a massage establishment shall make the records required to be maintained by this section available for inspection upon demand by any law enforcement officer or town regulatory license inspections official, during any period of time that the business premises are open to the public or lawfully occupied.

F. The licensee, owner, controlling person, designated agent and/or manager shall ensure that the massage establishment is in compliance with the provisions of this section.

Upon codification of Ordinance 2011.01, the town attorney renumbered paragraph F from "E" to "F" as a scrivener's error under the authority of section 1-4-5

9-4-22 Manager list; manager, designated agent or licensee required on premises

Ordinance 2012.13 substantially rewrote and revised section 9-4-22

A. A massage establishment licensee shall maintain on file with the license inspector, on the form provided by the license inspector for that purpose, a current list of the names and license numbers of each person employed as a manager at the massage establishment.

B. The massage establishment licensee, the designated agent and/or manager of a massage establishment shall ensure that at least one of the following individuals is physically present on the massage establishment premises during all times the establishment is open for business:

1. A licensed manager.
2. The designated agent.
3. The massage establishment licensee.

9-4-23 Exemptions

The provisions of this chapter shall not apply to:

A. Establishments whose employees are authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy, or acupuncture.

B. Establishments whose employees are acting as trainers for any bona fide amateur, semiprofessional, or professional athletic team or athlete.

C. Establishments whose employees are authorized by the laws of this state as barbers or cosmetologists, provided their activity is limited to the scope of their barber or cosmetology license.

D. Establishments whose employees are providing colon irrigation only.

E. Businesses that are operating solely as a school that is Arizona state board of massage therapy-approved.

9-4-24 Licenses; cumulative regulation

A. The licenses required in this chapter are in addition to any business or transaction privilege license required by the Marana town code or state law.

B. A massage therapist license does not authorize one to operate a massage establishment.

C. An applicant for a massage establishment license need not have a massage therapist license. However, massage establishments shall employ only Arizona state-licensed massage therapists to perform massage.

D. A licensed massage therapist who operates as a sole practitioner and who has no employees must obtain a massage establishment license for the business location at which massage therapy is provided; however, no separate manager license is required.

CHAPTER 9-5. CLOTHING AND CONDUCT FOR QUALIFIED ESTABLISHMENTS

Ordinance 2000.06 rewrote chapter 9-5. See Ordinance 95.12 and 96.09 for prior history.

9-5-1 Definitions

In this chapter, unless the context otherwise requires, the following words and phrases shall be construed as follows:

A. "Entertainer" means any person who performs any dance, show, exhibition, or performance for any number of persons. The entertainer need not receive compensation from any source to be covered under this chapter.

B. "Employee" means any employee, independent contractor, agent, consultant, or other like person.

C. "Opaque" means not allowing any light to pass through; not transparent, semi-transparent, or translucent.

D. "Premises" means land with its appurtenances and structures on it as well as any other property adjoining the land that the qualified establishment uses or allows to be used for its benefit.

E. "Qualified establishment" means any restaurant, nightclub, bar, tavern, taproom, theater or private, fraternal, social, golf, or country club, or any place that holds a valid Arizona liquor license, which serves spirituous liquors as defined by A.R.S. § 4-101. This includes the entire premises owned, leased, or otherwise occupied by the establishment, whether the liquor license extends to that portion of the premises or not.

Ordinance 2005.22 and Ordinance 2014.014 simplified the statutory reference in section 9-5-1 (E)

9-5-2 Purpose

The purpose of this chapter is to:

A. Provide for the clothing requirements of entertainers, employees serving spirituous liquors, and other employees in qualified establishments that serve spirituous liquors as defined by A.R.S. § 4-101.

Ordinance 2005.22 and Ordinance 2014.014 simplified the statutory reference in section 9-5-2 (A)

B. Provide for conduct requirements of entertainers, employees serving spirituous liquors, employees, patrons, and operators in qualified establishments;

C. Provide for requirements of employment for entertainers, employees serving spirituous liquors, and employees in qualified establishments;

D. Provide for penalties, to be enforced by the town, for anyone violating the provisions of this chapter;

E. Regulate the conduct and dress of entertainers, employees serving spirituous liquors, and other employees in qualified establishments so as to encourage public health, morals, and safety.

9-5-3 Clothing requirements for female entertainers and employees serving spirituous liquors in qualified establishments; penalty

Any female entertaining or performing any dance, show, exhibition, or performance, and any female serving spirituous liquors as defined by A.R.S. § 4-101, as amended, or any female employee, in a qualified establishment, who appears clothed, costumed, unclothed, or uncostumed shall appear in a way so that any portion of the nipple and the areola (the more darkly pigmented portion of the breast encircling the nipple) is not visible and is firmly covered by a fully opaque material, which does not resemble or simulate the actual appearance of an areola and/or nipple. No person may knowingly conduct, maintain, own, manage, and/or operate any qualified establishment where any person is in violation of this section.

Ordinance 2005.22 and Ordinance 2014.014 simplified the statutory reference in section 9-5-3

9-5-4 Clothing requirements for all entertainers, employees serving spirituous liquor, and employees, in qualified establishments; penalty

Any person entertaining or performing any dance, show, exhibition, or performance, and any person serving spirituous liquors as defined by A.R.S. § 4-101, as amended, in a qualified establishment, who appears clothed, costumed, unclothed, or un-costumed shall appear in a way so that the lower portion of his or her torso, consisting of the genitals, pubic hair, or anal cleft or buttocks, is covered by a fully opaque material and is not so thinly covered as to appear uncovered. No person may knowingly conduct, maintain, own, manage, and/or operate any qualified establishment where any person is in violation of this section.

Ordinance 2005.22 and Ordinance 2014.014 simplified the statutory reference in section 9-5-4

9-5-5 Screening requirements; operation of qualified establishments in violation of screening requirements

If any entertainer, employee serving spirituous liquors, employee, owner, operator, manager, or patron in a qualified establishment is able to view, either on or off the premises of the qualified establishment, any person who would be in violation of this chapter if that person were on the premises of a qualified establishment, the viewing person shall effectively screen the violating person or persons from view. No person may knowingly conduct, maintain, own, manage, and/or operate any qualified establishment where any person is in violation of this section.

9-5-6 Prohibited acts

The following acts are prohibited by entertainers, employees serving spirituous liquors, employees, owners, operators, managers, and patrons, in qualified establishments:

A. No employee, entertainer or person on the premises of a qualified establishment shall wear or use any devise or covering exposed to view, and no licensee, operator, manager, or owner of a qualified establishment shall permit, on the licensed premises, any employee, entertainer or person to wear or use any devise or covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any private portion of them.

B. No person on or visible from the premises of a qualified establishment shall perform, and no licensee, operator, manager, or owner of a qualified establishment shall permit on the premises or from any location visible to the premises of a qualified establishment, any person to perform acts of or acts which constitute or simulate:

1. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

2. The touching, caressing or fondling of the breast, buttocks, anus or genitals.

9-5-7 Restrictions on employment of entertainers

A. No entertainer under the age of 18 years shall be employed in a qualified establishment. All entertainers employed at a qualified establishment must provide the following to the employer to be kept on permanent file:

1. Valid Arizona driver's license or state ID card; and,

2. A certified copy of the entertainer's birth certificate.

B. The operator, manager, or owner of the qualified establishment shall have and keep on file the documents required by this section.

9-5-8 Classification; continuing violations

Ordinance 2014.014 added section 9-5-8. On July 9, 2014, the town attorney changed "class one" to "class 1" as a scrivener's revision under the authority of section 1-4-5

A. Whenever in this chapter any act is prohibited or declared to be unlawful or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of that provision is a class 1 misdemeanor.

B. Each day any violation continues shall constitute a separate offense.

CHAPTER 9-6. SEXUALLY ORIENTED BUSINESSES

Ordinance 2000.06 adopted chapter 9-6

9-6-1 Purpose

It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and gen-

eral welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this chapter to condone or legitimize the distribution of obscene materials.

9-6-2 Definitions

A. "Adult arcade" means any place to which the public is permitted or invited where coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to regularly show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Ordinance 2000.10 added the word "regularly" to the definition of adult arcade

B. "Adult bookstore," "adult novelty store" or "adult video store" means a commercial establishment that, regardless of any other purposes it may have, and as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or

2. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

C. "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

1. Persons who appear in a state of nudity or semi-nudity;

2. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities;

3. Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Ordinance 2000.10 deleted former subparagraph 4

D. "Adult motel" means a hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or

Ordinance 2000.10 rewrote the "adult motel" definition

other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; and

1. Offers a sleeping room for rent for a period of time that is less than 24 hours; or
2. Allows a tenant or occupant of a sleeping room to sub-lease the room for a period of time that is less than 24 hours.

E. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

F. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

G. "Adult vending machine" means any mechanical device that, regardless of any other purposes it may have, regularly publicly dispenses for any form or consideration any books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Ordinance 2000.10 rewrote the "adult vending machine" definition

H. "Employee" means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the person is paid a salary, wage, commission or other compensation by the operator of the business. A person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, as well as a person exclusively on the premises as a patron or customer is not an employee within the meaning of this chapter.

I. "Escort" means a person who, for pecuniary or other consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

J. "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

K. "Establishment" means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. The addition of any sexually oriented business to any other existing sexually oriented business;
4. The relocation of any sexually oriented business; or
5. A sexually oriented business or premises on which the sexually oriented business is located.

L. In assessing whether a particular business is a "family-oriented entertainment business," the town shall consider the following factors related to the business:

Ordinance 2000.10 rewrote the family-oriented entertainment business definition

1. Whether a primary business purpose is related to the sale of food or food services;
2. Whether a primary business purpose relates to the sale or use of entertainment or educational products, services, facilities or activities;
3. The age of patrons for or by which the services, facilities or activities of the business are primarily appropriate and utilized; and
4. Whether the business is primarily a retail establishment.

A business determined to be primarily a retail or a food services establishment is presumed to not qualify as a family-oriented entertainment business unless articulable reasons to the contrary are established by the town.

M. "Licensee" means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

N. "Nude model studio" means any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

Ordinance 2000.10 added the word "regularly" to the definition of nude model studio

O. "Nudity" or a "state of nudity" means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

P. "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances to them and buildings located there, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent to them, under the ownership,

Ordinance 2005.22 deleted a redundant definition of "person" (see section 1-3-2)

control, or supervision of the licensee, as described in the application for a business license pursuant to this chapter.

Q. "Regularly," "regularly features," or "regularly shown" shall be construed to apply the provisions of this chapter only activities that take place outside the context of some larger form of expression.

Ordinance 2000.10 deleted a former definition of "principal business purpose" and added the "regularly…" definition

R. "School" means a child care facility licensed pursuant to the Arizona revised statutes, title 36, chapter 7.1, or any public or private institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools; schools includes the school ground but does not include the facilities used primarily for another purpose and only incidentally as a school.

Ordinance 2000.10 added everything after "including but not limited to" in the school definition

S. "Semi-nude" or "semi-nudity" means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breasts, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

T. "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration for:

1. Physical contact in the form of wrestling or tumbling between any two persons of the opposite sex when one or more of the persons is in a state of nudity or semi-nudity; or
2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

U. "Sexually oriented business" means an adult arcade, adult vending machine, adult bookstore, adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, adult novelty store and sexual encounter center.

Ordinance 2000.10 changed "or" to "and" in the last clause of the sexually oriented business definition

V. "Specified anatomical area" means:

1. The human male genitals in a discernibly turgid state, even if fully and opaquely covered; or
2. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

W. "Specified criminal activity" means any of the following offenses:

1. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any sex-related offenses similar to those described under the criminal code of Arizona, other states, or other countries;

2. For which:

   a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

   Ordinance 2000.10 changed "five years" to "two years" in subparagraph a

   b. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or

   Ordinance 2000.10 changed "ten years" to "five years" in subparagraphs b and c

   c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

X. "Specified sexual activities" means and includes any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

3. Masturbation, actual or simulated; or

4. Excretory functions as part of or in connection with any of the activities set forth in 1 through 3 above.

Y. "Substantial enlargement" of a sexually oriented business means the increase in floor area occupied by the business by more than 25%, as the floor areas exist on May 2, 2000.

Z. "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

1. The sale, lease, or sublease of the business;

2. The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

9-6-3 Classification

Sexually oriented businesses are classified as follows:

A. Adult arcades;

B. Adult bookstores, adult novelty shops or adult video stores;

C. Adult cabarets;

D. Adult motels;

E. Adult motion picture theaters;

F. Adult theaters;

G. Adult vending machines;

Ordinance 2000.10 added paragraph G

H. Escort agencies;

I. Nude model studios; and

J. Sexual encounter centers.

9-6-4 License required; non-transferability; exceptions

A. It shall be unlawful for any person to operate a sexually oriented business without first obtaining and maintaining a valid sexually oriented business license issued pursuant to this chapter.

B. It shall be unlawful for any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if the employee is not in possession of a valid sexually oriented business employee license issued to the employee pursuant to this chapter.

C. It shall be unlawful for any person to obtain employment with a sexually oriented business if the person is not in possession of a valid sexually oriented business employee license issued to the person pursuant to this chapter.

D. It shall be unlawful for any person, association, firm or corporation licensed as provided in this chapter to operate under any name or conduct business under any designation not specified in the license.

E. All licenses issued pursuant to this chapter shall be nontransferable except as provided in this chapter.

F. The license required by this section shall be in addition to any other licenses or permits required to engage in the business or occupation, as applicable, by either the town, the county or the state, and

persons engaging in activities described by this chapter shall comply with all other ordinances and laws, including the town zoning ordinance, as may be required to engage in a business or profession.

G. It shall be a defense to subsections B and C of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

9-6-5 License application

A. An application for a sexually oriented business license, including a renewal application, must be made on a form provided by the town. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The license inspector may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. Prior to applying for an original sexually oriented business license, all applicants for the license must have the premises inspected and approved by the health department, fire department, building safety department, and zoning department. Written certification of the inspections and approvals by each inspecting agency must be submitted with each sexually oriented business license application. A licensee who has not submitted the certifications within the five previous years or a licensee for an establishment which expanded since the time of the previous license application must also have the respective premises inspected and submit written certification of the inspections and approvals by each inspecting agency with the licensee's next application for the renewal of a sexually oriented business license. Agencies responsible for inspecting the premises of an existing or anticipated sexually oriented business must complete the requested inspections within 30 days of applicant's request; if one or more agencies fails to timely inspect the requested premises, the requirements of this subsection as they relate to that one or more inspection are waived by the town.

Ordinance 2007.22 changed "building department" to "building safety department." The town attorney corrected the department name in paragraph B as a scrivener's correction, under authority confirmed by Ordinance 2008.16

Ordinance 2000.10 added the last sentence of paragraph B

C. The application may request, and the applicant shall provide, such information (including fingerprints) as the town may require to enable the town to determine whether the applicant meets the qualifications established under this chapter. The applicant has an affirmative duty to supplement a pending application with new information received subsequent to the date the application was deemed completed.

D. All applications to own or operate a sexually oriented business must be submitted by a natural person who must sign the application. If a legal entity wishes to own or operate a sexually oriented business, each natural person who owns or controls a 20% or greater interest in the business must sign the application for a business license as an applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a 20% or greater interest in the corporation must sign the application for a business license as an applicant. In all cases, any person involved in the day-to-day operation of the business or has the capacity to significantly influence the operation of the business must sign the application as an applicant.

Ordinance 2000.10 added the last sentence of paragraph D and changed two occurrences of 10% to 20%

E. Each application for a sexually oriented business license shall be accompanied by the following:

Ordinance 2000.10 rewrote paragraph E

1. Payment of the application fee in full;
2. The name of the applicant or organization applying for the license and the name under which the sexually oriented business will operate.
3. If the establishment is a state corporation, a copy of the articles of incorporation, together with all amendments to them and a signed statement that the corporation is in good standing in the state;
4. If the establishment is a foreign corporation, a copy of the certificate of authority to transact business in this state, together with all amendments to it and a signed statement that the corporation is in good standing in the state of incorporation;
5. If the establishment is a limited partnership formed under the laws of the state, a copy of the certificate of limited partnership, together with all amendments to it and a signed statement that the corporation is in good standing in the state;
6. If the establishment is a foreign limited partnership, a copy of the certificate of limited partnership and the qualification documents, together with all amendments to it and a signed statement that the corporation is in good standing in the state of incorporation;
7. Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;
8. If the persons identified as the fee owners of the tract of land in item 6 are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other documents evidencing the legally enforceable right of the applicants to have or obtain the use and possession of the tract or portion of them that is to be used for the establishment for the purpose of the operation of the establishment;

9. A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,500 feet of the property to be certified; the property lines of any established religious institution/synagogue, public park or recreation area, or family-oriented entertainment business within 1,500 feet of the property to be certified; the property lines of any school established within 1,500 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

10. Any of items 2 through 8, above, shall not be required for a renewal application or for an application for a secondary classification of sexually oriented business operated within the same establishment as the primary application or license if the applicant states that the documents previously furnished the town with the original application or previous renewals remain correct and current.

F. Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the license inspector by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the license inspector. Applications must be submitted to the office of the license inspector or the license inspector's designee during regular working hours and contain the following information:

1. The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
2. Age, date and place of birth;
3. Height, weight, hair color, and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. Date, issuing state, and number of photo driver's license, or other state issued identification card information;
7. Social Security number; and
8. Proof that the individual is at least 18 years old.

All information submitted to the town pursuant to this paragraph is confidential and will not be released except as pursuant to a valid law enforcement investigation, court order or as otherwise may be required by law.

Ordinance 2000.10 added the un-numbered paragraph after subparagraph 8

G. Each person signing an application as an applicant shall attach to the application form the following:

1. Two identical, passport-quality color photographs of the applicant clearly showing the applicant's face and taken within the preceding month, and two sets of the applicant's complete fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

Ordinance 2000.10 rewrote subparagraphs 1 and 2

2. A statement detailing the sexually oriented business license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether the applicant, in this or any other town, city, county, state, or country, has ever had any sexually oriented business license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. If there is any such denial, revocation, or suspension, state the name or names under which the license was sought and/or issued, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

3. A statement whether the applicant or any person over the age of 18 years with whom the applicant resides has been convicted, or is awaiting trial on pending charges, of a specified criminal activity and, if so, the nature of the specified criminal activity involved, the date, place and jurisdiction of each.

4. A statement made under oath that the applicant has personal knowledge of the information contained in the application, that the information contained in and furnished with the application is true and correct and that the applicant has read the provisions of this chapter.

H. A separate application and sexually oriented business license shall be required for each sexually oriented business classification operating within the same establishment.

I. The fact that a person possesses other types of permits and/or licenses does not exempt that person from the requirement of obtaining a sexually oriented business or employee license.

9-6-6 Issuance of license; denial; annual renewal required

A. Upon the filing of an application for a sexually oriented business employee license, the license inspector shall issue a temporary license to the applicant. The application shall then be referred to the appropriate town departments for investigation to be made on the information contained in the application. Any inspection requirement of a particular town agency shall be waived if the respective town agency fails to complete its inspection within 20 days of the date it received an inspection request. The application review process shall be completed within 30 days from the date of the completed application. After the investigation, the license inspector

Ordinance 2000.10 added the third sentence and added "review" to the fourth sentence of paragraph A

shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. That the applicant has failed to provide the information required by this chapter for issuance of the license or has falsely answered a question or request for information on the application form;

Ordinance 2000.10 inserted "required by this article" (now chapter) for "reasonably necessary" in subparagraph 1

2. The applicant is under the age of 18 years;
3. The applicant has been convicted of a specified criminal activity;
4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this chapter; or
5. The applicant has had a sexually oriented business employee license revoked by any jurisdiction within two years of the date of the current application.

Ordinance 2000.10 inserted "any jurisdiction" for "the Town" in subparagraph 5

B. If an application for a sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void.

C. Denial, suspension, or revocation of a license issued pursuant to this section shall be subject to appeal as set forth in this chapter.

D. A license issued pursuant to subsection A of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license on the employee's person at all times while engaged in employment or performing services on the sexually oriented business premises so that the license may be available for inspection upon lawful request.

E. If application is made for a sexually oriented business license, the license inspector shall approve or deny issuance of the license within 45 days of receipt of the completed application. The failure of the town or a particular town official or agency to timely act shall result in the waiver by the town of any requirement under this chapter as applied to that particular town official or agency. The license inspector shall issue a license to an applicant unless it is determined that one or more of the following findings is true:

Ordinance 2000.10 added the second sentence of paragraph E

1. An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
2. An applicant is under the age of 18 years;
3. An applicant has been denied a license by the town to operate a sexually oriented business within the preceding 12 months, or applicant's license to operate a sexually oriented business has been revoked within the preceding 12 months;

Ordinance 2000.10 deleted the phrase "or a person with whom the applicant is residing" from the first line of subparagraphs 3, 4 and 5, and inserted "applicant's" for "whose" in subparagraph 3

4. An applicant is overdue in payment to the town in taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;

5. An applicant has been convicted of a specified criminal activity;

6. The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building safety department as being in compliance with applicable laws and ordinances;

Ordinance 2007.22 changed "building department" to "building safety department." The town attorney corrected the department name in paragraph 6 as a scrivener's correction, under authority confirmed by Ordinance 2008.16

7. The premises to be used for the sexually oriented business is located within 1,500 feet of any residential zone, single- or multiple-family dwelling, family-oriented entertainment business, church, park or school;

Ordinance 2000.10 reduced the distance from schools to 1,500 feet (from one mile) in subparagraph 7

8. The premises to be used for the sexually oriented business is located within 1,500 feet of either any other sexually oriented business licensed under this chapter or any other sexually oriented business that would be licensed under this chapter if it were located with the town limits;

9. The license fee required under this chapter has not been paid; or

10. An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this chapter.

F. A license issued pursuant to subsection E of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the section 9-6-3 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

G. A sexually oriented business license shall issue for only one classification, as set forth in section 9-6-3. Each classification operating within the same establishment and wholly owned by that establishment requires a separate license.

Ordinance 2000.10 added the last sentence of paragraph G

H. If the license inspector determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing of the reasons for the denial within 45 days of the receipt of the completed application by the license inspector, provided that the applicant may request, in writing at any time before the notice is issued, that the period be extended for an additional period of not more than ten days to make modifications necessary to comply with this chapter.

I. Each license issued pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the license inspector that the applicant has not been convicted of any specified criminal activity, or committed any act

during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within 30 days of receiving the completed application. The renewal of a license shall be subject to the fee as set forth in section 9-6-7. Non-renewal of a license shall be subject to appeal as set forth in this chapter.

9-6-7 Fees

Ordinance 2000.10 rewrote section 9-6-7, which was amended by Ordinance 2009.11 to replace specific fee amounts with a reference to the comprehensive fee schedule

The annual fee for a new sexually oriented business license, whether new or renewal, shall be established by a fee schedule adopted by the council and amended from time to time. The annual fee for a sexually oriented business employee license, whether new or renewal shall be established by a fee schedule adopted by the council and amended from time to time. These fees are to be used to pay for the cost of the administration and enforcement of this chapter. The fees are nonrefundable and may not be prorated for a license period of less than one year. The fee requirements under this chapter shall not result in the suspension, non-renewal or revocation of a license pursuant to this chapter if the applicant or licensee makes full payments within 15 days of being notified of the fee requirements.

9-6-8 Inspection

Ordinance 2000.10 rewrote section 9-6-8

Ordinance 2007.22 changed "building department" to "building safety department." The town attorney corrected the department name in paragraph A as a scrivener's correction, under authority confirmed by Ordinance 2008.16

A. An applicant or licensee shall permit representatives of the police department, health department, fire department, building safety department, or other town, state or federal departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The inspection shall be limited to visual assessment of the activities conducted in areas in accord with the provisions of this chapter: areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this chapter; and to requests for identification of those individuals who reasonably appear to be under the age of 18 years.

B. It shall be unlawful for an applicant, licensee or employee of a sexually oriented business to refuse to permit law enforcement officers or any other agent allowed by this section to inspect the premises at any time the premises is occupied or open for business.

C. The provisions of this section do not apply to areas of an adult motel that are currently being rented for use as temporary or permanent habitation.

9-6-9 Expiration of license

A. Each license shall expire one year from the date of issuance and may be renewed only by submitting a renewal application to the town. Application for renewal shall be made at least 30 days before the expiration date.

B. If the town clerk denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Notwithstanding the provisions of this section, if a licensee appeals the non-renewal of a license, the status quo immediately prior to the non-renewal shall be maintained while the appeal is pending.

Ordinance 2000.10 added the last sentence of paragraph B

9-6-10 Suspension

A. The license inspector shall issue a notice and order of suspension, suspending a license for a period not to exceed 30 days, if the license inspector determines that the licensee or an employee of the licensee has:

1. Violated or is not in compliance with any section of this chapter;
2. Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
3. Refused to allow prompt inspection of the sexually oriented business premises as authorized by this chapter; or
4. Knowingly or intentionally permitted gambling by any person on the sexually oriented business premises.

B. The notice and order of suspension shall become effective within ten days after issuance unless the licensee appeals the suspension of a license.

Ordinance 2000.10 inserted "issue a notice and order of suspension, suspending" in place of "suspend" in paragraph A, added "Knowingly or intentionally" at the beginning of subparagraph 4, and added paragraph B

9-6-11 Revocation

A. The license inspector shall issue a notice and order or revocation, revoking a license issued pursuant to this chapter if any of the following occur:

1. A cause of license suspension occurs and the license has been suspended within the proceeding 12 months;
2. A licensee knowingly or intentionally gave false or misleading information in the material submitted during the application process;
3. A licensee, or a person with whom the licensee resides, is convicted of a specified criminal activity on a charge that was pending prior to the issuance of the license;
4. A licensee, subsequent to licensing, is convicted of a specified criminal activity;
5. A licensee knowingly or intentionally permitted the possession, use, or sale of controlled substances on the premises;
6. A licensee knowingly or intentionally permitted the sale, use, or consumption of alcoholic beverages on the premises;
7. A licensee knowingly or intentionally permitted prostitution on the premises;

Ordinance 2000.10 inserted "issue a notice and order of revocation, revoking" in place of "revoke" in paragraph A, added "knowingly or intentionally" in subparagraphs 2 and 5 through 13, and added the last sentence of paragraph B and all of paragraph C. Ordinance 2009.25 replaced the term "town clerk" with "license inspector" in paragraphs A and B

8. A licensee knowingly or intentionally operated the sexually oriented business during a period of time when the licensee's license was suspended;
9. A licensee knowingly or intentionally permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
10. A licensee knowingly or intentionally is delinquent in payment to the town, county or state for any taxes or fees;
11. A licensee knowingly or intentionally permitted a person under 18 years of age to enter the establishment;
12. A licensee knowingly or intentionally attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee; or
13. A licensee knowingly or intentionally permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

B. When the license inspector revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the town determines that the basis for the revocation has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

C. The notice and order of revocation shall become effective within ten days after issuance unless the licensee appeals the suspension of a license.

9-6-12 Administrative appeal

Ordinance 2000.10 rewrote section 9-6-12 and changed the title from "Appeal" to "Administrative appeal"

Ordinance 2009.25 corrected the duties of the town clerk and license inspector in section 9-6-12, which had been incorrectly revised by Ordinance 2009.14

An applicant may appeal the decision of the license inspector regarding a denial, revocation or suspension to the town council by filing a written notice of appeal with the town clerk within 15 days after service of notice upon the applicant of the license inspector's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for the appeal and all arguments in support of the appeal. The license inspector may, within 15 days of service upon the town clerk of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the town council. The applicant shall be afforded a hearing before the town council at which the applicant or the applicant's attorney shall be afforded the right to address the council and the license inspector's decision, after which the town may respond to the applicant's presentation; the hearing shall be taken within 31 calendar days after the date on which the town clerk receives the notice of appeal. After reviewing submitted memoranda and exhibits as well as the arguments orally presented by the applicant and the town, the town council shall vote either to uphold or overrule the license inspec-

tor's decision. The town council's decision shall be effective upon its rendering. Judicial review of a denial by the license inspector and town council may then be made pursuant to this chapter.

9-6-13 Judicial review

Ordinance 2000.10 added the last sentence of section 9-6-13

After denial of an initial or renewal application, or suspension or revocation of a license by the town council, the applicant or licensee may seek judicial review of the administrative action in any court of competent jurisdiction. When the town is notified that an applicant has filed for judicial review of the administrative action resulting in the denial of an application, the town shall issue a provisional license to applicant allowing it to carry on its requested activities, subject to the orders of the reviewing court.

9-6-14 Change of employment

Ordinance 2000.10 rewrote paragraphs A and C

A. An establishment operator covered by this chapter shall keep and maintain an up to-date register of all employees including the following: each employee's name, address, age, sex and duties. The licensee must notify the license inspector in writing within 15 days of hiring any attendant or employee.

B. An establishment operator covered by this chapter must notify the license inspector in writing within 15 days of any change of licensed employees employed at the establishment.

C. An employee covered by this chapter must notify the license inspector in writing within 15 days of any change in the employee's place of employment from one establishment covered by this chapter to another.

9-6-15 Sale, transfer or expansion

A. Upon the sale or transfer of a substantial interest in a sexually oriented business, the license for it shall be null and void, unless the transaction was approved in advance by the license inspector, under the application procedure of this chapter. An original application shall be made by any person, association, firm or corporation desiring to own or operate the establishment upon its transfer.

B. An establishment licensee shall submit, upon sale or transfer of any interest in an existing sexually oriented business, or any enlargement or expansion of the place of business of a sexually oriented business, new certifications of inspection as required of original applicants by this chapter.

9-6-16 Notices

A. Any notice required or permitted to be given by the license inspector or any other town office, division, department or other agency under this chapter to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the

application for the license, or any notice of address change that has been received by the license inspector. Notices mailed as above shall be deemed given upon their deposit in the United States mail. If any notice given by mail is returned by the postal service, the license inspector or the license inspector's designee shall cause it to be posted at the principal entrance to the establishment.

B. Any notice required or permitted to be given to the license inspector by any person under this chapter shall not be deemed given until and unless it is received in the office of the license inspector.

C. It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the license inspector in writing of any change of residence or mailing address.

9-6-17 [Reserved]

Section 9-6-17 as adopted by Ordinance 2000.06 ("Additional regulations for adult motels") was deleted by Ordinance 2000.10

9-6-18 Additional regulations for escort agencies

A. An escort agency shall not employ any person under the age of 18 years; neither shall any person who is under the age of 18 may be employed or act as an escort.

B. A person shall not act as an escort or agree to act as an escort for any person under the age of 18 years; neither shall an escort agency arrange for an escort for any person under the age of 18 years.

9-6-19 Additional regulations for nude model studios

A. A nude model studio shall not employ any person under the age of 18 years.

B. A person under the age of 18 years shall not appear semi nude or in a state of nudity in or on the premises of a nude model studio.

C. A person shall not appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public and containing a partition to prevent visibility into the studio.

9-6-20 Solicitation of gratuity prohibited

Section 9-6-20 was rewritten by Ordinance 2000.10

An employee of a sexually oriented business, while nude or semi-nude, shall not solicit any gratuity from any patron or customer on the sexually oriented business premises, nor shall any patron or customer pay or give any gratuity to any employee who appears in a state of nudity or semi-nudity on the sexually oriented business premises.

9-6-21 Regulations pertaining to exhibition of sexually explicit films and videos

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

A. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan of the proposed business specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place where the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The license inspector may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. The application shall be sworn to be true and correct by the applicant.

C. No alteration in the configuration or location of a manager's station may be made without the prior approval of the license inspector or the license inspector's designee.

D. It is the duty of the owner and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

E. The interior of the premises shall be configured so that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may neither contain nor be subject to surveillance by video reproduction equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured so that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

F. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection E of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection A of this section.

G. No viewing room may be occupied by more than one person at any time.

H. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candle as measured at the floor level.

I. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

J. No licensee shall allow an opening of any kind to exist between viewing rooms or booths.

K. No person shall make any attempt to make an opening of any kind between the viewing booths or rooms.

L. The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing rooms or booths to determine if any openings or holes exist. No licensee or employee of a sexually oriented business may permit a patron to occupy a viewing room or booth containing any openings or holes allowing viewing between two or more booths.

M. The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

N. The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

9-6-22 Exterior portions of sexually oriented businesses

A. An owner or operator of a sexually oriented business shall not allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

B. An owner or operator of a sexually oriented business shall abide by the provisions of this chapter regulating the content of signs.

Paragraph B was rewritten by Ordinance 2000.10

C. An owner or operator of a sexually oriented business shall not allow exterior portions of the establishment to be painted any color

other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

1. The establishment is a part of a commercial multi unit center;
2. The exterior portions of each individual unit in the commercial multi unit center, including the exterior portions of the business, are painted the same color as one another or are painted as a component of the overall architectural style or pattern of the commercial multi unit center; but
3. Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

9-6-23 Signage

A. Notwithstanding any other provision of the code, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one primary sign and one secondary sign, as provided in this section. This section is intended to augment the town sign code, not supplant it.

B. Primary signs shall have no more than two display surfaces. Each display surface shall:

1. Not contain any flashing lights;
2. Be a flat plane, rectangular in shape;
3. Not exceed 75 square feet in area; and
4. Not exceed ten feet in height or ten feet in length.

C. Primary and secondary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

D. Each letter forming a word on a primary or secondary sign shall be of solid color, and shall be the same print type, size and color. The background behind the lettering on the display surface of a primary sign shall be of a uniform and solid color.

E. Secondary signs shall have only one display surface. The display surface shall:

1. Not contain any flashing lights;
2. Be a flat plane, rectangular in shape;
3. Not exceed 20 square feet in area;
4. Not exceed five feet in height or five feet in width; and
5. Be affixed or attached to a wall or door of the enterprise.

9-6-24 Sale, use, or consumption of alcoholic beverages prohibited

The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

9-6-25 Persons younger than eighteen prohibited from entry; attendant required.

A. An owner or operator of a sexually oriented business shall not allow a person who is younger than 18 years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

B. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during the sexually oriented business' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of 18 years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of 18 years unless the attendant asked for and was furnished:

1. A valid operator's, commercial operator's, or chauffeur's driver's license; or
2. A valid personal identification issued by the state reflecting that the person is 18 years of age or older.

9-6-26 Hours of operation

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and noon on Sundays.

9-6-27 Applicability to existing businesses

Ordinance 2000.10 added section 9-6-27

The provisions of this chapter shall apply to the activities of all persons and sexually oriented businesses described in this chapter, whether the business or activities were established or commenced before, on or after the effective date of this section, except that the requirements that sexually oriented businesses be separated from certain types of land uses shall not apply to businesses existing on the date of passage of this ordinance. For purposes of this section, a use shall be considered existing or established if it is in existence as of July 18, 2000.

9-6-28 Violations, penalty and abatement

Ordinance 2000.10 added section 9-6-28

A. It shall be unlawful for a person having a duty under this chapter to knowingly fail to fulfill that duty.

B. A person who violates any provision of this chapter is guilty of a class 1 misdemeanor.

C. In addition to prosecution for a criminal violation of this chapter, the operation of a sexually oriented business without a valid license shall constitute a nuisance and the town attorney may file an

action in a court of competent jurisdiction against a person or entity operating or causing to be operated the business for injunctive relief or to abate the nuisance arising out of violation of this ordinance.

CHAPTER 9-7. LIQUOR LICENSES

Ordinance 2014.021 deleted and replaced chapter 9-7 in its entirety. For previous history, see Ordinances 93.02, 96.09, and 2009.11.

9-7-1 Definition

For purposes of this chapter, "spirituous liquor" is defined as provided in A.R.S. § 4-101.

9-7-2 License required; classification

A. No person shall manufacture, sell or deal in spirituous liquors within the town without first obtaining and properly maintaining in force a liquor license issued by the state under the procedures specified by state law.

B. Violation of this section is a class 2 misdemeanor.

9-7-3 License application; fees

A. Any person desiring a license to manufacture, sell, or deal in spirituous liquor in the town shall file an application on forms prescribed and furnished by the Arizona department of liquor licenses and control. Applications shall be processed in accordance with the procedures specified by state law.

B. Every person filing an application under this chapter shall pay a nonrefundable application fee to the town in an amount established by a fee schedule adopted by the council and amended from time to time, except that no fee shall be charged for an application for sampling privileges. The applicable fee shall be due and payable to the town upon the town's receipt of the application.

CHAPTER 9-8. CABLE TELEVISION

Ordinance 2002.29 adopted chapter 9-8. Ordinance 2005.22 replaced all occurrences of "grantor" in chapter 9-8 with "town." For prior ordinance history, see Ordinance 87.09, 96.09 and 2000.06.

9-8-1 Intent

A. The town, pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the town limits.

B. The town council finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of Marana. Because of the complex and rapidly changing technology associated with cable television, the town council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the town or such persons as the town shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and this finding shall

Ordinance 2005.22 rewrote the last sentence of paragraph B

be deemed to be included as an integral part of any franchise issued pursuant to this chapter.

9-8-2 Definitions

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the following meanings:

Ordinance 2005.22 rewrote the introductory paragraph of section 9-8-2 to delete repetitious rules of construction (see chapter 1-3) and stylistic rules inconsistent with Ordinance 2005.22, and deleted repetitious definitions (see section 1-3-2)

A. "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

B. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No.102-385, and as may, from time to time, be amended.

C. "Cable service" means:

1. The one-way transmission to subscribers of video programming or other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of the video programming or other programming service.

D. "Cable television system," "system" or "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but the term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using any public rights-of-way;
3. A facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that those facility shall be considered a cable system to the extent that the facility whether on a common carrier basis or otherwise is used in the transmission of video programming directly to subscribers; or
4. Any facilities of any electric utility used solely for operating its electric utility system.

E. "Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel as defined by the FCC.

F. "FCC" means the Federal Communications Commission, its designated representative or its lawful successor.

G. "Franchise" means a town-issued authorization to construct or operate a cable system, whether designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise.

Ordinance 2005.22 rewrote paragraph G

H. "Franchise agreement" means a franchise granted pursuant to this chapter, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

I. "Franchise fee" means any tax, fee or assessment of any kind imposed by the town or other governmental entity on a grantee or cable subscriber, or both, solely because of their status as such. The term "franchise fee" does not include:

1. Any tax, fee, or assessment of general applicability (including any tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

2. Capital costs that are required by the franchise agreement to be incurred by the cable operator for public, educational, or Governmental Access Facilities;

3. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

4. Any fee imposed under title 17 of the United States Code.

J. "Grantee" means any person receiving a franchise pursuant to this chapter and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.

K. "Gross annual revenues" means all revenues derived directly or indirectly by the grantee or any person in which the grantee has a financial interest from or in connection with the operation of the system pursuant to a franchise granted under this chapter, except it shall not include bad debt, sales tax or other taxes or charges imposed on grantee in addition to its franchise obligations and collected for direct pass-through to state or federal government.

L. "Initial service area" means the area of the town that will receive cable service initially, as set forth in any franchise agreement.

M. "Installation" means the connection of the system to subscribers' terminals, and the provision of cable service.

N. "Normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

O. "Normal operating conditions" means those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions, and significant legislative or regulatory requirements. Those conditions

which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

P. "PEG access facilities" means public, educational or government access facilities; that is:

1. Channel capacity designated for public, educational, or governmental use; and
2. Facilities and equipment for the use of that channel capacity.

Q. "Service area" or "franchise area" means the entire geographic area within the town as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise agreement.

R. "Service interruption" means the loss of picture or sound on one or more cable channels affecting at least 10% of the town's subscribers on the system.

S. "Street" means each of the following that have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the town limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the town shall permit to be included within the definition of street from time to time.

T. "Subscriber" means any person who or which lawfully elects to subscribe to, for any purpose, cable service provided by the grantee by means of or in connection with the cable system and who pays the charges for it, except those persons or entities authorized to receive cable service without charge as described in the franchise agreement.

9-8-3 Franchise to install and operate

A franchise granted by the town under the provisions of this chapter shall encompass the following purposes:

A. To engage in the business of providing cable service, and such other services as may be permitted by the franchise agreement.

B. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.

C. To maintain and operate the franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals for the delivery of cable services and any other services permitted by the franchise agreement.

D. To set forth the obligations of a grantee under the franchise agreement.

9-8-4 Franchise required

It shall be unlawful for any person to construct, install or operate a cable television system in the town within any street without a properly granted franchise awarded pursuant to the provisions of this chapter.

9-8-5 Term of the franchise

A. A franchise granted under this chapter shall be for a term established in the franchise agreement, commencing with the town's adoption of an ordinance or resolution authorizing the franchise.

B. A franchise granted under this chapter may be renewed upon application by the grantee pursuant to the provisions of applicable state and federal law and of this chapter.

9-8-6 Franchise territory

Any franchise shall be valid within all the territorial limits of the town, and within any area added to the town during the term of the franchise, unless otherwise specified in the franchise agreement.

9-8-7 Federal, state and town jurisdiction

A. This chapter shall be construed in a manner consistent with all applicable federal and state laws.

B. If the state or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction so as to expand rather than limit municipal regulatory authority, the town may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

C. This chapter shall apply to all franchises granted or renewed after the effective date of this chapter. It shall further apply to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this chapter.

D. Grantee's rights are subject to the police powers of the town to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the town pursuant to that power.

E. Grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter or any franchise granted pursuant to this chapter by reason of any failure of the town to enforce prompt compliance.

F. This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state.

9-8-8 Franchise non-transferable

A. Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the franchise and/or cable system or any of the rights or privileges granted by the franchise, without the prior consent of the council which consent shall not be unreasonably denied or delayed and shall be denied only upon a good faith finding by the town that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under the franchise agreement. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise and/or cable system without the consent of the council shall be null and void. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the town shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with grantee.

B. The following events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable system requiring compliance with this section:

1. The sale, assignment or other transfer of all or a majority of grantee's assets;
2. The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in grantee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in grantee;
3. The issuance of additional capital stock or partnership, membership or other equity interest by grantee so as to create a new controlling interest in grantee; and
4. The entry by the grantee into an agreement with respect to the management or operation of the grantee and/or the system.

C. The term "controlling interest" as used in paragraphs B.2 and 3 above means majority equity ownership of the grantee.

Ordinance 2005.22 rewrote and designated this paragraph as "C" and renumbered the following paragraphs to conform

D. Except as provided below, no grantee may sell or otherwise transfer ownership in a franchise and/or cable system, without the prior consent of the council which consent shall not be unreasonable denied or delayed and shall be denied only upon a good faith finding by the town that the proposed transferee lacks the legal technical or financial qualifications to perform its obligations under the franchise agreement following either the acquisition or initial construction of the system by grantee. In the case of a sale of multiple systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more of the systems to one or more third parties, the transfer shall be considered a part of the initial

transaction. No consent from the town shall be required for the following:

1. Any transfer of ownership interest in any franchise and/or cable system which is not subject to federal income tax liability;
2. Any sale required by operation of any law or any act of any agency, any state or political subdivision or the town; or
3. Any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

E. In the case of any sale or transfer of ownership of any franchise and/or cable system following acquisition of the system, the town shall have 120 days to act upon any request for approval of the sale or transfer that contains or is accompanied by information required by FCC regulations, the requirements of this chapter and any other reasonable information the town, in its sole discretion, requests. If the town fails to render a final decision on the request within 120 days from receipt by the town of all required information, the request shall be deemed granted unless the requesting party and the town agree to an extension of time.

F. Grantee shall notify the town in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the grantee or upon the termination of any lease or interest covering all or a substantial part of the franchise property. The notification shall be considered by the town as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of the town to the change in control of ownership shall apply.

G. For the purpose of determining whether it shall consent to the change, transfer, or acquisition of control, the town may inquire into the legal, financial, and technical qualifications of the prospective transferee or controlling party, and grantee shall assist the town in any such inquiry. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, and technical qualities of the applicant and determining that they are satisfactory, the town finds that the transfer is acceptable, the town shall transfer and assign the rights and obligations of the franchise. The consent of the town to the transfer shall not be unreasonably denied.

H. Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the town that it or its designee satisfactory to the town shall take control of and operate the cable television system, if a grantee defaults in its financial obligations. The financial institution shall also submit a plan for the operation within 30 days of assuming control that will

insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the town in its discretion and during that period of time it shall have the right to petition the town to transfer the franchise to another grantee.

9-8-9 Purchase by town upon expiration or revocation

A. If, subject to the provisions of the cable act, a renewal of a franchise is denied, the town may purchase to the extent permitted by Federal law and upon payment to the grantee of the cable systems' fair market value as a going concern, exclusive of any value allocated to the franchise itself, that portion of grantee's cable system serving the town.

B. Subject to the cable act, if a franchise is revoked for cause, the town may, to the extent permitted by federal law, acquire that portion of the cable system serving the town upon payment of an equitable price.

9-8-10 Geographical coverage

A. Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the service area, subject to any line extension requirements of the franchise agreement.

B. After service has been established by activating trunk and/or distribution cables for any part of the service area, grantee shall provide cable service to any requesting subscriber within that service area within 30 days from the date of request, provided that the grantee is able to secure all rights-of-way necessary to extend service to that subscriber within the 30 day period on reasonable terms and conditions.

9-8-11 Nonexclusive franchise

Any franchise granted shall be nonexclusive. The town specifically reserves the right to grant, at any time, any additional franchises for a cable television system or any system component, as it deems appropriate, subject to applicable state and federal law, provided, however, that no franchise shall be granted on terms materially less burdensome or more favorable than any other franchise granted under this chapter.

9-8-12 Multiple franchises

A. The town may grant one or more franchises for a service area. The town may, in its sole discretion, limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations; such as:

1. The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes

of the utility systems, such as electrical power, telephone, gas and sewerage.

2. The impact on the community of having multiple franchises.

3. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

4. The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed system for the duration of the franchise term.

B. Each grantee awarded a franchise to serve the entire town shall offer service to all residences in the town, in accordance with construction and service schedules mutually agreed upon between the town and grantee, and consistent with applicable law.

C. Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two cable systems in accordance with the provisions of section 9-8-19D.

D. The town may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in the town's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

E. Any additional franchise granted by the town to provide cable service in a part of the town in which a franchise has already been granted and where an existing grantee is providing service shall require the new grantee to provide service throughout its service area within a reasonable time and in a sequence which does not discriminate against lower income residents.

9-8-13 Initial franchise applications

Any person desiring an initial franchise for a cable television system shall file an application with the town. A reasonable nonrefundable application fee established by the town shall accompany the application. The application fee shall not be deemed to be "franchise fees" within the meaning of section 622 of the cable act (47 U.S.C. § 542), and the payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the town by grantee pursuant to section 9-8-18 hereof and applicable provisions of a franchise agreement, or (ii) part of the compensation to be paid to the town by grantee pursuant to section 9-8-18 hereof and applicable provisions of a franchise agreement. An application for an initial franchise for a cable television system shall contain, where applicable:

A. A statement as to the proposed franchise and initial service area.

B. Resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field.

C. List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder, if a corporation.

D. List of officers, directors and managing employees of applicant, together with a description of each person's background.

E. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant.

F. A current financial statement of applicant verified by a certified public accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the town.

G. Proposed construction and service schedule.

H. Any additional information that the town deems applicable.

9-8-14 Consideration of initial applications

A. Upon receipt of any application for an initial franchise, the town manager shall prepare a report and make recommendations respecting the application to the town council.

B. A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the council. Within 30 days after the close of the hearing, the council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise should be granted, and, if granted, subject to what conditions. The council may grant one or more initial franchises, or may decline to grant any franchise.

9-8-15 Franchise renewal

Franchise renewals shall be in accordance with applicable law including, but not necessarily limited to the cable act. The town and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

9-8-16 Consumer protection and service standards

Except as otherwise provided in the franchise agreement, grantee shall maintain a local office or offices to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

A. cable system office hours and telephone availability:

1. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

   a. Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.

b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.

2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less then 90% of the time under normal operating conditions, measured on a quarterly basis.

3. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

4. Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.

5. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

B. Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on a quarterly basis:

1. Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system.

2. Excluding conditions beyond the control of grantee, grantee will begin working on Service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.

3. At the subscriber's request, the "appointment window" alternatives for Installations, service calls, and other Installation activities will be within a two to four hour time block during normal business hours. (The grantee may schedule service calls and other Installation activities outside of normal business hours for the express convenience of the customer.)

4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

5. If grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment

will be rescheduled, as necessary, at a time that is convenient for the customer.

C. Communications between grantee and cable subscribers:

1. Notifications to subscribers:

a. The grantee shall provide written information on each of the following areas at the time of Installation of service, at least annually to all subscribers, and at any time upon request:

i. Products and services offered;

ii. Prices and options for programming services and conditions of subscription to programming and other services;

iii. Installation and service maintenance policies;

iv. Instructions on how to use the cable service;

v. Channel positions for programming carried on the system; and

vi. Billing and complaint procedures, including the address and telephone number of the town's cable office.

b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of the changes if the change is within the control of the grantee. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 30 days.

3. Refunds: Refund checks will be issued promptly, but no later than either:

a. The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or

b. The return of the equipment supplied by the grantee if service is terminated.

4. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

9-8-17 Rate regulation

A. The town reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent permitted by federal or state law. The grantee shall be subject to the rate regulation provisions provided for in this chapter, and those of the FCC at 47 C.F.R., Part 76.900, subpart N. The town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, subpart N.

B. Except to the extent otherwise expressly permitted by applicable law, grantee shall provide cable service to each resident within the service area at a uniform rate.

9-8-18 Franchise fee

A. Following the issuance and acceptance of a franchise, the grantee shall pay to the town a franchise fee in the amount set forth in the franchise agreement.

B. The town, on an annual basis, shall be furnished a statement within 60 days of the close of the calendar year, certified by an officer of the grantee or audited by a certified public accountant, reflecting the total amounts of gross annual revenues and all payments, and computations for the previous calendar year. Upon ten days prior written notice, the town shall have the right to conduct an independent audit of grantee's records, in accordance with generally accepted accounting principles and if the audit indicates a franchise fee underpayment of 10% or more, the grantee shall assume all reasonable costs of the audit.

C. Except as otherwise provided by law, no acceptance of any payment by the town shall be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable as a franchise fee under this chapter or any franchise agreement or for the performance of any other obligation of the grantee.

D. If any franchise fee payment or recomputed amount is not made on or before the dates specified in the franchise agreement, grantee shall pay as additional compensation an interest charge, computed from the due date, at an annual rate equal to the prime lending rate plus 1½% during the period for which payment was due.

E. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

9-8-19 Design and construction requirements

A. Grantee shall not construct any cable system facilities until grantee has secured, at its own expense, all necessary permits, licenses or

other forms of approval or authorization from the town and other cognizant public agencies.

Ordinance 2005.22 rewrote paragraph B

B. Grantee shall construct, operate and maintain its transmission and distribution facilities underground in those areas of the town where transmission or distribution facilities of the public utilities providing telephone and electric power service are underground.

C. In those areas of the town where grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and if the facilities of both of those public utilities subsequently are placed underground, then the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at grantee's cost. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures.

D. In new residential developments in which all the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:

1. The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire (or, pursuant to the terms and provisions of this chapter and any franchise agreement, may be required) to provide cable service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development map shall indicate the cable operators that have agreed to serve the development.

2. If one or two cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two operators indicate interest, the developer shall provide conduit to accommodate two sets of cable television cables and dedicate to the town any initially unoccupied conduit. The developer shall be entitled to recover from the town the cost of the initially unoccupied conduit if the town subsequently leases or sells occupancy or use rights to any grantee.

3. The developer shall provide at least ten working days notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two working days to begin the Installation of their cables, and five working days after beginning Installation to complete Installation.

4. The final development map shall not be approved until the developer submits evidence that:

   a. It has notified each grantee that underground utility trenches are to open as of an estimated date, and that each

grantee will be allowed access to those trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and grantee, or has received no reply from a grantee within ten days after its notification to the grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

5. Sharing the joint utilities trench shall be subject to compliance with state regulatory agency and utility standards. If compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating cable operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative Installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.

6. Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to the trenching.

E. Grantee shall remove, replace or modify at its own expense the installation of any of its facilities within any street when required to do so by the town to allow the town to change, maintain, repair, improve or eliminate a street. Nothing in this section shall prevent grantee from seeking and obtaining reimbursement from sources other than the town.

F. At the request of any person holding a valid building moving permit and upon sufficient notice, grantee shall temporarily raise or lower its wires as necessary to facilitate the move upon not less than 72 hours advance notice. The direct expense of the temporary changes, including standby time, shall be paid by the holder of the moving permit and grantee may require payment in advance.

9-8-20 Technical standards

A. The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any standards set forth in its franchise agreement. In addition, the grantee shall provide to the town, upon request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to FCC standards and guidelines.

B. Repeated and verified failure to maintain specified technical standards shall constitute a material franchise violation.

C. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable local, state and federal laws and regulations.

D. All Installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety code and National Electrical Code, as amended, and as may from time to time be amended.

E. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable local, state and federal laws and regulations.

F. All of grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements that the town may deem appropriate to make, or to interfere in any manner with the rights or reasonable convenience of any property owner, or to unnecessarily hinder or obstruct public use of the streets or pedestrian or vehicular traffic.

G. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

9-8-21 Trimming of trees

Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over streets, alleys, sidewalks, and public places of the town so as to prevent the branches of the trees from coming in contact with the wires and cables of grantee. Town representatives shall have authority to supervise and approve all trimming of trees conducted by grantee.

9-8-22 Use of grantee facilities

The town shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and unused conduits, any wires and fixtures desired by the town to the extent that the installation and maintenance does not interfere with existing operations and future use of grantee.

9-8-23 Hold harmless

A. Grantee, under any franchise operated pursuant to this chapter, shall agree to indemnify, hold harmless, release and defend the town, its officers, boards, commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability, losses, expenses, including reasonable attorneys' fees and costs or liabilities of any nature that may be asserted by any person resulting or in any manner arising from the action or inaction of the grantee in constructing, operating, maintaining, repairing or removing the system, in carrying on grantee's business or operations in the town or in exercising or failing to exercise any right or privilege granted by the franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark or patent, or any other right of any person, firm or corporation, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter or any franchise agreement, but shall not include any claim or action arising out of the actions or omissions of town officers, employees or agents or related to any town programming or other PEG access facilities programming for which the grantee is not legally responsible.

B. The town shall promptly notify grantee of any claims subject to indemnification by grantee and shall cooperate with all reasonable requests by grantee for information, documents, testimony or other assistance appropriate to a resolution of the claims. Grantee shall have full responsibility for and control of any action or undertaking directed at the resolution of the claims.

9-8-24 Insurance

Grantee shall provide insurance as specified in the franchise agreement.

9-8-25 Records required and the town's right to inspect

A. Grantee shall at all times maintain:

1. A full and complete set of plans, records and "as-built" maps showing the location of the cable television system installed or in use in the town, exclusive of subscriber service drops and equipment provided in subscribers' homes.

2. If requested by the town, a summary of service calls, identifying the number, general nature and disposition of the calls, on a monthly basis. A summary of service calls shall be submitted to the town within 30 days following its request in a form reasonably acceptable to the town.

B. Upon 48 hours written notice, and during normal business hours, grantee shall permit examination by any duly authorized repre-

sentative of the town, of all franchise property and facilities, together with any appurtenant property and facilities of grantee situated within the town, and all records relating to the franchise, provided they are necessary to enable the town to carry out its regulatory responsibilities under local, state and federal law, this chapter and the franchise agreement. Records include all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of grantee. Grantee shall have the right to be present at the examination.

C. If any of the records described in the previous subsection are proprietary in nature or must be kept confidential by state, federal or local law, upon proper request by grantee, the information obtained during the inspection shall be treated as confidential. To the extent that any state or federal law requires the town to disclose the records, the town shall be entitled to disclose those records.

D. Copies of all petitions, applications, communications and reports submitted by grantee, or on behalf of or relating to grantee, to the FCC, securities and exchange commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this chapter and any franchise shall be made available to the town upon request. Copies of responses from the regulatory agencies to grantee shall likewise be furnished to the town upon request.

9-8-26 Annual reports

A. Grantee shall submit a written end of the year report to the town with respect to the preceding calendar year containing the following information

1. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, services begun or discontinued during the reporting year.
2. A list of grantee's officers, members of its board of directors, and other principals of grantee.
3. A list of stockholders or other equity investors holding 5% or more of the voting interest in grantee.
4. Information as to the number of subscribers and the number of basic and pay service subscribers.
5. The town, including its agents and representatives, shall have the authority, during normal business hours, to arrange for and conduct an inspection of annual reports required pursuant to this chapter or a franchise agreement. The town shall give the grantee 72 hours written notice of the inspection request.

6. If the requested information is proprietary in nature or must be kept confidential by state, federal or local law, upon proper request by grantee, the information obtained during the inspection shall be treated as confidential. To the extent that any state or federal law requires the town to disclose the records, the town shall be entitled to disclose those records.

B. All reports and records required under this chapter shall be furnished at the sole expense of grantee, except as otherwise provided in this chapter or the franchise agreement.

9-8-27 Franchise violation

If grantee fails to perform in a timely manner any material obligation required by this chapter or a franchise granted under this chapter, following notice from the town and an opportunity to cure the nonperformance, the town may act to remedy the violation in accordance with the following procedures:

A. The town shall notify grantee of any alleged material violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than ten business days in the case of the failure of the grantee to pay any sum or other amount due the town under this chapter or the grantee's franchise and 30 days in all other cases.

B. If grantee fails either to correct the violation within the time prescribed or to commence correction of the violation within the time prescribed and to diligently pursue correction of the violation, the town shall then give written notice of not less than 20 business days of a public hearing to be held before the council. The notice shall specify the violations alleged to have occurred.

C. At the public hearing, the council shall hear and consider relevant evidence and thereafter render findings and its decision. If the council finds that a material violation exists and that grantee has not corrected it in a satisfactory manner or has not diligently commenced correction of it after notice from the town and is not diligently proceeding to fully remedy the violation, the council may revoke the franchise or impose another penalty permitted by the franchise agreement.

D. The town shall give written notice to the grantee of its intent to revoke the franchise on the basis of a pattern of noncompliance by the grantee, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The grantee shall have 60 days from the receipt of the notice to object in writing and to state its reasons for the objection. If the town has not received a satisfactory response from the grantee, it may then seek termination of the franchise at a public hearing. The town shall cause to be served upon the grantee, at least ten days prior to the public hearing, a written notice specifying the time and

place of the hearing and stating its intent to request termination of the franchise.

E. At the hearing, the town shall give the grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the grantee within ten business days. The decision of the town shall be in writing and shall be delivered to the grantee. The grantee may appeal the determination to an appropriate court, which shall have the power to review the decision of the town and to modify or reverse the decision as justice may require. An appeal to the appropriate court must be taken within 60 days of the issuance of the determination of the town.

9-8-28 Force majeure: grantee's inability to perform

If grantee's performance of any of the terms, conditions or obligations required by this chapter or a franchise grant under this chapter is prevented by a cause or event not within grantee's control, the inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result of it. For the purpose of this section, causes or events not within the control of grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosion, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

9-8-29 Abandonment or removal of franchise property

A. If the use of any property of grantee within the franchise area or a portion of it is discontinued for a continuous period of 12 months, grantee shall be deemed to have abandoned that franchise property.

B. The town, upon whatever terms the town may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the town and shall restore any affected street to its former state at the time the facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The town shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance

provisions of this chapter and any security fund provided in the franchise shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.

C. Upon abandonment of any franchise property in place, the grantee, if required by the town, shall submit to the town an instrument, satisfactory in form to the town, transferring to the town the ownership of the franchise property abandoned.

D. At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided for in this chapter, in any such case without renewal, extension or transfer, the town shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the town within a reasonable period of time, which shall not be less than 180 days.

E. Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which the property is located or with the use of it by any public utility or other cable grantee.

9-8-30 Extended operation and continuity of services

Upon either expiration or revocation of the franchise, the town shall have discretion to permit and/or require grantee to continue to operate the cable television system for an extended period of time not to exceed six months from the date of the expiration or revocation. Grantee shall continue to operate the system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time.

9-8-31 Receivership and foreclosure

A. A franchise granted under this chapter shall, at the option of the town, cease and terminate 120 days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless the receivership or trusteeship shall have been vacated prior to the expiration of that 120 days, or unless:

1. The receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivership or trustees within that 120 days shall have remedied all the faults under the franchise or provided a plan for the remedy of the faults which is satisfactory to the town; and

2. The receivers or trustees shall, within those 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, in which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.

B. In the case of a foreclosure or other judicial sale of the franchise property, or any material part of it, the town may serve notice of termination upon grantee and the successful bidder at the sale, in which event the franchise granted and all rights and privileges of the grantee under this chapter shall cease and terminate 30 days after service of the notice, unless:

1. The town shall have approved the transfer of the franchise, as and in the manner that this chapter provides; and

2. The successful bidder shall have covenanted and agreed with the town to assume and be bound by all terms and conditions of the franchise.

9-8-32 Rights reserved to the town

A. In addition to any rights specifically reserved to the town by this chapter, the town reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

B. The town shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the town determines (1) that it is in the public interest to do so, and (2) that the enforcement of the provision will impose an undue hardship on the grantee or the subscribers. To be effective, the waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the town. Waiver of any provision in one instance shall not be deemed a waiver of that provision subsequent to that instance or be deemed a waiver of any other provision of the franchise unless the statement so recites.

9-8-33 Rights of individuals

A. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, disability, gender or sexual preference. Nor shall grantee fail to extend service to any part of the town within its licensed service area on the basis of the income of the residents. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, relating to nondiscrimination.

B. Grantee shall adhere to the applicable equal employment opportunity requirements of federal, state and local regulations.

C. Neither grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for

any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

D. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting from it, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as those rights are delineated or defined by applicable law. Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

E. No cable line, wire amplifier, converter, or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed. Where a property owner or his predecessor has granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as grantee's intended use, grantee shall not be required to obtain the written permission of the owner for the Installation of cable television equipment.

9-8-34 Conflicts

If there is a conflict between any provision of this chapter and a franchise agreement entered pursuant to it, the provisions of this chapter shall control, except as may be specifically otherwise provided in the franchise agreement.

9-8-35 Severability

If any provision of this chapter is held by any court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by the court or agency to be modified in any way to conform to the requirements of any law, rule or regulation, the provision shall be considered a separate, distinct, and independent part of this chapter, and the holding shall not affect the validity and enforceability of all other provisions hereof. If the law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with the law, rule or regulation, that provision shall return to full force and effect and shall thereafter be binding on the town and grantee, provided that the town shall give grantee 30 days written notice of the change before requiring compliance with the provision or such longer period of time as may be reasonably required for grantee to comply with the provision.

CHAPTER 9-9. PENALTY

Chapter 9-9 was deleted and replaced by Ordinance 2014.014. For prior history, see Ordinance 2000.06.

9-9-1 Classification; enforcement; continuing violations

A. Except as otherwise provided in this title, any violation of this title is a civil infraction, and may be enforced in any manner provided by town ordinances and state laws.

B. Each day any violation continues shall constitute a separate offense.

CHAPTER 9-10. SURFACE MINING AND LAND RECLAMATION

Ordinance 2002.08 added chapter 9-10

9-10-1 Purpose and intent

It is the purpose and intent of this chapter to establish an effective and comprehensive surface mining and reclamation policy including regulation of surface mining operations so as to assure that:

A. Adverse environmental effects are prevented or minimized and that mined lands are reclaimed in a timely manner, to a usable condition which is readily adapted for alternative land use.

B. The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

C. Residual hazards to public health and safety are eliminated.

9-10-2 Definitions

For the purposes of this chapter the following definitions shall apply:

A. "Financial assurance amount" means that amount of money necessary to conduct a complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the town.

B. "Financial assurance" means a bond, instrument, fund or other form of financial assurance acceptable to the town.

C. "Government mine" means any surface mine owned and operated by federal, state or local governmental entity.

D. "Idle" means to curtail for a period of one year or more surface mining operations by more than 90% of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

E. "Interim management plan" is the plan which the operator of an idle mine shall submit and gain approval for, to assure that the site shall be maintained in compliance with the approved reclamation plan, use permit, and applicable conditions, until the mine operation is resumed or the mine is fully reclaimed in accordance with the approved reclamation plan.

F. "Mined lands" includes the surface, subsurface, and groundwater of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

G. "Minerals" means any naturally occurring compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to sand, gravel and rock.

H. "Mining waste" includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations, excluding stockpiles as defined in this section.

I. "Operator" means any person who is engaged in surface mining operations himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

J. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between deposits, before or after their removal by surface mining operations.

K. "Pledge of revenue" means a financial assurance mechanism by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.

Ordinance 2005.22 deleted a redundant definition of "person" (see section 1-3-2)

L. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, or other adverse effects from mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land use and creates no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, restoration of water bodies, and slope stability or other measures.

M. "Reclamation plan" means the plan required by the town pursuant to this chapter and adopted in accordance therewith and should include beginning and estimated ending dates for each phase, all reclamation activities required, criteria for measuring completion of activities and estimated costs for each phase of reclamation.

N. "Sand and gravel operation" means any operation the principal product of which is sand, gravel, pumice or any other common variety of mineral.

O. "Stockpile" means a volume of stored mined material which is residual or secondary material extracted during a surface mining operation and which has a demonstrated future economic value sufficient to warrant its protection and preservation.

P. "Surface mining operations" means all, or part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by auger methods, dredging, and quarrying. Surface mining operations include, but are not limited to:

1. In place distillation, retorting or leaching.
2. The producing and disposal of mining wastes.
3. Prospecting and exploratory activities.
4. Borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same).

9-10-3 Scope

A. The provisions of this chapter shall apply to all the incorporated areas of the town.

B. The provisions of this chapter are not applicable to:

1. Excavation or grading for farming, onsite construction, or restoration of land following a flood or natural disaster or other activities separately regulated by town ordinances.
2. Reclamation of lands mined prior to February 5, 2002, unless subject to approved development agreements and zoning conditions enacted or agreed to after February 5, 2002.
3. Surface mining operations that are required by federal law to protect a mining claim, if those operations are conducted solely for that purpose.
4. Prospecting for, or the extraction of, minerals for commercial purpose and the removal of overburden in total amounts of less than one thousand cubic yards in any one location of one acre or less.

9-10-4 Reclamation plan requirements

A. Any person who proposes to engage in a surface mining activity shall, prior to the commencement of the operations, obtain approval of a permit to mine, submit a reclamation plan, and have financial assurances in place sufficient to implement the approved plan. Approval to mine and approval of the reclamation plan, in accordance with the provisions set forth in this chapter, shall be obtained from the Marana development services director.

B. The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of

overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation, sediment and erosion control, and current and proposed zoning. The reclamation plan shall include a certification by the operator that all public agencies having possible jurisdiction over the surface mining activity, including but not limited to county, state and federal agencies, have reviewed and approved the plan, and that all necessary permits have been obtained.

C. Reclamation plans issued pursuant to this chapter shall be recorded with the county recorder and shall run with the land affected thereby and shall be binding on all successors, heirs, and assigns of the permittee.

D. Applicants having a surface mining operation that involves separate, noncontiguous parcels of land may file one reclamation plan for the entire operation covering each parcel of land, provided that the type of operation is the same on each parcel of land and each parcel of land is identified in the reclamation plan. A separate phasing schedule shall be required for each parcel.

9-10-5 Application

All applications for a reclamation plan for any mining operation shall be made on forms provided by town development services department. The application shall be filed in accordance with this chapter and procedures established by the town.

9-10-6 Fees

A. The fees for a reclamation plan, amendment to reclamation plan, and interim management plan shall be as the same as those set forth in the town fee schedule for development plans, and shall be paid to the development services department at the time of filing of the reclamation plan amendment to reclamation plan, or interim management plan.

B. A business license fee shall be paid the town for inspections and monitoring of a surface mine as set forth in section 9-1-3 of the Marana town code.

9-10-7 Financial assurances

A. To ensure that reclamation will proceed in accordance with the approved reclamation plan, the town shall require as a condition of approval financial assurances.

B. Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds or other mechanisms acceptable to the town.

C. Public agencies may satisfy financial assurance requirements by using "pledges of revenue" or "budget set aside" as acceptable financial assurances mechanisms.

D. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

E. The amount of the financial assurances shall be calculated by the applicant based on the projected expense to complete the reclamation for the intended future use as approved by the town engineer. Approval of the amount of financial assurances will be subject to the review and approval of the town engineer.

Ordinance 2005.22 inserted "town engineer" for "development services director" in paragraph E

F. The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

G. The financial assurances shall be made payable to the town. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the town, the town shall review those financial assurances to ascertain whether they are adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the town.

H. If a sand and gravel surface mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the town until new financial assurances are secured from the new owner and have been approved by the town.

I. The release of financial assurances shall be with the concurrence of all agencies named on the financial assurance. The criteria for release of financial assurances, or part of the financial assurances, shall be made part of the reclamation plan. In no case shall the financial assurance be released until reclamation has been completed.

J. The amount of financial assurances shall be reviewed and adjusted, if required, pursuant to section 9-10-10.

9-10-8 Public records

Reclamation plans, reports, applications and other documents submitted pursuant to this chapter are public records unless it can be demonstrated to the satisfaction of the town that the release of the information, or any part of it, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information and is not required by law. The town shall identify the proprietary information as a separate part of each application. Proprietary Information shall be made available to persons other than the mine operator or mine owner

only when authorized by law or by the mine operator and by the mine owner.

9-10-9 Procedures

Ordinance 2005.22 inserted "town engineer" for "development services director" in section 9-10-9

Once all required and approved documents and other related materials and requirements are submitted and approved as required under this chapter, including the submittal of the financial assurances in the amount approved by the town engineer, the town engineer shall expeditiously issue approval to commence operation of the approved surface mining operation and reclamation plan.

9-10-10 Periodic review and inspections

A. The town shall monitor and inspect each surface mining operation on a regular basis.

B. The required financial assurances shall be reviewed annually by the town. Financial assurances shall be adjusted to account for new lands disturbed by surface mining operations, inflation, reclamation of lands accomplished in accordance with the approved reclamation plan, or other factors related to the cost of reclamation which have changed since the previous review.

C. At the time of the annual inspection, the mine operator shall make available to the town an updated reclamation cost estimate prepared by the operator.

D. The person in charge of the surface mining operation shall make the surface mining operation open and available for monitoring and inspection during regular town and operator business hours or at such other times as may be mutually agreed upon by him or her and the development services department. The provisions of this subsection shall be deemed to be a condition of the reclamation plan.

E. The development services department shall make a report of the results of the inspection. This report shall be filed with the town engineer.

Ordinance 2005.22 inserted "town engineer" for "development services director" in paragraph E

9-10-11 Idle mine – interim management plans

Ordinance 2005.22 inserted "town engineer" for "development services director" in section 9-10-11

Within 90 days of a surface mining operation becoming idle, the operator shall submit an interim management plan. The interim management plan shall be developed in accordance with this chapter. Interim management plans shall be sent to the town engineer for review in the same manner as amendments to reclamation plans. Financial assurances as required shall remain in effect during the period that the surface mining operation is idle.

9-10-12 Amendments to plan

Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until the amendment

has been filed and approved, in the same manner as established in this chapter for original application. The foregoing notwithstanding, in emergency situations where irreversible physical damage to the environment may occur, an operator may take whatever action is necessary to prevent irreversible physical damage and shall promptly report the taking of the action to the development services department. Applications for an amendment are subject to the fee in accordance with section 9-10-6.

9-10-13 Enforcement

A. Where it appears to the development services department that a surface mining operation is in violation of any condition of an approved reclamation plan or applicable statute, regulation, or ordinance, the development services department shall serve formal notice to the operator stating the nature of the violation and the specified time frame to correct the violation before an order is issued.

B. The time within which the permittee must commence correction of the violation shall be sooner than 60 days from the notice of violation.

C. An order shall be issued if the operator fails to comply with the notice within the specified time limit. Not sooner than 30 days after the date of the order, a hearing shall be held by the town engineer or his or her designee, for which at least ten days' written notice has been given to the operator. The order shall not take effect until the operator has been provided the hearing. The date of issuance of the order is the date of receipt by the operator.

Ordinance 2005.22 inserted "town engineer" for "development services director" in paragraph C

D. Failure to comply with the order shall be subject to an order setting administrative penalties. Penalties shall be assessed from date of original non-compliance.

E. In determining the amount of administrative penalty, the town shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require.

F. Orders setting administrative penalties shall become effective upon issuance and payment shall be made to the development services department, unless the operator files an appeal with the town manager within 30 days. The town manager shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. If after hearing, the town manager affirms the order, the operator shall pay the administrative penalties set by the town manager's order within 30 days of the service of that order.

G. The provisions of this chapter shall be enforced by the town engineer, the assistant town manager, town manager, or a designated appointee.

Ordinance 2005.22 inserted "town engineer" for "development services director" in paragraph G

H. Notwithstanding the foregoing, a violation of this chapter may be enforced by the town by the use of any legal or equitable remedy the town may have.

9-10-14 Application fees

No application shall be accepted unless it is in full compliance with all requirements of this chapter, and accompanied by the fee specified in section 9-10-6. No part of any required fee shall be returnable, and every such fee shall be deposited with the town.

CHAPTER 9-11. SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE

Ordinance 2006.01 added chapter 9-11

9-11-1 Definitions

A. In this chapter:

1. "Pseudoephedrine product" means any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectable quantity of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine or their salts, optical isomers or salts of optical isomers. Product packaging that lists ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product.
2. "Retail establishment" means any place of business that offers any pseudoephedrine product for sale at retail.

9-11-2 Restrictions

A. The operator of a retail establishment shall keep all products containing pseudoephedrine behind a store counter or otherwise in a manner that is inaccessible to customers without the assistance of the operator or an employee of the establishment.

B. The retail establishment employee making a retail sale of a product containing pseudoephedrine shall require a government-issued photo identification from the purchaser and shall record the purchaser's name and date of birth, the quantity of pseudoephedrine product purchased, the transaction date and the initials of the retail establishment employee making the sale.

C. The information required to be obtained by paragraph B of this section shall be retained by the retail establishment for a period of 90 days, and will be considered a confidential document that will only be available to the operator of the retail establishment and to law enforcement agency officers and officials.

9-11-3 Penalty

A violation of this chapter is a class 1 misdemeanor.

Title 10

Health and Sanitation

10

TITLE 10. HEALTH AND SANITATION

CHAPTER 10-1. TRANSPORTATION AND DUMPING OF GARBAGE OR AGGREGATE MATERIAL 10-1

CHAPTER 10-2. MAINTENANCE OF PROPERTY 10-3

CHAPTER 10-3. SEWAGE SLUDGE 10-7

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TITLE 10. HEALTH AND SANITATION

Ordinance 96.15 adopted title 10

CHAPTER 10-1. TRANSPORTATION AND DUMPING OF GARBAGE OR AGGREGATE MATERIAL

Ordinance 2002.06 adopted section 10-1-1. Ordinance 2012.07 amended section 10-1-1 by adding the unnumbered introductory paragraph, inserting the "disposal facility" definition, and amending the "garbage" definition. See Ordinance 96.15 for prior text.

10-1-1 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise.

A. "Aggregate material" means any rock fragments, pebbles, sand, gravel, cobbles, crushed base, asphalt, dirt or similar material.

B. "Closed container" means a container designed for transporting loose material such as garbage, refuse or aggregate material, with sides, top and bottom made of solid and durable material, such as metal or plastic, which will resist normal wear and tear, and without any holes, cracks or openings through which materials may escape, regardless of the degree to which the container is filled.

C. "Disposal facility" means any active landfill, inactive landfill, debris fill, transfer station, temporary drop off site for any solid waste, waste storage site, or waste processing facility.

D. "Enclosed cargo area" means a part of a vehicle designed for carrying objects or materials, with all of the following characteristics:

1. Bottom and vertical sides made of solid and durable material, such as metal or plastic, which will resist normal wear and tear, and without any holes, cracks or openings through which materials may escape, regardless of the degree to which the cargo area is filled;

2. A tailgate or equivalent device;

3. Seals on any opening used to empty a load from the cargo area, including bottom dump gates and tailgates, sufficient to prevent material from escaping; and

4. A cover, tarpaulin or other device which prevents the load from becoming loose, detached or in any manner a hazard to other users of the roadway, public thoroughfare or right-of-way.

Ordinance 2002.30 adopted paragraph 4. See Ordinance 2002.06 for prior text.

"Enclosed cargo area" shall not include any part of a vehicle's cab or passenger compartment, nor shall it include frame rails, fenders or decks of low beds or flat beds.

E. "Garbage" means any litter, refuse, rubbish, trash, weeds, filth or debris which constitutes a hazard to public health and safety, and includes, but is not limited to, all putrescible and nonputrescible solid wastes including garbage, trash, ashes, street cleanings, dead animals, abandoned automobiles, vehicle parts and solid market and industrial waste, filthy or odoriferous objects or substances, any clippings of brush, grass, or weeds, and any debris, rubbish or other unsightly or unsanitary matter of any kind whatsoever.

10-1-2 Transportation of garbage or aggregate material; classification; enforcement

Section 10-1-2 was adopted by Ordinance 2002.06 and modified by Ordinance 2012.07

A. No person shall transport garbage or aggregate material within the town limits in an open vehicle unless the garbage or aggregate material is in a closed container or in an enclosed cargo area.

B. Vehicles transporting the following materials are not required to be equipped with a cover or tarpaulin:

1. Loads composed solely of asphalt.
2. Loads composed solely of petroleum coke, if loaded with a chemical surfactant (surface active agent) designed to prevent blowing, spilling or escaping.
3. Aggregate materials loaded so that no portion of the load contacts the sides of the cargo area closer than six inches from the top of the sides and no portion of the load crowns or peaks above the top of the sides of the cargo area.
4. Equipment employed in agricultural or husbandry activities.

Ordinance 2002.30 added paragraph 4

C. No vehicle shall be driven or moved on any roadway within the town limits unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping from it, except that sand may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway.

D. Vehicles transporting aggregate material within the town limits shall be equipped with the following equipment:

Ordinance 2002.30 amended paragraph D

1. Splash flaps shall be maintained behind every tire or set of tires.
2. Fenders on commercial trailers shall not be removed or disabled.

E. Vehicles transporting garbage, refuse or aggregate material within the town limits and equipped with a bottom dump gate shall be equipped with the following equipment:

1. Shed boards designed to prevent material deposit on the vehicle body during top loading.
2. A center flap behind the bottom dump gate, which may be located either directly behind the gate, or to the rear of the rear axle and in line with the splash flaps. The outside edge of the center flap shall not extend more than one inch from the sidewall of the adjacent tire. The center flap shall be a minimum of 24 inches in height and shall be within five inches of the roadway surface.

F. Vehicles with cargo areas comprised of full rigid enclosures are exempt from the requirements of subsection E of this section.

G. Violation of this section is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

10-1-3 Spilled garbage or aggregate materials; classification

Ordinance 2012.07 added section 10-1-3.

A. Any person transporting any garbage or aggregate materials along the streets of the town shall immediately replace in the conveyance used for the hauling any garbage or aggregate materials which may fall upon any street.

B. Violation of this section is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

10-1-4 Illegal dumping; classification

Ordinance 2012.07 added section 10-1-4. See Ordinance 2005.22 for prior text.

A. No person shall dump, deposit, place, throw, discard or leave garbage on any public or private property not owned or under the control of that person except at a designated disposal facility or in an authorized garbage receptacle that prevents garbage from being carried or deposited by the elements upon any other private or public property.

B. In addition to any penalty that may be imposed by this code, any person violating the provisions of this section shall be liable for any costs assessed for removing, abating or enjoining the garbage.

C. Violation of this section is a class 1 misdemeanor.

CHAPTER 10-2. MAINTENANCE OF PROPERTY

Ordinance 2012.07 added chapter 10-2. See Ordinance 96.15, 98.14, and 2005.22 for prior text.

10-2-1 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise.

Ordinance 2013.017 added the "dilapidated building" definition and renumbered the remaining definitions to conform

A. "Dilapidated building" means any real property structure that is likely to burn or collapse and its condition endangers the life, health, safety or property of the public.

B. "Owner" means, as applied to property, any part owner or joint owner.

C. "Property" means buildings, grounds, lots and tracts of land.

D. "Refuse" means any rubbish, trash, filth or debris which constitutes a hazard to public health and safety and shall include all putrescible and nonputrescible solid wastes including garbage, trash, ashes, street cleanings, dead animals, abandoned automobiles, vehicle parts and solid market and industrial waste, any deposit, accumulation, pile or heap of brush, grass, debris, weeds, cans, cloth, paper, wood, rubbish or other unsightly or unsanitary matter of any kind whatsoever.

E. "Weeds" includes, but is not limited to, untended or uncultivated plants, invasive plants, aggressively seeding plants, Russian thistle, ragweed, plants generally accepted as having no value and frequently of uncontrolled growth.

10-2-2 Accumulation of vegetation prohibited; classification; enforcement

A. Each owner, lessee, tenant, resident or occupant shall maintain a property so it is free of the accumulation or untended growth of vegetation. The accumulation or untended growth of vegetation means the presence of plants on property that create a fire, safety or health hazard, or that attract vermin either on the property, on neighboring properties, or on both, and includes but is not limited to:

1. Any growth of brush, grass or other vegetable growth that exceeds nine inches in height.
2. All weeds that exceed nine inches in height.
3. Dead trees or dead shrubs.
4. Dead palm fronds within ten feet of the ground, a structure, a fence or wall, or of any combustible other than the tree from which the fronds have grown.
5. Any tree, shrub, or other form of vegetation of any kind on the property or on the adjoining right-of-way, street, or alley that extends over or under the sidewalk space or roadway in a manner that may interfere with the reasonable use of the street, sidewalk, or alley for pedestrian or vehicular traffic of any kind or that may obstruct the view or light distribution of traffic-control devices or luminaries. Vegetation must be trimmed and maintained to provide an unobstructed pedestrian path a minimum of 48 inches in width and 80 inches in height from grade.

B. Violation of this section is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

10-2-3 Accumulation of refuse prohibited; classification; enforcement

A. Each owner, lessee, tenant, resident or occupant shall maintain a property so it is free of the accumulation of refuse. The accumulation of refuse means contained or uncontained refuse that is present on property that is not a properly licensed and zoned junkyard or material recycling facility.

B. Violation of this section is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

10-2-4 Dilapidated buildings prohibited; classification; enforcement

Ordinance 2013.017 added section 10-2-4 and renumbered the remaining sections to conform

A. Each owner, lessee, tenant, resident or occupant shall maintain a property so that it is free of dilapidated buildings. Dilapidated building means any real property structure that is likely to burn or collapse and its condition endangers the life, health, safety or property of the public, and includes but is not limited to a building that is abandoned, inadequately maintained, in disrepair, neglect-

ed, vandalized, constructed in a faulty manner, not of sufficient strength or stability, not anchored, attached or fastened in place to an adequate supporting foundation, unsecured or in a state of deterioration.

B. Violation of this section is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

10-2-5 Notice to compel removal of refuse, vegetation, weeds or dilapidated buildings

Ordinance 2013.017 renumbered section 10-2-5 and revised its heading and text to include dilapidated buildings

A. If enforcement pursuant to chapter 5-7 of this code fails to secure compliance with the provisions of this chapter, or if the town is unable to pursue enforcement pursuant to chapter 5-7 by reason of failure to secure jurisdiction over the owner, lessee, tenant, resident or occupant of the property in question, the town shall provide notice to compel the removal of refuse, vegetation, weeds or dilapidated buildings by the procedures set forth in this section.

B. The town shall provide written notice of a violation of this chapter to the owner of the property, the owner's authorized agent or the owner's statutory agent, and to the occupant or lessee of the property, if any. The notice shall be served by personal service or by certified mail. If the notice is served by certified mail, it shall be mailed to the last known address of the owner, the owner's authorized agent or the owner's statutory agent and to the address to which the tax bill for the property was last mailed.

C. The notice shall include all of the following:

1. A description of the violation;
2. A legal description of the property;
3. A date by which the owner, occupant or lessee must come into compliance with this chapter, which date shall be not less than 30 days from the date of service of the notice;
4. A statement that if any person with an interest in the property, including an owner, lienholder, lessee or occupant, fails to comply with this chapter by the date set for compliance, the town will remove the refuse, vegetation, weeds or dilapidated buildings and assess all costs for removal against the property;
5. A statement of the cost to the town for removal of the refuse, vegetation, weeds or dilapidated buildings should the owner, occupant or lessee fail to comply with the notice; and
6. A description of the owner's, occupant's or lessee's right to appeal the notice, as provided in this chapter.

10-2-6 Appeal

A. Within ten business days after the owner's, occupant's or lessee's receipt of the notice described in section 10-2-5, the owner, occupant or lessee may file a written response and request for an appeal hearing with the town clerk.

B. Within seven business days after receipt of the owner's, occupant's or lessee's request for appeal, the town shall either withdraw or modify the notice or schedule an appeal hearing before the town council.

C. The owner, occupant or lessee shall be notified in writing by certified mail of the date, time and location of the hearing.

D. The hearing shall be scheduled not less than 15 calendar days and no more than 30 calendar days after receipt by the town clerk of the request for hearing.

E. The hearing shall be conducted in an informal manner and the rules of evidence shall not apply. The owner, occupant or lessee may be represented by an attorney.

F. The council may affirm or withdraw the notice or modify the scope of the work required by the notice. The decision of the council is final.

10-2-7 Removal by town; costs assessed; appeal; recording of assessment

Ordinance 2013.017 renumbered section 10-2-7 and revised paragraph A to include dilapidated buildings

A. If the owner, occupant or lessee fails, neglects or refuses to comply with the notice described in section 10-2-5 in a timely manner, the town may remove, abate, enjoin or cause the removal of the refuse, vegetation, weeds or dilapidated buildings at the expense of the owner, occupant or lessee.

Ordinance 2013.028 added "the actual costs" in place of "5%" in paragraph B of section 10-2-7

B. Upon completion of the work, the town shall prepare a verified statement of account of the actual cost of the removal or abatement, including the actual costs for additional inspection and other incidental connected costs, the date the work was completed, and the legal description of the property on which the work was done, and shall serve a duplicate copy of the verified statement upon the owner, occupant or lessee in the manner described in paragraph B of section 10-2-5.

C. Within ten business days after the owner's, occupant's or lessee's receipt of the verified statement described in paragraph B of this section, the owner, occupant or lessee may file a written response and request for an appeal hearing with the town clerk.

D. Within seven business days after receipt of the owner's, occupant's or lessee's request for appeal, the town shall either withdraw or modify the verified statement or schedule an appeal hearing before the town council. The provisions of paragraphs C, D and E of section 10-2-6 shall apply to any appeal hearing provided pursuant to this section.

E. The council may affirm or modify the amount of the assessment or determine that no assessment at all shall be made. The decision of the council shall be final and binding on all persons.

F. If an appeal of the assessment of costs is not filed with the town clerk within the time period provided for appeal, then the amount

of the assessment as determined by the town shall become final and binding.

G. If no appeal is taken from the amount of the assessment, or if an appeal is taken and the council has affirmed or modified the amount of the assessment, and if the owner, occupant or lessee of the property does not pay the assessment within 14 calendar days after it becomes final, the original or council-modified assessment shall be recorded in the office of the county recorder and, from the date of its recording, shall be a lien on the property until paid.

10-2-8 Enforcement independent of other enforcement action

The authority of the town to enforce the provisions of this chapter is independent of and in addition to the authority of other town officials to enforce the provisions of any other chapter of this code or other laws, ordinances, or statutes.

CHAPTER 10-3. SEWAGE SLUDGE

See Ordinance 83.04 and 85.06 for prior history of sewage sludge regulations

10-3-1 Residential areas

The use of land within the town that is within one quarter mile of a human residence that is also within the town for the application of or injection of sewage sludge to the surface or within eight inches of the surface shall be prohibited, except where the residence is owned by the owner of the land where sludge is to be applied or injected or where a written waiver has been obtained from the resident or owner of the residence and where the waiver has been filed with the town clerk.

10-3-2 Flood plain areas

The use of land within the designated flood plain of the Santa Cruz River as defined by the town zoning ordinance or development code for the application of or injection of sewage sludge within eight inches of the surface shall be prohibited.

10-3-3 Other areas

The use of any other land within the town for the application of or injection of sewage sludge to the surface or within eight inches of the surface shall be in accordance with standards and regulations of the United States Environmental Protection Agency, the Arizona Department of Health Services and the Pima County Health Department for the protection of those who may work on the land and for those who may use the land at a later time for purposes other than the growing of crops or other agricultural purposes, including residential, commercial, industrial and public land uses.

10-3-4 Reporting requirements

Any use of land within the town for the application or injection of sewage sludge shall be reported to the town clerk upon the initiation

of that land use at each site approved by the Arizona Department of Health Services, in accordance with the regulations of the state and the Pima County Department of Wastewater Management.

10-3-5 Classification; enforcement

Ordinance 2012.07 amended Section 10-3-5 by modifying the title, adding paragraph A, and numbering and modifying paragraph B

A. Violation of this chapter is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

B. Enforcement of this chapter shall be the responsibility of the town planning and zoning administrator, but other law enforcement officers and code compliance officers of the town may be called upon to enforce its provisions from time to time.

CHAPTER 10-4. TRAVEL REDUCTION CODE

See Ordinance 88.06 for prior history of travel reduction regulations

10-4-1 Purpose

The purpose of this chapter, recognizing that motor vehicles are the single greatest contributor to air pollution, is to improve air quality and reduce traffic congestion within the incorporated and unincorporated areas of Pima County by increasing alternate mode usage and reducing overall motor vehicle travel for commute trips. This chapter shall establish a basis for a cooperative effort of the local jurisdictions to achieve a uniform program for reduction of work related trips by employees working for major employers subject to this regulation.

10-4-2 Definitions

A. The following definitions shall apply unless the context clearly indicates otherwise.

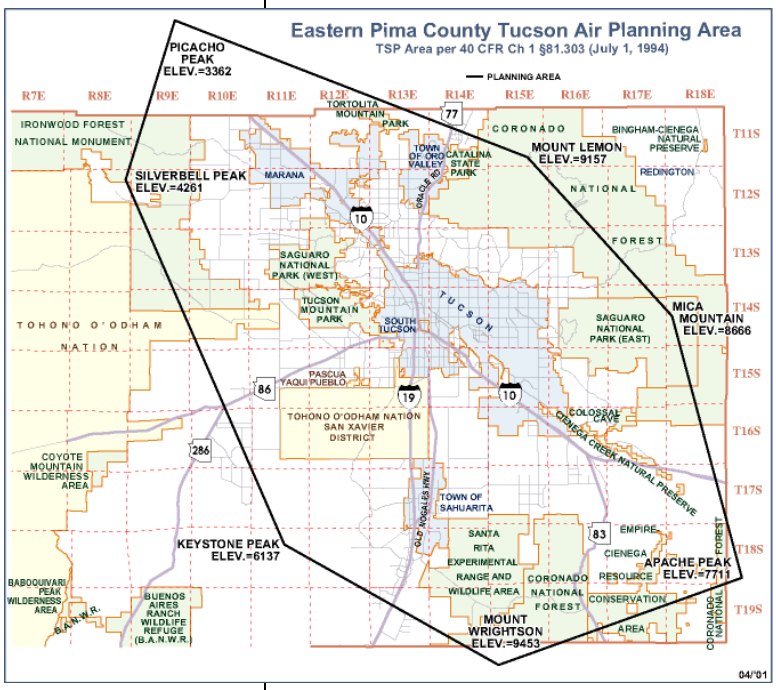
1. "Airshed" means that area delineated with a black "planning area" line on the map entitled "Eastern Pima County Tucson Air Planning Area" reproduced on this page.

2. "Alternate mode" means any mode of commuter transportation other than the single occupancy motor vehicle.

3. "Approvable travel reduction plan" means a plan submitted by a major employer that meets the requirements as set forth in section 10-4-5.

4. "Carpool" or "vanpool" means two or more persons traveling in a light duty vehicle (car, truck or van) to or from work.

5. "Commuter trip" means a trip taken by an employee to or from work within the airshed.



6. "Commuter matching service" means any system, whether it uses computer or manual methods, which assists in matching employees for the purpose of sharing rides to reduce drive alone travel.
7. "Employer" means a sole proprietor, partnership, cooperation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, either public or private, that employs workers. See also "major employer" and "voluntary employer".
8. "Full time equivalent (FTE) employees" means the number of employees an employer would have if the employer's work needs were satisfied by employees working forty hour work weeks. The number of full time equivalent employees for any employer is calculated by dividing the total number of annual work hours paid by the employer, by 2080 work hours in a year.
9. "Local jurisdictions" includes Pima County, city of Tucson, town of Marana, town of Oro Valley, town of Sahuarita and city of South Tucson.
10. "Major employer" means an employer who employs one hundred or more full time equivalent employees at a work site during a twenty-four hour period for at least 6 months during the year.
11. "Mode" means the type of conveyance used in transportation including single occupancy motor vehicle, rideshare vehicle (carpool or vanpool), transit, bicycle, and walking.
12. "Motor vehicle" means any vehicle propelled by a motor; including car, van, bus, motorcycle, and all other motorized vehicles.
13. "Public agency" means any political subdivision of this state and any board, commission or agency of it.
14. "Public interest group" means any nonprofit group whose purpose is to further the welfare of the community.
15. "Regional program" means the combination of all implemented plans within the airshed combination.
16. "Ridesharing" means transportation of more than one person for commute purposes, in a motor vehicle, with or without the assistance of a commuter matching service.
17. "Transit" means a bus or other public conveyance system.
18. "Transportation coordinator" means a person designated by an employer, property manager, or transportation management association as the lead person in developing and implementing a travel reduction plan.

19. "Transportation management association" (TMA) means a group of employers or associations formally organized to seek solutions for transportation problems experienced by the group.
20. "Travel reduction plan" means a written report outlining travel reduction measures which will be submitted annually by each major employer.
21. "Travel reduction program" means a program, implementing a travel reduction plan by an employer, designed to achieve a predetermined level of travel reduction though various incentives and disincentives.
22. "Travel reduction program regional task force" means that task force established pursuant to the intergovernmental agreement to be entered into by the local jurisdictions.
23. "Vanpool" see "carpool".
24. "Vehicle occupancy" means the number of occupants in a motor vehicle including the driver.
25. "Vehicle miles traveled" (VMT) means the number of miles traveled by a motor vehicle for commute trips.
26. "Work site" means a building or any grouping of buildings located within the town which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way, and which are owned or operated by the same employer.

B. As utilized in this chapter, the following shall have the indicated meanings.

1. PAG - Pima Association of Governments
2. TMA - transportation management association
3. TRO - travel reduction ordinance and code
4. TRP - travel reduction program
5. VMT - vehicle miles traveled

10-4-3 Jurisdiction/lead agency

A. The council shall evaluate major employers' TRP plans received from the TRP task force. The lead agency shall have 45 days to object to the plan; otherwise the plan is automatically approved. Any objection shall be based upon the criteria set forth in section 10-4-5. If the lead agency objects, the plan is not approved and shall be returned to the TRP task force with appropriate comments for review and revision in consultation with the employer.

B. The lead agency shall receive recommendations for enforcement from the TRP task force. The lead agency shall take whatever action it deems necessary.

10-4-4 Applicability; voluntary participation

A. The provisions of this code shall apply to all major employers.

B. Employers or groups of employers with less than 100 full time equivalent employees at a single work site are encouraged to participate in data collection and information dissemination efforts and in the preparation of their own travel reduction plans on a voluntary basis. These groups shall be assisted by the TRP task force, the TRP technical advisory committee and TRP staff, and shall be eligible for participation in all programs and services. Groups of employers are encouraged to form transportation management associations.

10-4-5 Requirements for employers

In each year of the regional program each major employer shall:

A. Provide each regular employee with information on alternate mode options and travel reduction measures including, but not limited to: Sun Tran bus routes and schedules, the RideShare program, and bicycle routes. This information shall also be provided to new employees at the time of hiring.

B. Participate in a survey and reporting effort, forms for which will be provided by the TRP task force. The results of this survey shall form a baseline against which attainment of the targets in this section shall be measured as follows:

1. The baseline for participation in alternative modes of transportation shall be based on the total number of employees.

2. The baseline for VMT shall be the average VMT per employee for employees not residing on the work site.

C. Prepare and submit a travel reduction plan for submittal to TRP staff and presentation to the TRP task force. TRP staff will assist in preparing the plan. Major employers shall submit plans within nine weeks after they receive survey data results. The Plan shall contain the following elements.

1. The name of the designated transportation coordinator.

2. A description of employee information programs and other travel reduction measures which have been completed in the previous year.

3. A description of travel reduction measures to be undertaken by the major employer in the coming year. The following measures may be included:

a. A commuter matching service, in addition to or coordinated with PAG's RideShare program, to facilitate employee ridesharing for work trips.

b. Provision of vans for vanpooling.

c. Subsidized carpooling or vanpooling which may include payment for fuel, insurance or parking.

d. Use of company vehicles for carpooling.

e. Provision of preferential parking for carpool or vanpool users which may include close in parking or covered parking facilities.

f. Cooperation with Sun Tran or other transportation providers to provide additional regular or express service buses to the work site.

g. Subsidized bus fares.

h. Construction of special loading and unloading facilities for transit and carpool and vanpool users.

i. Cooperation with local jurisdictions to construct walkways or bicycle routes to the work site.

j. Provision of bicycle racks, lockers, and showers for employees who walk or bicycle to and from work.

k. Provisions of special information center where information on alternate modes and other travel reduction measures will be available.

l. Establishment of a work-at-home program, full or part time, for employees.

m. Establishment of a program of adjusted work hours which may include compressed work weeks and employee-selected starting and stopping hours. Work hour adjustments should not interfere with or discourage the use of ridesharing and transit.

n. Establishment of a program of parking incentives and disincentives; such as a fee for parking and/or a "rebate" for employees who do not use the parking facility.

o. Incentives to encourage employees to live closer to work.

p. Implementation of other measures designed to reduce commute trips such as the provision of day care facilities or emergency taxi services.

D. An approvable travel reduction plan shall meet all of the following criteria:

1. The plan shall designate a transportation coordinator.

2. The plan shall describe a mechanism for regular distribution of alternate mode transportation information to employees.

3. For employers who in any year, meet or exceed annual regional targets for travel reduction, the plan shall accurately and completely describe current and planned travel reduction measures.

4. For employers who, in any year, fall below the regional targets for travel reduction, the plan shall include commitments to implement:

   a. At least two specific travel reduction measures (such as those described in section 10-4-5C.3 of this chapter) in the first year of the regional program.

   b. At least three specific alternate modes incentives programs (such as those described in section 10-4-5C.3 of this chapter) in the second year of the regional program.

5. After the second year, the travel reduction program task force shall review the travel reduction programs for employers not meeting regional targets and may recommend additional measures.

Ordinance 2005.22 corrected the cross-reference in subparagraphs (D)(4)(a) and (b)

E. Employers shall implement all travel reduction measures considered necessary by the task force to attain the following target employee participation in alternate modes or commuter trip VMT Reductions per regulated work site:

1. 15% of the total employee pool in the first year of the regional program.
2. 20% of the total employee pool in the second year of the regional program.
3. 25% of the total employee pool in the third year of the regional program.

F. After the third year of the regional program, either:

1. An increase in employee participation in alternate modes of 1% per year for each subsequent year until 40% of all commute trips are made by alternate modes; or:
2. Alternatively, a reduction in average annual VMT per employee of 1.5% per year can be selected by a major employer after a 25% alternate mode or commuter trip VMT reduction usage is achieved.

10-4-6 Variance and appeals

A. Variances

1. The TRP task force shall serve as a hearing board for major employers requesting variances from all or part of TRP ordinance requirements and/or travel reduction plan scheduling.
2. Any major employer wishing a variance form any of the requirements of this title shall make written application to the TRP task force which will determine whether to recommend the variance. The recommendation will be forwarded within forty-five days to lead Agency which will or will not authorize the variance. Request for variances shall be finally approved or

disapproved within 90 days of the filing of a request by an employer.

B. Appeals

1. Any affected major employer may appeal a decision of the lead agency to authorize or withhold variances or a decision of the lead agency regarding enforcement or other provision of this chapter.

2. The town council will hear and decide the appeal. If the decision is to disapprove the plan, the plan shall be returned to the TRP task force for review and revision or to the lead agency for appropriate action.

10-4-7 Classification; enforcement

Ordinance 2012.07 amended Section 10-4-7 by modifying the title, adding paragraph A, and renumbering the remaining paragraphs

A. Violation of this chapter is a petty offense punishable as provided by the Arizona revised statutes.

B. The lead agency, upon determining a substantial violation of this code, shall request the town attorney to take appropriate legal action.

C. Violations of any of the following requirements may subject a major employer to enforcement actions.

1. Failure to collect or supply information requested by the TRP task force.

2. Failure to disseminate information on alternate modes and other travel reduction measures as specified in this chapter.

3. Failure to designate a transportation coordinator.

4. Failure to submit an approvable travel reduction plan.

5. Failure to implement an approved plan within the time schedule provided or failure to perform a revision of a plan as required by the TRP task force.

D. Failure by a major employer to meet travel reduction goals as defined in sections 10-4-5 E and F shall not constitute a violation provided that the major employer is attempting in good faith to meet the goals.

Ordinance 2005.22 corrected the cross-references in paragraph D

CHAPTER 10-5. FIREWORKS

Ordinance 2011.09 Chapter 10-5 renamed chapter 10-5 from "Fireworks permits" to "Fireworks." See Ordinance 89.29 for prior history of fireworks regulations.

10-5-1 Definitions

Ordinance 2011.09 added section 10-5-1 and deleted former section 10-5-1 ("Issuance of permits")

In this chapter, unless the context requires otherwise, the following terms shall have the following meanings:

A. "Display firework," "fireworks" and "permissible consumer fireworks" are defined as provided in A.R.S. § 36-1601 or any successor provision.

B. "Public display of fireworks" means a performance of display fireworks open to the public and authorized by a permit issued by the town.

10-5-2 Prohibited conduct; exceptions

Ordinance 2011.09 added section 10-5-2 and re-numbered former section 10-5-2

A. Except as otherwise provided in this chapter, it is unlawful to:

1. Sell, use or possess any fireworks within the town limits.
2. Put on a public display of fireworks without first obtaining a permit for a public display of fireworks from the town.

B. This chapter does not prohibit:

1. The sale of permissible consumer fireworks by a retail establishment if the retail establishment complies with the rules adopted pursuant to A.R.S. § 36-1609.
2. The use or possession of permissible consumer fireworks by the general public.
3. A public display of fireworks authorized by a permit issued by the town pursuant to the procedures set forth in this chapter.

10-5-3 Application for permit

Ordinance 2011.09 renumbered section 10-5-3

Any person wishing to have a public display of fireworks within the town limits must make written application for a fireworks permit to the town clerk, on a form to be prescribed by the town clerk, not less than 15 days prior to the date of the fireworks display.

10-5-4 Permit fee

Ordinance 2011.09 renumbered section 10-5-4, which Ordinance 2009.11 amended by replacing the specific fireworks permit fee with a reference to the comprehensive fee schedule

All applications for fireworks permits must include a non-refundable permit fee in an amount established by a fee schedule adopted by the council and amended from time to time to cover the cost of investigating the application and processing of permits. This fee may be waived in the sole discretion of the town clerk for non profit corporations whose principal place of business is located within the town.

10-5-5 Required information in application

Ordinance 2011.09 renumbered section 10-5-5

A. Each application for a fireworks permit shall include the following information:

1. The name, address, phone number and date of birth of the applicant.
2. The occupation, business address and business phone number of the applicant.
3. The date or dates that the public display of fireworks will be held, the times during which the public display of fireworks will be held, and the location from which the public display of fireworks will be held.

4. A complete description of the method, manner and handling of all fireworks, including but not limited to the storage prior to the public display, and the manner in which the public display will be held.
5. The name, address and phone number of the operator of the public display of fireworks, together with a full description of all of the operator's qualifications and experience to operate a public display of fireworks.
6. The exact type and number of fireworks to be utilized at the public display.

10-5-6 Investigation; issuance of permit

Ordinance 2011.09 renamed, renumbered, and amended section 10-5-6

A. Upon receipt of an application for a permit for a public display of fireworks, the town clerk shall forward the application to the fire chief for investigation. The fire chief shall conduct an investigation to determine, among other things, that the display is being handled by a competent operator, and that the display of fireworks is of such character and located in such an area that when the fireworks are discharged they will not be hazardous to property or endanger any person.

B. If the fire chief approves the public display of fireworks after investigation and the applicant is otherwise in compliance with the provisions of this chapter, the town clerk is hereby authorized to issue a permit for the public display of fireworks within the town limits.

10-5-7 Bond and insurance requirements

Ordinance 2011.09 renamed, renumbered, and amended section 10-5-7

A. After considering the potential danger to property and the proximity of the display to existing structures, the town clerk shall require an applicant for a permit for a public display of fireworks to furnish a cash bond or surety bond issued by an insurance carrier licensed in the state in the sum of not less than $500 or more than $5,000, the bond to be issued to insure that payment be made for all damages which may be caused to persons or property by reason of the display.

B. In addition to any bond required by paragraph A, the applicant shall also furnish insurance in a form and in amounts satisfactory to the town.

10-5-8 Permit non-transferable

Ordinance 2011.09 renumbered section 10-5-8

Any permit issued pursuant to this chapter is not transferable or assignable, and shall be issued in the name of the applicant, with the competent operator of the fireworks display to be designated on it, and shall specify and be limited to the specific location, times, number and types of fireworks as contained in the permit.

10-5-9 Classification; continuing violations

Ordinance 2011.09 added section 10-5-9

A. Whenever in this chapter any act is prohibited or declared to be unlawful or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of that provision is a class 3 misdemeanor.

B. Each day any violation continues shall constitute a separate offense.

CHAPTER 10-6. SPECIAL EVENTS

Ordinance 2007.18 added chapter 10-6, "Special Events Permit." Ordinance 2014.008 renamed it "Special Events." Former Chapter 10-6 ("Smoking") was added by Ordinance 2006.04 and repealed by Ordinance 2007.04. The repeal was effective on the effective date of the smoke-free Arizona initiative, which was approved by the voters at the 2006 Arizona general election and became effective May 1, 2007.

10-6-1 Purpose

The purpose of this chapter is to establish a process for permitting and regulating certain temporary activities conducted on public property or private property when public safety is potentially impacted. This chapter is adopted pursuant to the authority of A.R.S. § 9-240, as amended, and is intended to provide fair and reasonable regulations governing the time, place, and manner in which a special event may take place, and in doing so, to provide for the health, safety and welfare of the public and to assist the town and its appropriate officers in enforcing the applicable provisions of A.R.S. title 9 and title 36.

Ordinance 2014.008 deleted former paragraph B, which listed various definitions, and deleted "definitions" from the section's title.

10-6-2 Definitions

Ordinance 2014.008 added section 10-6-2.

The following definitions shall apply throughout this chapter unless the context clearly indicates or requires a different meaning.

A. "Permit clerk" means the town employee designated and authorized by the town manager to accept and process applications for special events permits.

B. "Person" means a corporation, firm, association, organization, and any other group acting as a unit, as well as an individual.

C. "Special event" means any of the following:

1. Any indoor or outdoor public gathering or celebration that uses town-owned property, including public right-of-way, for any of the following activities:

   a. Entertainment

   b. Dancing

   c. Music

   d. Dramatic productions

   e. Amusements, festivals or carnivals

   f. Sale of merchandise, food, or alcohol, including sidewalk sales

   g. Parades, walks, bicycle rides, runs, block parties or other events that will not comply with normal or usual traffic regulations or controls, or are likely to impede, obstruct, impair or interfere with the free flow of traffic

2. Any activity taking place on private or town-owned property that requires a state-issued special event liquor license.
3. Any activity taking place on private or town-owned property that, in the opinion of the town manager or designee requires town services to a degree significantly over and above that routinely provided under ordinary circumstances.
4. Any activity taking place on private or town-owned property that, in the opinion of the planning administrator, involves a substantial deviation from the current legal land use or legal nonconforming use.

10-6-3 Exemptions

Ordinance 2014.008 added section 10-6-3.

The provisions of this chapter shall not apply to any of the following activities:

A. School functions at school facilities.

B. Ordinary and customary events at a venue designed to accommodate them.

C. Events produced by the town. For purposes of this section, "events produced by the town" means events organized primarily by the town, and does not include events that the town merely supports, sponsors or promotes.

10-6-4 Permit required; non-transferable

Ordinance 2014.008 renumbered section 10-6-4, added "non-transferable" to its title, added the first clause of paragraph A, and added paragraph B.

A. In addition to any other permits, licenses, taxes or requirements imposed by the town, any person wishing to operate, maintain or conduct a special event within the town must first obtain a permit to do so. No permit shall be issued until all conditions required pursuant to this chapter have been met and fulfilled. The maximum number of people permitted at any event will be based upon the nature of the event and the physical capacity of the site where the event will take place.

B. All special event permits issued pursuant to this chapter are non-transferable.

10-6-5 Application process; fees

Ordinance 2014.008 renumbered and substantially rewrote section 10-6-5

A. The applicant or the applicant's authorized representative shall submit written application to the permit clerk on the form provided by the town for that purpose. The applicant must submit the application with enough advance time to allow the town to complete its review process prior to the event. The town reserves the right to reject an application if the town determines there is insufficient time to complete the review process.

B. Each application shall be accompanied by any applicable fees as set forth in the fee schedule approved by the council and amended from time to time. Applications submitted less than seven days be-

fore the event, if accepted for processing by the town, shall be subject to an expedited review fee as set forth in the fee schedule.

C. The application shall contain the following facts and information:

1. The name, telephone number and mailing address of the person making the application. If the person making the application is acting on behalf of an organization, the person shall also include the name of the organization and the title of the person making the application. The applicant may provide the organization's mailing address and telephone number in lieu of the applicant's own address and telephone number.
2. The address or legal description of the place or premises where the proposed event is to be conducted, operated or carried on.
3. A description of the event, including activities, anticipated attendance, entertainment, and type of retail sales if applicable.
4. The dates and times for which the permit is sought.
5. An estimate of the number of customers, spectators, participants and other persons intended, calculated or expected to attend the event for each day it is conducted.
6. A site map or sketch showing the location of the property in relation to surrounding properties, the area to be used, the access to the property and the location of any proposed facilities, parking areas, vending areas, stages and other principal features of the venue.
7. Information regarding the factors listed in section 10-6-6.
8. Any other information the permit clerk may reasonably require.

10-6-6 Application review

Ordinance 2014.008 renumbered, renamed, and substantially rewrote section 10-6-6

A. Procedure. Upon receipt of the application, the permit clerk shall circulate the application for review by the appropriate town departments and by the Northwest Fire District. The departments shall review the application and may require reasonable supplementation of the information in the application if necessary. The departments shall consider the factors listed in this section and may impose permit conditions related to these factors or to the potential impact of the event upon town resources.

B. Noise impacts. The town shall evaluate noise impacts related to the event and may impose conditions related to minimizing those impacts.

C. Sanitation. Adequate toilet and hand washing facilities and trash receptacles shall be maintained at all times during the event. The town may require the applicant to provide facilities or receptacles in addition to those existing at the event site due to the anticipated maximum attendance and event duration.

D. Security. The applicant may be required, at the applicant's expense, to provide security services, and/or extra-duty law enforcement officers for event security, as determined by the chief of police.

1. In making the determination of the need for security services, the chief of police shall consider the event nature, anticipated attendance, access to alcohol, ticket or money handling and any other factors deemed relevant.

2. If private security services are to be used, the chief of police must approve the security service provider and the security plan for the event.

3. If extra-duty law enforcement will be used, the town will coordinate the hiring of officers and the security plan preparation.

E. Medical services. The applicant may be required, at the applicant's expense, to furnish medical services to the event, as determined by Northwest Fire District.

1. Conditions which may warrant this requirement include the expected temperatures during the event, the nature of the event, expected attendance, age of the expected attendees, and accessibility of the event venue to emergency vehicles.

2. If medical services are used at the event, the medical services plan shall be approved by the chief of police and Northwest Fire District.

F. Lighting. Event areas, sanitation facilities, parking areas and areas of pedestrian travel must be adequately illuminated at all times during the event by existing or additional lighting. The town may require the applicant to submit a lighting plan.

G. Parking. Adequate parking shall be provided for all special events.

1. If temporary parking areas are to be used, the applicant must prepare and submit a parking layout and circulation plan for approval by the town's traffic engineering division.

2. In temporary parking areas, all parking spaces shall be adequately marked and dust control measures shall be undertaken.

H. Traffic control. The applicant must provide adequate vehicular access to the event venue for the general public and emergency vehicles.

1. If the access points to the event venue may present safety or capacity concerns based on the expected ingress/egress traffic volumes, temporary traffic control measures will be required.

2. Where temporary traffic control measures are to be employed, a traffic control plan must be submitted for approval by the town's traffic engineering division.

I. Sales. All event vendors shall hold a current Marana business license, including the applicant if tickets to the event are to be sold.

1. All merchandise and ticket sales are taxable in accordance with the laws of the state of Arizona.
2. Tickets to an event shall not be sold prior to approval of the special event permit.
3. All food vendors shall also hold a current county health department permit for food handling and sales, if required by applicable county regulations.

J. Insurance. A certificate of insurance and additional insured endorsement, evidencing insurance in the amounts and types determined by the town and naming the town of Marana as additional insured, shall be required if the event is being held on town property, such as a town park or town right-of-way.

1. The amount and type of insurance required for a special event shall be determined by the town on a case by case basis.
2. At a minimum, the applicant shall provide proof of commercial general liability of $1,000,000 per occurrence and $2,000,000 aggregate.
3. Insurance certificates and endorsements must be provided to the permit clerk prior to the event date.

K. Other requirements. Applicants may be required to meet any other requirements necessary to ensure that the special event is conducted in a safe and appropriate manner.

10-6-7 Permit issuance or denial; request for additional information; review by town manager

Ordinance 2014.008 added section 10-6-7

A. The permit clerk shall respond to the applicant within ten business days of the submission of a completed application. The permit clerk shall either issue the requested permit, with or without imposed conditions, request additional information from the applicant, or deny the permit.

B. The applicant shall provide additional information within five business days of receipt of a request for additional information from the permit clerk.

C. If the permit is denied, the permit clerk shall provide written notice of the denial to the applicant. The notice shall include a statement of the reasons the application was denied and may be delivered by first class mail or electronic mail.

D. If the applicant disagrees with a decision to deny a permit, the applicant may file a request for reconsideration with the town manager within ten days of denial of the permit.

1. The town manager or designee shall issue a written decision to the applicant within five days of the receipt of the request for reconsideration.
2. The decision of the town manager or designee is final and not subject to any further administrative review.

10-6-8 Grounds for denial

Ordinance 2014.008 renumbered and revised section 10-6-8

The permit clerk may deny a special event permit for any of the following reasons:

A. The applicant has failed to meet the conditions imposed pursuant to this chapter, including failure to provide requested additional information regarding the event or application within the time period set forth in this chapter.

B. The proposed event is intended to be conducted in a manner or location not meeting the health, zoning, fire or safety standards established by rules or regulations of the town, the laws of the state of Arizona, or rules and regulations adopted by any of its agencies, or the town finds that that the intended activity would otherwise be detrimental to the health, safety or welfare of either the general public or of nearby residents or owners of nearby property.

C. The applicant has made any false, misleading or fraudulent statement of material fact in the application for permit or in any other document required pursuant to this chapter.

D. The applicant, his or her employee, agent or any person associated with the applicant as partner, director, officer, stockholder, associate or manager, has been convicted in a court of competent jurisdiction, by final judgment, of an offense:

1. Involving the presentation, exhibition or performance of an obscene production, motion picture or play, or of selling obscene matter;
2. Involving lewd conduct;
3. Involving the use of force and violence upon the person of another;
4. Involving misconduct with children; or
5. An offense against the provisions of Arizona law respecting narcotics and dangerous drugs, or of any equivalent offense under the law of any other state which if committed in Arizona would have been a violation of the Arizona statutory provisions.

E. The scheduled date of the event conflicts with other previously scheduled events such that it will result in an undue impact on the town's resources and staff.

F. The applicant is delinquent in payment to the town of taxes, fees, fines or penalties assessed against or imposed upon the applicant

in relation to or arising out of any business activity or previous special event of the applicant.

G. The applicant has failed to apply for or obtain all other necessary permits or licenses for the special event.

10-6-9 Waivers

Ordinance 2014.008 renumbered section 10-6-9 and deleted "or designee"

At the discretion of the town manager, application submittal requirements or permit conditions may be waived.

10-6-10 Classification; enforcement; continuing violations

Ordinance 2014.008 renumbered, renamed, and substantially rewrote section 10-6-10

A. Whenever in this chapter any act is prohibited or declared to be unlawful, or the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of that provision is a civil infraction.

B. This chapter may be enforced in any manner provided for by town ordinances and state laws.

C. Each day any violation continues shall constitute a separate offense.

10-6-11 Permit revocation; effect of revocation on prosecution

Ordinance 2014.008 added section 10-6-11

A. In addition to any other remedy available as a matter of law, violations of this chapter or of any permit conditions may result in revocation of a special event permit and the discontinuation or closing of any special event.

B. Revocation of a special event permit shall not be a defense against prosecution.

Former chapter 10-7 (penalties) was deleted by Ordinance 2012.07, and its provisions were placed into the respective sections of this title. For prior history, see Ordinance 96.15, 98.14, 2006.04, and 2007.04.

Title 11

Offenses

11

TITLE 11. OFFENSES

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TITLE 11. OFFENSES

Ordinance 96.16 adopted title 11

CHAPTER 11-1. DRIVING OR PARKING ON PROPERTY OF ANOTHER

11-1-1 Driving or parking on another's property unlawful

It is unlawful for a person to loiter, drive or park in or upon the property of another during those hours when the person legally entitled to the possession of the property is not present, or, if the property is a business, for any purpose other than the normal conduct of trade with that business, or, if the property is that of a government, for any purpose other than the normal conduct of business with that government agency, without having in his or her possession the written permission of the person legally entitled to the possession of the property.

11-1-2 Exceptions

No person charged with violating this section shall be convicted, and any charge against him or her shall be dismissed if he or she subsequently produces in court the written permission.

CHAPTER 11-2. DRUG PARAPHERNALIA

11-2-1 Unlawful possession

It is unlawful for any person to keep or exhibit any box pipe, cup, hypodermic needle, thing or apparatus used for unlawfully smoking, eating, inhaling, injecting or consuming any substance defined as a narcotic in A.R.S. § 13-3401 *et seq.*, or any subsequent amendments to them.

11-2-2 Unlawful activities

It is unlawful for any person to act as a lookout or tender at any place where the acts as set forth in section 11-2-1 are practiced or carried on.

11-2-3 Duty of police to seize unlawful paraphernalia

It is the duty of all police officers of the town to seize and safely keep all cups, pipes, apparatus, boxes, hypodermic needles and things used for the purpose of unlawfully eating, smoking, inhaling, injecting or otherwise consuming any substance defined as a narcotic under A.R.S. § 13-3401 *et seq.*, as it may be amended, and to produce them in court. The articles shall be retained until a final disposition of any case in which they may be required as evidence, and may be destroyed after final disposition of the case. Nothing contained in this section shall prevent the destruction of the articles at any time when the magistrate deems the articles no longer required to be retained as evidence, or when they may be otherwise destroyed pursuant to any applicable Arizona Revised Statute.

CHAPTER 11-3. GRAFFITI

Ordinance 98.21 adopted chapter 11-3 and renumbered the later chapters to conform

11-3-1 Definitions

A. In this section, the following words and phrases shall be construed as defined in this section unless in context it appears that a different meaning is intended:

1. "Graffiti" means the unauthorized etching, spraying of paint or application of paint, ink, chalk, dye or other similar substance on buildings, fences, structures or similar places.
2. "Graffiti abatement officer" means the town official designated by the town manager to interpret and enforce the provisions of this section.
3. "Retailer" means any person, business or governmental entity that owns, operates or manages a store, stand, booth, concession, mobile unit or other place where sales of spray paint are made to purchasers for consumption or use.

Ordinance 2005.22 deleted a redundant definition of "person" (see section 1-3-2)

4. "Spray paint" means any paint or paint like coating substance which is dispensed by the use of an aerosol spray device whether or not containing a toxic substance.
5. "Unauthorized" means without the permission of the property owner or otherwise in violation of the provisions in this section.

11-3-2 Purpose and intent

A. It is the purpose and intent of this chapter to provide a procedure for the prevention, prohibition, and removal of graffiti from walls, structures, or surfaces on public and private property to reduce blight and deterioration within the town and to protect the public health and safety.

B. The mayor and council finds that graffiti contributes to neighborhood deterioration, provides a communication system for gangs and other vandals, damages property, constitutes a public nuisance, and must be abated immediately to avoid the detrimental impact of the graffiti and prevent the further spread of graffiti.

C. The mayor and council further find that graffiti is most frequently spread by youth under the age of 18 years and that measures to limit youth access to spray paint containers are critical to the town's prevention efforts.

11-3-3 Graffiti prohibited; abatement procedures; penalty

A. It shall be unlawful for any person owning or otherwise being in control of any real property within the town to maintain, permit or allow graffiti to remain on any building, fence, structure or otherwise on the property where the graffiti is visible from the street or other public or private property.

B. Upon the receipt of notice requiring abatement from the graffiti abatement officer, any person owning or otherwise being in control of the property shall within ten days thereafter remove or abate all graffiti specified in the notice. The graffiti abatement officer shall give notice utilizing the procedures set forth in this section. The graffiti abatement officer may cause the removal of graffiti from private property should the property owner or person in control fail to remove graffiti after the required notice. The town is expressly authorized to enter private property and abate graffiti.

C. Any person or business in violation of this section shall constitute a civil infraction.

11-3-4 Prohibited conduct; penalties

A. No person may write, paint, or draw any inscription, figure, or mark of any type on any public or private building or other real or personal property, owned, operated, or maintained by a governmental entity, agency or instrumentality or by any person, firm, or corporation, unless permission of the owner or operator of the property has been obtained.

B. No person may possess an aerosol spray paint container on any private property unless the owner, agent, manager, or other person having control of the property consented to the presence of the aerosol spray paint container.

C. No person under the age of 18 years may possess an aerosol spray paint container on any public property unless accompanied by a parent, guardian, teacher or other person in a similar relationship over the age of 18 years and the possession is for a lawful purpose.

D. No person under the age of 18 years may buy any aerosol spray paint container from any person or firm.

E. Penalties. Violations of this section shall constitute a class 1 misdemeanor and shall be punished as follows:

1. A person convicted of violating subsection A shall be punished by a term of not less than 48 hours in jail, a fine not less than $250 and not less than 40 hours community service involving participation in the removal of graffiti. In addition to any other punishment, the court shall order restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in an amount to be determined by the court. Persons under the age of 18 years will be punished as provided for in title 8 of the Arizona revised statutes.

2. A person convicted of violating subsection B or C shall be punished by a term of not less than 24 hours in jail, a fine not less than $100 dollars and 40 hours of community service involving participation in the removal of graffiti. Persons under the age of 18 years will be punished as provided for in title 8 of the Arizona revised statutes.

3. A person convicted of violating subsection D shall be punished as provided for in title 8 of the Arizona revised statutes.

4. No judge shall suspend the imposition of any of the mandatory minimum penalties required by this section.

11-3-5 Prohibited sale or transfer to minors; regulation of sale; classification; penalty

A. Spray paint containers shall not be sold, delivered, transferred or given to persons under age 18 years. Evidence that a person demanded and was shown acceptable evidence of age and acted upon that evidence in a transaction or sale shall be a defense to any prosecution under this subsection. This subsection does not apply to the transfer of an aerosol spray paint container from a parent to child, guardian to ward, employer to employee, teacher to student or in any other similar relationship when the transfer is for a lawful purpose.

B. Spray paint containers sold at retail establishments shall be stored or displayed either A) in an area that is inaccessible to the public without employee assistance in the regular course of business pending legal sale or other disposition or B) within 15 feet of a cash register and within the line of sight of a cashier at all times.

C. Identification shall be required of purchasers of spray paint containers appearing to be under the age of 26 years. A retailer shall not be found responsible for a violation of this subsection unless the failure to require identification resulted in a sale of spray paint to a person under age 18 years.

D. Spray paint containers shall not be displayed or sold at swap meets, yard sales, garage sales, or other like events.

E. A retailer shall be responsible for the violation of any provision of this section by its employees.

F. Any violation of any provision of this section constitutes a civil infraction. No magistrate, special magistrate or limited special magistrate may suspend the imposition of the minimum fines prescribed in this section.

G. A person found responsible for a violation of any provision of this section shall be fined not less than $200. The fine amount for each subsequent violation of any provision of this section within a consecutive 365-day period shall increase by increments of $300 for each violation.

CHAPTER 11-4. MINORS; LOITERING AND CURFEW

Ordinance 97.35 adopted chapter 11-4. See Ordinance 96.16 and 98.21 for prior history.

11-4-1 Definitions

A. In this section, unless the context otherwise requires:

1. "Curfew hours" means the following:

a. For juveniles under 16 years of age, between the hours of 10:00 p.m. and 5:00 a.m. of the following day.

b. For juveniles on or after the sixteenth birthday, but prior to the eighteenth birthday, between the hours of midnight and 5:00 a.m. of the following morning.

2. "Custodian" means any person, not a juvenile, who is in loco parentis to a juvenile.

3. "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term also includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

4. "Establishment" is defined as any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

5. "Guardian" means a person who, under court order, is the guardian of the person of a minor; or a public or private agency with whom a minor has been placed by an authorized agency or court; or any person other than a parent, who has legal guardianship of the person of a juvenile; or a person at least 21 years of age and authorized by a parent or guardian to have the care and custody of a minor.

6. "Insufficient control" means failure to exercise reasonable care and diligence in the supervision of the juvenile.

7. "Juvenile" or "minor" means any person who has not yet reached eighteen years of age.

8. "Operator" means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

9. "Parent" means a natural parent, adoptive parent, or stepparent of another person.

10. "Public place" is any place to which the public or a substantial group of the public has access, and includes streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

11. "Remain" means to linger or stay or fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

12. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

11-4-2 Offenses

A. A minor commits an offense if the minor remains in any public place or on the premises of any establishment within the town, away from the property where the minor resides, during curfew hours.

B. A parent, guardian or person having responsibility of a minor commits an offense if the parent, guardian or person having responsibility for the minor knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the town, away from the property where the minor resides, during curfew hours. It shall not constitute a defense that the parent, guardian or other person having responsibility for the minor did not have actual knowledge that the minor was violating the provisions of this chapter if the parent, guardian or other person having responsibility for the minor, in the exercise of reasonable care and diligence, should have known of the violation.

C. A parent, guardian or other person having the care, custody or supervision of the minor commits an offense by refusing to take custody of the minor after the demand is made upon the parent, guardian or other person having the care, custody or supervision of the minor, by a law officer who arrests the minor for violations of this chapter.

D. The owner, operator, or any employee of an establishment commits an offense if the owner, operator, or any employee of the establishment knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

11-4-3 Defenses/exceptions

A. It is a defense to prosecution under section 11-4-2 of this chapter that:

1. The minor was accompanied by the minor's parent or guardian;
2. The minor was on an errand at the direction of the minor's parent or guardian without any detour or stop;
3. With prior permission of the parent or guardian, the minor was in a vehicle involved in interstate travel;
4. The minor was engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop by the most direct route;
5. The minor was involved in an emergency;
6. The minor was on the sidewalk abutting the minor's residence or abutting the residence of a next door neighbor if the neighbor did not complain to the police department about the minor's presence;

7. With prior permission of the parent or guardian, the minor was engaged in a reasonable, legitimate, and specific business and/or activity. Examples include, but are not limited to, attending an official school, religious, or other recreational activity supervised by adults and sponsored by the town, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the town, a civic organization, or another similar entity that takes responsibility for the minor;
8. With permission of the parent or guardian the minor was exercising First Amendment rights protected by the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly; or
9. The minor is emancipated, whether emancipation be through marriage, military service, or other legally sufficient grounds in accordance with Arizona law.

B. It is a defense to prosecution under section 11-4-2D that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

11-4-4 Enforcement

Before taking any enforcement action under this chapter, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 11-4-3 exists.

11-4-5 Penalties

A. Each violation of the provisions of section 11-4-2 shall constitute a separate offense.

B. A person convicted of a violation of this chapter shall be guilty of a class 1 misdemeanor, punishable according to the laws of the state.

CHAPTER 11-5. NOISE

Ordinance 98.21 renumbered chapter 11-5

11-5-1 Unlawful activities

A. It is hereby declared to be a public nuisance, and it is unlawful for any person, to play or permit to be played any music or musical instruments whether played by individuals, orchestra, radio, phonograph, music box or other mechanical device or means in such a loud or unusual manner as to be offensive to the senses, or so as to disturb the slumber, peace and quiet, or otherwise interfere with or annoy the comfortable enjoyment of life or property of any person

and is no less a nuisance because the extent of the annoyance inflicted is unequal.

B. It is unlawful to play, operate or use any device known as a sound truck, loud speaker or sound amplifier, radio or any instrument of any kind or character which emits loud and raucous noises and is attached to and upon any vehicle unless the person in charge of the vehicle shall have first applied to and received permission from the chief of police to operate the vehicle so equipped.

11-5-2 False alarms

A. It shall be unlawful to allow or cause a false alarm within the town. A violation of this section shall be punishable as provided in section 11-9-2 below.

The town attorney revised the cross-reference in 11-5-2, paragraph A as a scrivener's error on April 30, 2009, pursuant to the authority granted by section 1-4-5

B. In this chapter, unless the context otherwise requires:

1. "Alarm" means any mechanical or electrical device or assembly of equipment designed or arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which the police are expected to respond, or designed or arranged to signal the occurrence of a fire or excessive smoke requiring urgent attention and to which a fire department is expected to respond.
2. "Alarm company" means any firm, person, partnership, corporation or entity which has servicing, maintenance or monitoring duties or responsibilities under the terms of any agreement or arrangement with any alarm user within the corporate limits of the town.
3. "Alarm user" means any person, firm, corporation or entity of any kind in control of any building, premises, structure or facility in which or upon which an alarm is maintained.
4. "False alarm" means an alarm signal to which police or fire department personnel respond with any emergency personnel or equipment when a situation requiring a response by the police or applicable fire department does not in fact exist, and which signal is caused by the inadvertence, negligence or intentional act or omission of an alarm company or alarm user or a malfunction of the alarm.

C. The following shall not be considered false alarms:

1. Alarms caused by the testing, repair or malfunction of telephone equipment or lines.
2. Alarms caused by an act of God, including earthquakes, floods, windstorms, thunder or lightning.
3. Alarms caused by an attempted illegal entry of which there is visible evidence.
4. Alarms caused by the testing, repair or malfunction of electrical utility equipment or lines.

11-5-3 Noise standards in the resort and recreation zone

Ordinance 2002.12 adopted section 11-5-3

A. Applicability; policy. The town has come to understand that certain allowable activities within the resort and recreation zone may be disruptive to the public health, safety and general welfare, the satisfaction, and the feeling of well being to the surrounding residents. To control unnecessary, excessive and annoying noise being generated from properties with the resort and recreation (RR) zoning designation, it is the policy of the town to maintain the standards identified in this section to protect the public health, safety and general welfare of the surrounding residentially zoned properties. All uses established or placed into operation after the effective date of this section shall comply at all times hereafter with the following limitations or performance standards.

B. Definitions. As used in this section, the following terms shall be defined as follows:

1. A weighted sound level. The sound pressure level in decibels as measured on a sound level meter using the A weighted filter network. The A weighted filter network is designed to simulate the response of the human ear. The A weighted sound level is expressed by the symbol dBA.

2. Ambient noise. The composite of noise from all existing sources near and far. The ambient noise level constitutes the normal or existing level of environmental noise at a given location, excluding any alleged offensive noise.

3. Decibel (dB). A unit for measuring the amplitude of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

4. Impulsive noise. A noise of short duration, usually less than one second, and of high intensity, with an abrupt onset and rapid decay.

5. Noise study. An acoustical analysis performed by a qualified noise engineer which determines the potential noise impacts of a roadway, land use or operation of equipment. The noise study will generate noise contours and recommend mitigation for noise impacts which exceed the city's noise standards.

6. Sound level meter. A sound level meter shall mean an instrument meeting at a minimum the American National Standards Institute's Types 1 or 2 Standards, or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

C. Amplified noise standards. This section identifies stationary types of noise sources. The type of noise standard contained in this section is for amplified noise, which may be intrusive to a neighboring residential property. The noise standards shown in table 1 are for

regulating the impact of stationary noise sources to a neighboring property.

D. Exterior noise. It shall be unlawful for any person, entity or operation at any location within the RR zone of the town to create any amplified noise, or to allow the creation of any amplified noise on property owned, leased, occupied or otherwise controlled by the person, which causes the noise level when measured at the property line to exceed the noise standards found in table 1, and these amplified noise standards are hereby established and declared to be reasonable and acceptable during the times stated in table 1.

TABLE 1 STATIONARY NOISE SOURCE STANDARDS
Maximum noise levels measured at property line
7:00 a.m. to 10:30 p.m.—Not to exceed 55dBA
10:30 p.m. to 7:00 a.m.—Not to exceed 50dBA

E. Exemptions. The following activities shall be exempt from these noise standards:

1. Special events pursuant to an approved special event permit. Noise impacts shall be evaluated and conditioned as part of the special event permit process as set forth in chapter 10-6.

Ordinance 2014.009 revised subparagraph E.1 by changing "special use permit" to "special event permit" in two places, and by adding the reference to chapter 10-6

2. Filming pursuant to a film permit. Noise impacts shall be evaluated and conditioned as part of the film permit.

3. Activities conducted on public parks, public playgrounds and public or private school grounds including school athletic and entertainment events that are conducted under the sanction of the school or under a license or permit duly issued pursuant to any provision of town code.

4. Noise sources associated with the maintenance of real property, provided the activities take place between the hours of 7 a.m. to 8 p.m. on any day except Sunday or between the hours of 9 a.m. to 8 p.m. on Sunday.

5. Any activity to the extent regulation of it has been preempted by state or federal law.

F. Noise level measurements. All noise shall be measured in accordance with the following standards. Measurements shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A weighting scale and the slow meter response as specified by the American National Standards Institute (A.N.S.I.). Noise levels shall be measured in decibels and A weighted. Meters shall be maintained in calibration and in good working order. The measurement location is at the property line between the RR Zone and the residentially zoned property.

G. Measurement procedure. The sound level meter shall be operated in accordance with the instrument manufacturer's instructions and as follows:

1. Microphone orientation. The microphone shall be pointed towards the allegedly offensive noise source, unless the manufacturer's instructions specifically indicate otherwise.

2. Meter setting. The meter shall be set for the A weighted network and "slow" response mode.

3. Calibration. An internal or external calibration check shall be made before and after each use.

4. Sound levels shall be measured at the approximate location of the property line, at a height of at least three feet above the immediate surrounding surface.

5. Windscreens shall be used whenever appropriate.

H. To implement and enforce this section effectively, the chief of police shall, within a reasonable time after the effective date of this section, develop and promulgate standards and procedures for testing and validating sound level meters used in enforcement of this section.

I. A law enforcement agent shall command any person violating this section to abate his or her violation. It is unlawful for any person to fail to comply with an order of a law enforcement agent regarding a noise violation. Each violation of the order of a law enforcement agent under this subsection shall constitute a separate offense of this section.

J. Noise studies required.

1. Pre-development noise studies. A pre development noise study is performed prior to development and is designed to project future noise levels and recommend mitigation measures to be implemented in project development. A registered noise engineer as approved by the town shall prepare all noise studies. Noise studies may be required when a noise generating use, such as an amphitheater, arena, etc., is proposed in the RR zoning district. The need for a noise study will be determined at the time of development review. Pre-development noise studies shall project future noise levels based on proposed uses, traffic volumes and other relevant future conditions. Existing and projected noise shall be evaluated pursuant to the noise standards within this section. Mitigation measures shall be proposed to bring noise levels into compliance with these standards. Mitigation measures may consist of walls, berms, setbacks, landscaping, building materials, construction methods and any other means whereby noise can be reduced to the levels within this section.

K. Enforcement.

1. It shall be unlawful for any person in the RR zoning district, within the town, to create any exterior noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the person, which causes the noise lev-

el when measured according to this section, to exceed the maximum allowable noise levels in Table 1 of this section.

2. No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this section while the authorized person is engaged in the performance of his or her duty.

3. Any person violating any provision of this section shall be deemed responsible of a civil infraction. A law enforcement agent shall command any person violating this section to abate his or her violation. It is unlawful for any person to fail to comply with an order of a law enforcement agent regarding a noise violation. Each violation of the order of a law enforcement agent under this subsection shall constitute a separate offense of this section.

4. The operation or maintenance of any device, instrument, or machinery in violation of any noise standard identified in this section is hereby declared to be a public nuisance and may be abated pursuant to the nuisance abatement procedure in the town code.

5. Pursuant to this section, each person shall be deemed responsible of a separate offense for each and every day during any portion of which any violation of any provision of this section is committed, continued, or permitted by the person and shall be punished accordingly.

6. Even though compliance with performance standards or procedures in obtaining any permit is not required for a particular use, initial and continued compliance with performance standards is required of every use and the provisions for enforcement of continued compliance with performance standards shall be invoked by the police and planning departments against any use if there are reasonable grounds to believe that performance standards are being violated by that use.

7. The designee of the police and planning departments shall investigate any purported violation of noise standards and, if there is reasonable ground for same, shall commence proceedings to abate the violation. The town, to assist in the abatement proceedings, may employ qualified expert consultants. Action by the town to abate the violation may include, but shall not be limited to, commencing proceedings for revocation of permits or commencing enforcement proceedings pursuant to this code or other remedies available by law or equity.

L. Jurisdiction. The town magistrate shall have authority to adjudicate violations of this section. Violations shall be charged via the short form Arizona Traffic Ticket and Complaint or via the long form summons and complaint submitted by the town attorney. Pursuant to A.R.S. § 9-500.21(A)(3), the town magistrate, in adjudi-

cating violations of this section, shall use the same procedures used for adjudicating civil traffic offenses.

11-5-4 Construction noise

Ordinance 2002.14 adopted section 11-5-4, which was renumbered to conform to Ordinance 2002.12

A. It shall be unlawful to allow or cause site construction activities that result in disturbance to persons residing within 500 feet of the site between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and between 7:00 p.m. and 7:00 a.m. on weekends.

B. Commercial or industrial zones that are no closer than 500 feet to residential areas site construction may begin no earlier than 5:00 a.m. and end no later than 8:00 p.m.

C. It will be permissible for the contractor to obtain special permission to perform site construction work earlier in the summer months by notifying the residents within 500 feet of the site in writing and asking the residents to contact the town if they wish to deny permission. The Building Official will then evaluate the request, and if reasonable, and without majority of residents requesting denial, issue an early work permit and inform the police department of permitted early work.

D. Grading and roadway construction is permitted to begin at 6:00 a.m. and end no later than 7:00 p.m. If a contractor wishes to perform work at an earlier time for road work or grading, he shall make an application to the town engineer for an early work permit. The town engineer shall consider whether construction noise in the vicinity of the proposed work site would be less objectionable at night than during the day due to population levels or activities, interference with traffic, and if the noise would not cause significant disturbance in residential areas. Emergency work or repairs may be authorized by the town engineer or his representative regardless of the time of day. The town engineer may use any factor or reasoning to allow work during night time hours if there exists a community benefit.

E. Service trucks may work on equipment stored on site up to 9:00 p.m. Maintenance during other hours will be allowed if no objectionable noise is generated.

F. Sand and gravel operations (mining), and agricultural operations are exempt from this ordinance.

G. Emergency Conditions. In case of emergency operations contact must be made with the Building Official or the head of Public Works. If neither of them can be reached notification must be made to the police department.

H. Definitions. For purposes of this section:

Ordinance 2005.22 amended paragraph H by adding "For purposes of this section" to the introduction and deleting it from the definition of "Site construction"

1. Site construction is the work relating to site improvements such as installation of utilities, on site curbs, parking lot surfaces, on site sidewalks, and all structures such as buildings, walls, signs and light poles.

2. Construction noise shall be considered any construction activity that generates a level of noise that disturbs the peace or quiet of any residence or that causes discomfort or annoyance to any reasonable person of normal sensitivity residing within 500 feet of the construction site.

3. A notification as stated in section C shall be considered door tags, letters or any written means of notification at least 24 hours prior to early work start.

I. The penalty for violation of this section will be as provided in chapter 11-9 Penalties. Violation of this provision will be a class 1 misdemeanor and will be issued by the Marana police department upon complaint and investigation finding probable cause to issue a ticket.

The town attorney made a scrivener's error correction to the chapter 11-9 cross-reference in paragraph I on January 5, 2010, pursuant to the authority in section 1-4-5

CHAPTER 11-6. PUBLIC URINATION OR DEFECATION

Ordinance 98.21 renumbered chapter 11-6

It is unlawful for any person to urinate or defecate in a public place, or in any place exposed to public view, except in an established lavatory or toilet.

CHAPTER 11-7. STORAGE OF INOPERABLE OR JUNKED VEHICLES

Ordinance 2012.06 rewrote chapter 11-7. See Ordinance 98.21 for prior text.

11-7-1 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise.

A. "Car cover" means a cover designed for the purpose of covering cars and does not include tarps, bed sheets, plastic sheeting, or similar materials.

B. "Inoperable vehicle" or "junked vehicle" means any vehicle, including any motor vehicle and any other device in, upon or by which a person or property may be transported or drawn on a street, including but not limited to trailers and camper shells but excluding devices moved by human power, that exhibits one or more of the following conditions: wrecked, partially or fully dismantled, abandoned, stripped, inoperative, inoperable, unlicensed, scrapped, or unable to be safely operated.

C. "Private property" means any real property not owned by the federal government, state, county, city or political subdivision of the state.

D. "Store" means to park, leave, locate, keep, maintain, deposit, allow to remain or allow to have a physical presence.

11-7-2 Prohibited storage; exceptions

A. No person owning or having custody of any inoperable or junked vehicle may store the vehicle on private property, or on any sidewalks, streets, rights-of-way or alleys within the town, except as otherwise permitted under this section

B. No person owning, occupying or in control of any private property within the town may store any inoperable or junked vehicle on the owned or occupied property, or on any abutting sidewalks, streets, rights-of-way or alleys, except as otherwise permitted under this section

C. Inoperable or junked vehicles may be stored on private property under the following circumstances:

1. If the vehicle is on the premises of a business enterprise operated in a lawful place and manner and licensed by the town and the storage of the vehicle is necessary to the operation of the business enterprise.

2. If there are no more than two vehicles on the private property and they are lawfully enclosed within:

a. An enclosed garage or other permanent building lawfully constructed of opaque materials without openings, holes or gaps other than doors and windows; or

b. A carport, and the body of the vehicle is completely covered by an opaque car cover; or

c. Any fence, wall or barrier, not less than five feet in height, constructed of opaque materials without openings, holes or gaps other than gates or doors, and the fence, wall or barrier completely encloses the vehicle and screens it from view from any adjacent properties, and is equipped with self-latching gates or doors.

11-7-3 Persons responsible

Whenever the town finds that any inoperable or junked vehicle is stored on private property or on any abutting sidewalks, streets, rights-of-way or alleys in violation of this chapter, the persons responsible for the violation include the recorded owner, occupant or person in control of the private property, as well as the registered owner or custodian of the vehicle.

11-7-4 Classification; enforcement

Violation of this chapter is a civil infraction and shall be enforced pursuant to chapter 5-7 of this code.

CHAPTER 11-8. UNATTENDED CHILD IN MOTOR VEHICLE; CLASSIFICATION; PENALTY

Ordinance 2009.04 adopted chapter 11-8 and renumbered the following chapters to conform

11-8-1 Prohibited conduct

It is unlawful to leave a child who is under eight years of age unattended in a motor vehicle without supervision by another person who is at least 12 years of age if either of the following applies:

A. The conditions tend to present a risk to the child's health, safety or welfare; or

B. The motor vehicle engine is running or the key to the motor vehicle is located in the passenger compartment of the motor vehicle.

11-8-2 Protection of children by town

A. Any peace officer is authorized to use whatever force is reasonable and necessary to remove any child from a motor vehicle whenever it appears that the child's life or health is endangered by extreme temperatures, lack of ventilation or any other condition existing within the motor vehicle.

B. No peace officer shall be liable for damages to property caused by the use of reasonable force to remove a child from a motor vehicle as described in this section.

11-8-3 Diversion

In any case involving a person's first violation of this chapter, the prosecutor may offer the person the opportunity to complete a diversion program in accordance with A.R.S. § 9-500.22. Successful completion of the diversion program requirements shall result in the dismissal of the charge.

11-8-4 Violation; penalty

A violation of this chapter is a class 1 misdemeanor.

CHAPTER 11-9. PENALTIES

Ordinance 2009.04 and 98.21 renumbered chapter 11-9

11-9-1 General

Ordinance 2012.06 revised section 11-9-1

Except as otherwise provided in this title, any violation of this title is a class 1 misdemeanor.

11-9-2 False alarms

Any violation of section 11-5-2 shall have the following penalties:

A. A civil sanction in an amount of not more than $250 may be assessed against an alarm user for each false alarm which occurs in any building, premises, structure or facility owned or controlled by the alarm user;

B. A civil sanction in an amount of not more than $250 may be assessed against the responsible alarm company for each false alarm which occurs if the false alarm was occasioned due to the manner of installation of the alarm by the responsible alarm company;

C. A civil sanction in an amount of not more than $250 may be assessed against the responsible alarm company for each false alarm which is occasioned by the failure of the responsible alarm company to properly service, maintain or monitor any alarm within the town.

Ordinance 2002.12 adopted section 11-8-3

11-9-3 Violation of section 11-5-3

A. A person found responsible for a first-time offense prohibited by section 11-5-3 shall be punished by a fine of not less than $500 or more than $1,000.

B. A person found responsible for a second offense prohibited by section 11-5-3 shall be punished by a fine or not less than $1,200 or more than $1,500.

C. A person found responsible of a third offense prohibited by section 11-5-3 shall be punished by a fine of not less than $2,000 or more than $2,500.

CHAPTER 11-10. UNRULY RESIDENTIAL ACTIVITIES

11-10-1 Unruly residential activities unlawful

An unruly residential activity is an activity on property used for residential purposes which causes a disturbance of the quiet enjoyment of private or public property by any person or persons, and shall be unlawful. Disturbances include, but are not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering. An unruly residential activity may be abated by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes.

11-10-2 Notice of unruly residential activity – posting

A. The premises where the unruly residential activity occurs shall be posted with a notice stating that an unruly residential activity has occurred at the premises. The notice shall state the date of the unruly residential activity, and that any subsequent unruly activity on the same premises within a 120-day period shall result in liability for the penalties provided in this chapter. Parties liable include any persons in attendance causing the unruly activity, or any owner, occupant or tenant of the premises where the unruly activity occurred, or any sponsor of the event constituting the unruly activity. For purposes of this chapter, the premises means the dwelling unit or units where the unruly residential activity occurs.

B. Premises shall be posted with a notice as provided in this section each time an unruly residential activity occurs. If premises are already posted at the time of a subsequent posting, the 120-day period from the date of the existing posting shall be extended to 120 days from the date of the subsequent posting. Once premises are initially posted as a result of an unruly residential activity and the unruly activity has ceased, a resumption of unruly activity on the premises resulting in another police response shall constitute a new and separate unruly residential activity for purposes of this chapter.

C. The owner, occupant, or tenant of the posted premises shall be responsible for ensuring that the notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted notice shall be a civil infraction carrying a penalty of a minimum, mandatory $100 fine, in addition to any other penalties which may be imposed under this chapter. The owner, occupant or tenant of the premises or sponsor of the unruly residential activity, if present, shall be consulted about the location where the notice is posted to achieve both the security of the notice and its prominent display.

D. An owner, occupant, or tenant of the posted premises may contest the posting of the notice by filing a written application for a hearing with the Marana municipal court requesting that the court determine whether justification existed for posting of the notice under the provisions of this chapter. The application shall be filed within ten days after the posting of the notice or, if the notice is given by mail, within ten days after mailing of the notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than 15 days after receipt of the written application for a hearing and shall notify both the applicant and the town's prosecutor of the hearing date. At the hearing, the town shall prove by a preponderance of evidence that the posting of the notice was justified pursuant to the provisions of this chapter.

E. The term "owner" as used throughout this chapter includes any agent of owner acting on behalf of the owner to control or otherwise regulate the occupancy or use of the property.

11-10-3 Notification of property owner

Notification of the posting of the notice of unruly residential activity shall be mailed to any property owner at the address shown on the Pima County property tax assessment records. The notification shall advise the property owner that any subsequent unruly activity within 120 days on the same premises shall result in liability of the property owner for all applicable penalties as provided in this chapter. Notification shall be made by certified mail. The return receipt shall be prima facia evidence of service.

11-10-4 Subsequent unruly residential activity a civil infraction; parties liable

A. The occurrence of an unruly residential activity on the same premises more than once in any 120-day period shall be a civil infraction. The following parties, if found responsible for the infraction, shall be liable for the penalties provided in section 11-10-5.

1. The owner of the property where the unruly residential activity occurred, provided that notification of posting was mailed to the owner of the property as provided in section 11-10-3 and that the unruly residential activity occurred not less than two weeks after the mailing of the notification.

The town attorney corrected the cross-reference in section 11-10-4 paragraphs A and A.1 on May 17, 2010 as a scrivener's error under authority of section 1-4-5

2. The owner, occupant, or tenant of the property where the unruly residential activity occurred.
3. The person or persons who organized or sponsored the event constituting the unruly residential activity.
4. Any person in attendance at the unruly residential activity who engaged in any conduct causing the activity to be unruly.

B. Nothing in this section shall be construed to impose liability on the owner, occupant, or tenant of the premises or sponsor of the event constituting the unruly residential activity, for the conduct of persons who are in attendance without the express or implied consent of the owner, occupant, tenant, or sponsor, as long as the owner, occupant, tenant or sponsor has taken all steps reasonably necessary to exclude the uninvited persons from the premises, including owners who are actively attempting to evict a tenant from the premises. Where an invited person engages in unlawful conduct which the owner, occupant, tenant or sponsor could not reasonably foresee and could not reasonably control without the intervention of the police, the unlawful conduct of the person shall not be attributable to the owner, occupant, tenant or sponsor for the purposes of determining liability under this section.

11-10-5 Penalties

A. The penalty for a party found responsible for the occurrence of a subsequent unruly residential activity, as provided in section 11-10-4, shall be a minimum mandatory fine of $500 for a first violation, a minimum mandatory fine of $1,000 for a second violation, and minimum mandatory fines of $1,500 for each third or subsequent violation.

The town attorney corrected the cross-reference in section 11-10-5 paragraph A on May 17, 2010 as a scrivener's error under the authority of section 1-4-5

B. The civil fines provided in this section shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an unruly residential activity.

C. The court may also enter an order of abatement against a party found responsible for a violation of this chapter.

11-10-6 Enforcement

The police department is authorized to enforce the provisions of this chapter provided that enforcement is initiated by a complaint from a member of the public. The complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible.

Title 12

Traffic and Highways

12

TITLE 12. TRAFFIC AND HIGHWAYS

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TITLE 12. TRAFFIC AND HIGHWAYS

Ordinance 96.17 adopted title 12 ("Traffic"), renamed "Traffic and Highways" by Ordinance 2008.04

CHAPTER 12-1. ADMINISTRATION

12-1-1 Duty of police department

A. It shall be the duty of the police department to provide for the enforcement of the street traffic regulations of the town and all of the state vehicle laws applicable to street traffic in the town, to make arrests for traffic violations, to investigate accidents and to assist in developing ways and means to improve traffic conditions, and to carry out all duties specially imposed upon the police department by this title.

B. Any peace officer or duly authorized agent of the town may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this title and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this title.

12-1-2 Records of traffic violations

A. The police department shall keep a record of all violations of the traffic laws of the town or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all alleged offenses. The record shall accumulate during at least a five year period and from that time on the record shall be maintained complete for at least the most recent five year period.

B. All forms for records of violations and notices shall be serially numbered. For each month and year, a written record shall be maintained complete for at least the most recent five year period.

12-1-3 Police department to investigate accidents

It shall be the duty of the police department to investigate traffic accidents and to arrest and assist in the prosecution of those persons charged with violations of law causing or contributing to those accidents.

12-1-4 Traffic accident studies

Whenever the accidents at any particular location become numerous, the police department shall conduct studies of those accidents and determine remedial measures.

CHAPTER 12-2. TRAFFIC CONTROL

12-2-1 Directing traffic

A. The police department is hereby authorized to direct all traffic by voice, hand or signal.

B. Officers of authorized fire departments, when at the scene of an emergency, may direct or assist the police department in directing traffic thereat or in the immediate vicinity.

12-2-2 Traffic control devices

A. The town shall place and maintain traffic control devices, signs and signals when and as required under the traffic regulations of the town to make effective the provisions of the regulations, and may place and maintain such additional traffic control devices as necessary to regulate traffic under the traffic laws of the town or under state law or to guide or warn traffic.

B. The driver of any vehicle shall obey the instructions of any official traffic control device placed in accordance with the traffic regulations of the town unless otherwise directed by the chief of police or member of the police department, subject to the exceptions granted in this title or by state law.

12-2-3 Traffic preemptor devices

It shall be unlawful for any person not authorized by the town engineer to utilize, alter or interfere with any preemptor device to control an official traffic control device within the town limits.

12-2-4 Crosswalks; safety zones; traffic lanes

A. The town engineer or his or her designee is hereby authorized:

1. To designate by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where, in his or her opinion, there is particular danger to pedestrians crossing the roadway, and at any other places as he or she may deem necessary;

2. To establish safety zones of the kind and character and at the places as he or she deems necessary for the protection of pedestrians;

3. To mark lanes for traffic on street pavement at any place he or she deems advisable, consistent with the traffic laws of the town and the state;

4. The council may adopt further rules and regulations from time to time as they deem necessary for the safety and efficient use of the town roads by the public.

12-2-5 Authority to place and obedience to turning markers

A. The town engineer or his or her designee is authorized to place markers, buttons or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at those intersections, and the course to be traveled as so indicated may conform to or be other than as prescribed by law.

B. When authorized markers, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of those indications.

12-2-6 Authority to place and obedience to restricted turn signs

A. The town engineer or his or her designee is hereby authorized to determine those intersections where drivers of vehicles shall not make a right, left or u turn and shall have proper signs placed at those intersections. The making of those turns may be prohibited between certain hours of any day and permitted at other hours, if the limitations are clearly indicated on the signs or if the signs are removed when the turns are permitted.

Ordinance 2005.22 rewrote the last sentence of paragraph A

B. Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of the sign.

12-2-7 One-way streets and alleys

A. The council shall by resolution designate any streets or alleys which are to be limited to one-way traffic.

B. When any resolution of the council designates any one-way street or alley, the town shall place and maintain signs giving notice of it, and no such regulation shall be effective unless the signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

12-2-8 Regulation of traffic at intersections

A. The council shall by resolution designate through streets, intersections where stops are required, and intersections where vehicles shall yield the right of way.

B. When any resolution of the council shall designate any through street or intersection where vehicles are to stop or yield the right of way, the town engineer or his designee shall erect and maintain the appropriate signs at every location where a vehicle must stop or yield the right of way.

C. Whenever any laws of the town designate and describe a through street, it shall be the duty of the town to place and maintain a stop sign on each and every street intersecting the through street or intersecting that portion of it described and designated as such by the laws of the town.

12-2-9 Drivers to obey signs

Whenever traffic signs are erected as provided in this title, every driver of a vehicle shall obey the signs unless directed to proceed by the chief of police, a member of the police department or a traffic control signal. No driver shall drive upon or through any private property

such as a gas station, vacant lot or similar property to avoid obedience to any regulation included in this title.

12-2-10 Processions

A. No procession or parade, except funeral processions, shall be held without first securing a permit from the chief of police, and all requests for permits shall state the time, place of formation, proposed line of march, destination and any other regulations the chief of police sets forth in the permit.

B. A funeral procession composed of a procession of vehicles shall be identified by the methods determined and designated by the chief of police.

C. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when the vehicles are conspicuously a part of the procession.

D. Each driver in a funeral or other procession shall drive as near to the right hand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe.

12-2-11 Speed limits

A. Reasonable and prudent maximum speed limits on roadways located within the town limits are set forth on the town speed zone map and accompanying table, adopted and amended from time to time by resolution of the council, upon recommendation by the town engineer and based on nationally-accepted traffic engineering standards.

Ordinance 2006.31 amended paragraph A. Click on the following hyperlinks to see the current speed zone map and table. (Note: These may take a moment to download.)

B. Any peace officer or duly authorized agent of the town may stop and detain a person as is necessary to investigate an actual or suspected violation of title 28, Arizona revised statutes, or this section, and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this title.

12-2-12 Speed limits in areas undergoing roadway construction

Ordinance 2008.08 added section 12-2-12

A. It shall be unlawful for a person to drive at a speed greater than the speed posted in an area undergoing roadway construction.

B. As used in this section, "roadway construction" means the construction, reconstruction or maintenance of any road by town employees or any contractor or subcontractor performing such construction, reconstruction or maintenance at the direction of the town.

C. The town engineer or the town engineer's authorized representative is hereby authorized to establish temporary reduced speed limits in areas undergoing roadway construction. The temporary reduced speed limits shall be implemented when the town engineer or the town engineer's authorized representative determines, based on an engineering and traffic investigation, that the perma-

nent speed limits in the area under construction are not reasonable and safe while the roadway construction is taking place.

D. Any temporary reduced speed limit established by the town engineer or the town engineer's authorized representative shall be effective only for the duration of the roadway construction.

E. The temporary reduced speed limits shall be effective when all of the following has taken place:

1. A work order authorizing a temporary construction zone speed limit is signed by the town engineer or the town engineer's authorized representative and filed in the town clerk's office.

2. Speed limit signs with the temporary reduced speed limit are erected in a clearly visible manner in the area undergoing construction.

3. The permanent speed limit signs in the area undergoing construction are temporarily removed, covered or turned.

F. Any person found responsible for speeding in excess of a posted temporary reduced speed limit shall be fined $250 for each violation. No judge may suspend any portion of the fine prescribed in this paragraph.

G. Any person found responsible for speeding in excess of the permanent posted speed limit in an area undergoing roadway construction where a temporary reduced speed limit has not been posted shall be fined $250 for each violation. No judge may suspend any portion of the fine prescribed in this paragraph.

12-2-13 School crossings

Ordinance 2008.08 renumbered section 12-2-13

School crossings shall be established and marked in front of each school building and grounds in conformity with the provisions of A.R.S. § 28-797.

12-2-14 Railroad crossings

Ordinance 2001.07 adopted section 12-2-14, which was renumbered by Ordinance 2008.08

A. No person shall stop, stand or park any motor vehicle or other vehicle within a railroad grade crossing, even if the stop is temporary in nature or caused by traffic congestion.

B. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing while the gate or barrier is closed, or is in the process of opening or closing, to any degree.

C. As used in this section, the term "railroad grade crossing" shall be defined as follows. Where railroad crossing gates exist, the "railroad grade crossing" shall be that area between the two gates, whether the gates are raised or lowered. Where no railroad crossing gates exist, the "railroad grade crossing" shall be that area within ten feet of the railroad tracks, on each side of the tracks.

12-2-15 Violations – chapter 12-2; penalty

Ordinance 2006.31 added section 12-2-15, which was revised and renumbered by Ordinance 2008.08. The town attorney corrected the cross-reference in paragraph C on September 4, 2008 as a scrivener's error under the authority of section 1-4-5.

A. Any violation of chapter 12-2 shall be a civil traffic violation unless otherwise designated in this title or under state law.

B. Any person found responsible for a civil violation of chapter 12-2 shall be fined not more than $250 for each violation.

C. A person convicted of violating section 12-2-14 is guilty of a class 1 misdemeanor.

CHAPTER 12-3. PARKING

See Ordinance 94.12 for prior history of chapter 12-3

12-3-1 Definitions.

Ordinance 2006.31 added section 12-3-1

The following definitions shall apply throughout this chapter:

A. "Handicap parking space" means any specially designated and marked parking space provided in accordance with section 12-3-6 for physically disabled persons.

B. "Parking" means the standing of a vehicle, whether occupied or not. Parking does not include a temporary stop for the purpose of and while actually engaged in loading or unloading.

C. "Right-of-way" means the entire width between boundary lines of every way set apart for public travel when any part of it is open to the use of the public for purposes of vehicular travel.

D. "Sale" means any transfer of title or possession or both, for consideration. Sale includes any exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transaction and auctions of property.

E. "Vehicle" means every device by which any person or property is or may be transported or drawn on a street or highway.

12-3-2 Method of parking

Ordinance 2006.31 renumbered section 12-3-2, added paragraphs B and C, and modified paragraph A

A. Except as otherwise authorized by posted regulatory signs, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right hand wheels of the vehicle parallel to and within 18 inches of the right hand curb.

B. Where authorized by posted regulatory signs, vehicles may be parked with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

C. Where authorized by posted regulatory signs, angle parking is permitted on any roadway. This paragraph shall not apply on any federal aid highway or state highway unless the director of the Arizona department of transportation has determined by resolution or order that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

Ordinance 2006.31 renumbered and substantially modified section 12-3-3

12-3-3 Blocking traffic

A. It shall be a civil infraction for any person to stop, stand or park any motor vehicle or other vehicle on the paved or main traveled part of a public roadway so as to leave available less than ten feet of the width of the public roadway for the free movement of vehicular traffic.

B. On a public roadway with yellow centerline markings, it shall be a civil infraction for any person to stop, stand or park any motor vehicle or other vehicle on the paved or main traveled part of a public roadway so as to leave available less than ten feet of the width of roadway between the yellow centerline markings and the curb on the same side of the centerline markings as the parked vehicle for the free movement of vehicular traffic.

C. It shall be a civil infraction for any person to stop, stand or park any motor vehicle or other vehicle on the paved or main traveled part of a public roadway outside of a business or residence district unless the vehicle is clearly visible from a distance of 200 feet in each direction on the roadway.

D. This section does not apply to:

1. The driver of a vehicle that is stopped temporarily when loading or unloading passengers or in the observance of traffic signs or police officer instructions.

2. The driver of a vehicle that is disabled while on the paved or main traveled portion of a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position.

3. A vehicle or the driver of a vehicle engaged in the official delivery of the United States mail that stops on the right-hand side of the highway for the purpose of picking up or delivering mail if the following conditions are met:

   a. A clear view of the vehicle is available from a distance of 300 feet in each direction on the roadway or a flashing amber light at least four inches in diameter with the letters "stop" printed on the light is attached to the rear of the vehicle.

   b. The vehicle has a uniform sign that:

      i. Is at least fourteen inches in diameter.

      ii. Is approved by the Arizona department of transportation.

      iii. Has the words "U.S. Mail" printed on the sign.

      iv. Is attached to the rear of the vehicle.

12-3-4 Stopping, standing or parking prohibitions

Ordinance 2006.31 adopted section 12-3-4 and deleted former section 12-3-4 ("Parking vehicles on sidewalks")

Except if necessary to avoid conflict with other traffic or if in compliance with law or the directions of a police officer or traffic control device, it shall be a civil infraction for any person to stop, stand or park a vehicle in any of the following places:

A. On a sidewalk.

B. In front of a public or private driveway, except that this paragraph does not apply to a vehicle or the driver of a vehicle in the following situations:

1. When loading or unloading materials in a way that does not block the driveway to the free movement of vehicular traffic.

2. When engaged in the official delivery of the United States mail if both of the following apply:

a. The driver does not leave the vehicle.

b. The vehicle is stopped only momentarily.

C. Within an intersection.

D. Within fifteen feet of a fire hydrant.

E. On or within 20 feet of a crosswalk.

F. Within 30 feet on the approach to any flashing beacon, stop sign, yield sign or traffic control signal located at the side of a roadway.

G. Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless otherwise authorized by posted regulatory signs.

H. Within 50 feet of the nearest rail or a railroad crossing or within eight feet six inches of the center of any railroad track, except while a motor vehicle with motive power attached is loading or unloading railroad cars.

I. Within 20 feet of the driveway entrance to a fire station.

J. Alongside or opposite a street excavation or obstruction when stopping, standing or parking would obstruct traffic.

K. On the roadway side of a vehicle stopped or parked at the edge or curb of a street.

L. On a bridge or other elevated structure on a public road or within a tunnel.

M. At any place where official signs prohibit parking, standing or stopping.

N. On a controlled access highway except for emergency reasons or except in areas specifically designated for parking such as rest areas.

O. Within an alley except when loading or unloading materials in a way that does not block the alley to the free movement of vehicular traffic.

P. Within 50 feet of a public transit bus stop.

12-3-5 Authority to erect signs restricting parking

Ordinance 2006.31 renumbered and substantially modified section 12-3-5

The town engineer may erect signs requiring parking at an angle to the curb, allowing parking on the left hand curb on one-way streets, notifying drivers that parking is prohibited and restricting parking in any way that may be necessary. No parking restrictions authorized by this section shall become effective until signs have been erected. Signs need not be erected before enforcement of parking restrictions adopted by other sections of this chapter. It shall be a civil infraction for any person to stop or park a vehicle in disobedience to the parking restrictions.

12-3-6 Stopping, standing or parking in handicap parking space

Ordinance 2006.31 renumbered and slightly modified section 12-3-6

A. Except as provided in subsection D of this section, no person may stop, stand or park a motor vehicle within a handicap parking space unless the motor vehicle is transporting a person eligible for the distinguishing insignia placard or number plates bearing the international wheelchair symbol, and either:

   1. The motor vehicle displays the distinguishing insignia placard; or

   2. The motor vehicle displays number plates bearing the international wheelchair symbol.

B. In any prosecution charging a violation of any of the provisions of this chapter governing the standing or parking of a vehicle, the person in whose name the vehicle is registered shall be prima facie responsible for the violation and subject to the penalty for it.

C. If a law enforcement officer employed by the town finds a motor vehicle in violation of this section, the officer shall issue a complaint which shall be attached or placed upon the vehicle which is unlawfully parked.

D. Any person who is chauffeuring a physically disabled person shall be allowed, without a distinguishing insignia placard or number plates bearing the international wheelchair symbol, to park momentarily in a handicap parking space for the purpose of loading or unloading the physically disabled person. No complaint shall be issued to the driver for that momentary parking.

E. Handicap parking spaces shall be designated on privately owned property as provided by the town land development code. Each handicap parking space shall be prominently outlined with paint and posted with a permanent sign located not less than three feet or more than six feet above the grade and of a color and design approved by the Arizona department of transportation bearing the

internationally accepted wheelchair symbol and the caption "reserved parking". The designation of handicap parking spaces as provided in this chapter or as required pursuant to the town land development code shall authorize police officers, and other duly authorized agents, to enforce the provisions of this section and shall constitute a waiver of any objection by the owner or person in possession of the property to the enforcement of this section, and the owner or person in possession shall be deemed to have consented by that designation.

F. The chief of police is authorized to institute a volunteer handicap parking enforcement specialist program in which special volunteers are authorized to issue citations only to persons who violate this section.

12-3-7 Law enforcement exception

Ordinance 2006.31 added section 12-3-7

The stopping, standing or parking restrictions provided in this chapter do not apply to a police or peace officer when the stopping, standing or parking is for the purpose of actual performance of a law enforcement duty.

12-3-8 Unarmed police parking enforcement aides

Ordinance 2006.31 renumbered and modified section 12-3-8

The police department may employ unarmed police parking enforcement aides empowered to commence an action or proceeding pursuant to chapter 5-7 of the town code for any violation of vehicle standing or parking regulations. The authority of the unarmed police parking enforcement aide shall be strictly limited to the enforcement of vehicle standing or parking regulations. They are not granted any other powers or benefits to which peace officers of the town are entitled.

12-3-9 Parking within right-of-way to display vehicle or goods for sale

Ordinance 2006.31 added section 12-3-9

It shall be a civil infraction to park a vehicle within any Town of Marana right-of-way for the purpose of:

A. Displaying the vehicle for sale; or

B. Displaying advertising; or

C. Displaying goods for sale.

12-3-10 Parking on public land to display vehicle for sale

Ordinance 2006.31 added section 12-3-10

It shall be a civil infraction to park a vehicle upon land owned by the town or by any other government agency for the purpose of displaying the vehicle for sale.

12-3-11 Presumption of liability

Ordinance 2006.31 added section 12-3-11

A. The display of any signs or other markings indicating that a vehicle is for sale shall be prima facie evidence that the vehicle has been parked for the purpose of sale.

B. Whenever a vehicle is parked in violation of this chapter, the registered owner of the vehicle and the person who parked the vehicle where the violation occurred are jointly and severally responsible for the violation.

12-3-12 Truck, trailer and recreational vehicle parking restrictions

Ordinance 2006.31 added section 12-3-12

A. Commercial trucks and oversized vehicles shall not be parked on a residential-area public street at any time, except while actively carrying on the activity for which the truck or vehicle is designed, including by way of example and not limitation:

1. A moving truck while loading or unloading.
2. A tradesman's work truck while the trade is being undertaken.
3. Construction vehicles during construction.

B. The following shall not be parked on a residential-area public street for more than 72 consecutive hours:

1. Vehicles with a trailer attached.
2. Trailers unattached from vehicles.
3. Recreational vehicles 20 feet or more in length.

C. For purposes of this section, the term "residential-area public street" shall mean any street within or contiguous to land zoned or used primarily for single family or multi-family residential uses.

12-3-13 Violations – chapter 12-3; penalty

Ordinance 2006.31 renumbered and modified section 12-3-13

A. Any violation of chapter 12-3 shall be a civil traffic violation.

B. Any person found responsible for violating any provision of chapter 12-3 shall be fined not more than $250 for each violation.

CHAPTER 12-4. OFF-ROAD MOTOR VEHICLE USE

Ordinance 2003.09 modified the title of chapter 12-4 from "Off-road recreational motor vehicles"

12-4-1 Definitions

Ordinance 2003.09 rewrote section 12-4-1

In this chapter, unless the context otherwise requires:

A. "Off-road recreational vehicle" means two-, three- and four-wheel motor vehicles manufactured or converted for recreational non highway all terrain travel.

B. "Operate" means driving or having actual physical control over the vehicle or off-road recreational vehicle.

C. "Private lands" or "privately owned" lands means any land other than public lands.

D. "Public lands" or "publicly owned" lands means any land owned by any government entity or agency, including federal, state and local governments.

E. "Vehicle" means any motor vehicle other than an off-road recreational vehicle.

F. "Wash" or "riverbed" means a water course having beds, banks, sides and channels through which either waters currently flow or through which flood waters flow periodically, and its adjoining floodplain terraces.

12-4-2 Prohibited uses

Ordinance 2003.09 added subparagraph (A)(8) and paragraph B and made other minor revisions to section 12-4-2

A. No person shall operate an off-road recreational vehicle:

1. Upon any portion of any publicly owned wash or riverbed within the town except to cross the wash or riverbed from one bank to another within the boundaries of an existing, clearly defined highway, street, road, primitive roadway, trail or traveled way; or
2. Upon privately owned lands without notarized written consent of the owner, the owner's agent or the person in lawful possession of the property. The written consent shall be kept in a person's possession while operating an off-road recreational vehicle and shall be shown upon the request of a peace officer; or
3. So as to knowingly cause or contribute to visible dust emissions which then cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises; or
4. At a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any object, person, animal life or other off-road recreational vehicle so as to comply with the duty of all persons to exercise reasonable care for the protection of others; or
5. So as to damage landscaping on public or private lands, or to create significant erosion on those lands; or
6. In a way that causes excessive noise that disturbs the peace and quiet of a residential area to the extent that a noise complaint is made to the police department; or
7. Unless all persons under the age of 17 years riding in or upon the off-road recreational vehicle shall wear adequate protective headgear; or
8. On any property owned or leased by the town other than a public roadway, unless specifically authorized in writing by the town or expressly allowed by this chapter.

B. No person shall operate a vehicle:

1. Upon any portion of any publicly owned wash or riverbed within the town except to cross the wash or riverbed from one bank to another within the boundaries of an existing, clearly defined highway, street, road, primitive roadway, trail or traveled way; or

2. Upon privately owned lands without notarized written consent of the owner, the owner's agent or the person in lawful possession of the property. The written consent shall be kept in a person's possession while operating a vehicle and shall be shown upon the request of a peace officer. This provision shall not apply to vehicles traveling upon driveways leading from a public street or highway to a private residence; or
3. So as to knowingly cause or contribute to visible dust emissions which then cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises; or
4. So as to damage landscaping on public or private lands, or to create significant erosion on those lands; or
5. On any property owned or leased by the town other than a public roadway, unless specifically authorized in writing by the town or expressly allowed by this chapter.

12-4-3 Identification and proof of ownership

A. All operators of off-road recreational vehicles shall carry proof of ownership, or a rental agreement and a driver's license while operating off-road recreational vehicles and shall show those documents upon the request of a peace officer. If an operator is unlicensed, then recent picture identification shall be carried.

B. For the purposes of this section, identification for minors may include a school picture identification with school or home address or a notarized statement consisting of the minor's physical description and home address which is signed by a parent or guardian.

12-4-4 Exempt uses

Ordinance 2003.09 amended the introductory paragraph of section 12-4-1 to add "or an off-road recreational vehicle"

The provisions of this chapter shall not apply to a vehicle or an off-road recreational vehicle being used for:

A. Ranching or agricultural purposes;

B. Grading, construction or building trade purposes;

C. Mining purposes;

D. Licensed off-road business operations such as land surveying, public utility companies, sand and gravel operations and other similar enterprises;

E. Authorized emergency vehicle including towing services;

F. Governmental purposes by a government employee;

G. Golf carts on golf courses.

12-4-5 Exempt locations

The provisions of this chapter shall not apply:

A. To vehicle or off-road recreational vehicle operators on their own property, except when creating dust emissions as set forth in section 12-4-2A.3 or section 12-4-2B.3.

Ordinance 2003.09 amended paragraph A to add "or section 12-4-2(B)(3)"

B. On any dedicated public highway, street, road, alley or parking lot generally open to the public for the purpose of vehicular travel if properly licensed to use the roadway.

12-4-6 Violations – chapter 12-4; penalty

Ordinance 2006.31 renumbered and modified section 12-4-6

A. Any violation of chapter 12-4 shall be a civil traffic violation.

B. Any person found responsible for violating any provision of chapter 12-4 shall be fined not more than $250 for each violation.

CHAPTER 12-5. IMPOUNDMENT OF VEHICLES

12-5-1 Police authorization to impound vehicles

A. The police department may take in charge, remove and keep in its custody under the direction of the chief of police or cause to be towed to and stored in a public storage facility, vehicles in the following circumstances:

1. Any unoccupied vehicle of any kind or description found violating any town ordinances, this code or the laws of the state regulating the standing or parking of vehicles;
2. When any person is arrested and taken into custody while in possession of a motor vehicle;
3. Pending forfeiture action as prescribed by A.R.S. § 3-3413, § 13-2301 or § 13-4305 or other applicable statutes;
4. When a vehicle is left unattended upon any bridge, viaduct or crossway, or in any tube or tunnel where the vehicle constitutes an obstruction of traffic;
5. When a vehicle upon a highway or street is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated so as to be unable to provide for its custody or removal;
6. When the vehicle is left unattended upon a street or alley and is parked illegally or constitutes a hazard or obstruction to the normal movement of traffic;
7. When the vehicle is left unattended upon a public street, highway or other public property for a period in excess of forty-eight hours;
8. When any person is cited for a violation of A.R.S. § 28-692, § 28-411, § 28-422.01, § 28-471, § 28-473 or § 28-1075, and the person cited does not have a licensed driver capable of safely driving the vehicle available and gives permission for it.

12-5-2 Notice of impoundment

A. Whenever an officer removes a vehicle from the street and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the vehicle owner, the officer shall immediately give or cause to be given notice telephonically, in person or in writing to the owner of the fact of the removal and the reasons for it, and of the place where vehicle has been taken.

B. Whenever an officer removes a vehicle from the street and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as provided in subsection A of this section, and the vehicle is not claimed by the owner within a period of three days, the officer shall send or cause to be sent a written report of the removal by mail to the Motor Vehicle Division of the State Department of Transportation and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored, in accordance with the police department's rules and regulations. The notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for the removal, and the name of the garage or place where the vehicle is stored.

12-5-3 Return of impounded vehicle

Ordinance 2009.11 amended section 12-5-3(A) by adding reference to the comprehensive fee schedule and deleting specific storage fee amounts for impounded vehicles

A. Unless the vehicle is being held for forfeiture proceedings or unless the vehicle is being held as evidence in a pending criminal case, the police department shall allow the return to the owner of the impounded vehicle when the owner has furnished evidence of identity and ownership and signed a receipt. The owner shall be required to pay any towing and storage fees which have accrued. If the vehicle is stored on town property, the owner shall pay an amount established by a fee schedule adopted by the council and amended from time to time for each day or any fraction of a day the vehicle is kept in the custody of the police department. Payment of any towing and storage fees shall not release the owner or driver of the vehicle of any other penalty which may be imposed for any violation of town ordinances, this code, state or federal laws.

B. If forfeiture proceedings are initiated and later discontinued, the vehicle will be released to the vehicle owner upon payment of the towing and storage fees as set forth in subsection A of this section.

C. If a vehicle is being held as evidence in a pending criminal case, at the final conclusion of that criminal case (together with the conclusion of all available appeals) the vehicle shall be returned to the owner of the vehicle, subject to the payment of all towing and storage fees as set forth in subsection A of this section.

12-5-4 Sale of impounded vehicles

If an impounded vehicle is not redeemed by its owner or agent within thirty days after it is subject to be released, it shall be sold for the

charges and costs set forth section 12-5-3A, in the manner provided by A.R.S. § 28-1401 et seq. This remedy is cumulative of all other penalties provided by this chapter.

CHAPTER 12-6. BICYCLE HELMETS FOR MINORS

Ordinance 96.33 adopted chapter 12-6 and renumbered chapter 12-7 to conform

12-6-1 Requirements for helmet use

A. General: no person under 18 years of age shall ride a bicycle or be a passenger on a bicycle, ride in a restraining seat attached to a bicycle, or ride in a device towed by a bicycle without wearing a helmet which meets the current standards of the American National Standards Institute for protective headgear.

B. Bicycle renters and sellers: it shall be unlawful for any person to rent or lease any bicycle to or for the use of a person under the age of 18 years unless:

1. The person is in possession of a protective helmet meeting the standards set out in section 12-6-1A at the time of the rental or lease; or

2. The rental or lease includes a protective bicycle helmet meeting the standards set out in section 12-6-1A and the person agrees to wear the helmet at all times while operating or riding as a passenger on the bicycle.

C. Written explanation of provisions: a person regularly engaged in the business of selling bicycles shall provide any purchaser of a bicycle with a written explanation of the provisions set forth in section 12-6-1A.

Ordinance 2006.31 renumbered and modified section 12-6-2

12-6-2 Violations – chapter 12-6; penalty

A. Any violation of chapter 12-6 shall be a civil traffic violation.

B. Any person found responsible for violating any provision of chapter 12-6 shall pay a maximum fine of $250.

C. The penalties for a violation of section 12-6-1A may be waived if the offender presents suitable proof that an approved helmet has been purchased or otherwise obtained since the time of the violation and that the minor uses or intends to use the helmet whenever required to do so.

CHAPTER 12-7. CONSTRUCTION IN TOWN RIGHTS-OF-WAY

Ordinance 2008.04 added chapter 12-7 and replaced un-codified Ordinance 91.21

12-7-1 Definitions

A. The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise.

1. "Applicant" means the owner of the firm, utility company or corporation whose facilities or equipment are the subject of the right-of-way permit application.

2. "Contractor" means the party doing the work.

3. "Emergency" means any condition which poses an immediate or imminent hazard to people or property.
4. "Public improvement" includes, but is not limited to, grading, paving, and landscaping, as well as the construction of curbs, gutters, drainage facilities, sidewalks, paths, trails, irrigation, walls, driveways and berms.
5. "Right-of-way" means alleys, streets, thoroughfares, drainage-ways and drainage easements dedicated to the town or to the public and other easements dedicated to the public.
6. "Town engineer" means the town engineer or the town engineer's authorized representative.

12-7-2 Authority of town engineer

The town engineer is appointed the duly authorized representative of the town, with full power and authority to authorize on behalf of the town and to supervise the use of the public rights-of-way of the town.

12-7-3 Permit required; exception

A. Any person, contractor, firm, utility company or corporation desiring to dig any hole, drain, trench or ditch in any public right-of-way or desiring to construct, remove or change any public improvement in any public right-of-way, or desiring to cut, trench, pothole or excavate any public right-of-way, or desiring to use any public right-of-way for traffic control, construction haul routes, landscape maintenance, maintenance of underground facilities or temporary parking shall first apply for and obtain a permit from the town engineer.

B. A permit is not required for work done for municipal purposes, using town personnel and equipment.

12-7-4 Applicability

This chapter applies to all construction performed in town rights-of-way, as well as all other uses listed under section 12-7-3A, including, but not limited to, the following:

A. Routine service connections and maintenance work.

B. Installation of utility distribution or collection systems and communications systems.

C. Work done by other governmental agencies and by public utilities.

D. Work done for private development projects.

E. Private homeowner encroachment in the right-of-way.

12-7-5 Permit process

A. Application forms for permits required by this chapter shall be obtained from the town. Completed applications, accompanied by

payment of all applicable permit fees, shall be submitted either by mail or in person to the town engineer.

B. Before issuance of any permit, each applicant will be required to do all of the following:

1. Provide evidence of the applicant's right to use the public right-of-way, typically by obtaining a town right-of-way license or franchise.

2. Furnish insurance in a form satisfactory to the town, indemnifying, defending and holding harmless the town, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature, arising out of the work under the permit, which are attributed to any act or omission of the applicant, its agents, employees or anyone acting under its direction, control or on its behalf.

3. Provide evidence that the contractor possesses an appropriate contractor's license issued by the Arizona registrar of contractors.

4. Submit a signed and approved contract showing the cost of the work, or submit a verifiable professional construction cost estimate.

5. Submit plans of the subject location and adjacent properties that

   a. Show existing surface conditions, including pavement, curbs, driveways, sidewalks, and landscaping; and

   b. Show existing underground installations, if applicable; and

   c. Diagram the work to be performed.

6. Post bonds or other cash forms of assurance with the town in an amount equal to the cost of construction for all required improvements plus 15% to ensure completion of the proposed work. Third party trust forms of assurance are not acceptable for work in the public right-of-way.

Ordinance 2013.011 modified paragraph 6 by adding the phrase addressing the amount

7. Obtain a business license from the town as required by chapter 9-1 of this code.

C. Projects which are to be self-certified under section 12-7-10C require a completed agreement for construction of public improvements before a permit will be issued. Necessary forms are available from the town engineer.

D. Completed applications will be reviewed by the town engineer. The town engineer shall issue the permit when all of the following have occurred:

1. The town engineer finds that the proposed construction does not interfere with the safety of the traveling public or the authorized public use of the right-of-way and does not otherwise

interfere with the general health, safety and welfare of the citizens of the town.

2. The town engineer finds that the proposed construction does not interfere with and is not inconsistent with a current or future community improvement project (CIP).
3. The town engineer has approved the application, including all plans and specifications for the proposed construction.
4. All applicable permit fees have been paid by the applicant.
5. The applicant has obtained an air quality permit, if required.
6. The applicant has submitted a traffic control plan that is approved by the town engineer.

12-7-6 Emergency work

When, in an emergency, it is impractical to obtain a permit before work is begun, the applicant shall make a diligent effort to telephone the town engineer prior to commencement of work. Emergency work shall be halted upon issuance of a stop work order by the town engineer. A permit shall be applied for, under the same procedures set forth in section 12-7-5, within two business days of commencing emergency work.

12-7-7 No warranty of title

By this section, applicants are placed on notice that the town may not own the particular property or property rights for which the permit is issued. Applicants assume all liability resulting from any defect to the title of the land and no warranty of title to the underlying land is expressed or implied.

12-7-8 Construction requirements

A. The applicant shall notify the town engineer of the proposed start date of the work and shall schedule and complete a pre-construction meeting with the town's right-of-way inspector at least two full work days before starting work.

B. Unless otherwise expressly approved in writing by the town engineer, all work shall conform to the following:

1. The 2003 edition of the Pima county/city of Tucson standard specifications and details for public improvements.
2. Other specifications, details or regulations approved by the town engineer or adopted by the town, including all conditions listed in the permit.
3. All requirements of this chapter.

C. The applicant shall be responsible for verifying the location of all underground utilities in accordance with the "blue stake" provisions of state law, A.R.S. § 40-360.21 *et seq.*, prior to the commencement of any excavation and shall protect any utilities from

damage. All town property shall be returned substantially to its original condition. The applicant shall be held responsible for any damage to, and for maintenance and protection of, existing utilities and structures.

D. Unless otherwise stipulated to in the permit, all pavement resurfacing after excavation shall be completed by the applicant. During construction, the site must be secured in a manner acceptable to the town whenever work is discontinued and construction staff is not on site. Permanent pavement repairs shall be completed within 30 working days after backfilling the trench.

E. If the applicant fails to secure the site, or if the permanent pavement repair is not performed within 30 working days after backfilling the trench and an extension has not been granted by the town engineer, the town engineer may select a contractor to perform all necessary work at the applicant's expense.

F. The applicant shall be responsible for restoration of all permanent traffic-control devices including, but not limited to, all pavement markings, signs and signals. The restoration of traffic-control devices may be accomplished by the applicant or, at the request of the applicant, by the town. In either case, the restoration shall be completed at the applicant's expense. All traffic control devices shall be approved by the town engineer prior to installation.

G. The applicant shall not allow any condition to exist during the project which would be a hazard or source of danger to the traveling public. If the work presents or becomes a hazard or source of danger to the traveling public, the town may take immediate corrective action and bill the applicant for the full cost incurred for the corrective action.

H. Completed excavation, backfill, and pavement repair shall be guaranteed free of defect by the applicant for a period of two years after closeout of permit or approval by the council, whichever occurs later.

Ordinance 2013.011 modified paragraph H by changing the period from one year to two

I. The town engineer shall be notified by the applicant before backfilling and upon completion of the work. If the applicant is not working under self-certification as provided in 12-7-10C and D, the applicant shall not proceed with pavement replacement until the backfill has been approved.

J. If the applicant does not repair the road and right-of-way to the specifications of the town engineer, the town shall notify the applicant of any deficiencies and the applicant shall have 20 working days to repair the deficiencies to the specifications of the town engineer. By acceptance of a permit, the applicant agrees to be responsible for all costs of the repair, if any. If a lawsuit is filed, the applicant, by acceptance of a permit, agrees to be responsible for all costs of collection including, but not limited to, court costs and attorneys' fees.

K. The applicant shall adequately barricade its work in accordance with the latest edition of the federal highway safety administration's manual on uniform traffic control devices and shall install sufficient warning lights and signs to protect the public. Not more than one direction of travel may be blocked at any one time, unless specifically allowed due to extenuating circumstances. The applicant shall submit a traffic control plan to the town engineer and obtain approval before closing or barricading any street or public right-of-way. All traffic control devices shall be delivered and in place in conformance with the approved traffic control plan prior to the contractor being allowed to begin the work, or to begin a new element of work requiring changes to the existing traffic control configuration.

Ordinance 2013.011 added the last sentence to paragraph K

L. If the applicant performs work not authorized by the permit or under the provisions for emergency repairs, the town shall notify the applicant of the unauthorized work. The notification from the town will indicate whether the town requires removal of the work. If the town requires removal of the work, the applicant shall be responsible for the removal within 15 working days of the notification. If the applicant does not remove the unauthorized work, the town may have the work removed by a competent contractor at the applicant's expense.

M. Where work is performed in a drainageway, drainage easement or designated floodplain area, the applicant shall not at any time obstruct or diminish in any manner the ability of the drainageway, drainage easement or designated floodplain area to convey or pass stormwater. Prior to any work within a drainageway, drainage easement or designated floodplain area, the applicant shall obtain written authorization from the town engineer and a floodplain use permit as required by title 21 of the land development code.

12-7-9 Newly constructed asphalt pavements

In addition to the requirements set forth in section 12-7-8, on newly constructed asphalt pavements, five years old or less, as verified by the town engineer, the following additional regulations apply:

A. If sufficient right-of-way is available, directional bore shall be used in lieu of open trench. This shall include the removal and replacement of sidewalk to achieve working room for bore pits.

B. No open pavement cuts shall occur without the permission of the town engineer, except in an emergency.

C. The applicant shall submit a letter to the town engineer assuring that all other methods of construction have been reviewed and are impractical.

D. The applicant shall guarantee the cut until the pavement is five years old or for two years, whichever period is longer.

Ordinance 2013.011 modified paragraph D by changing the period from one year to two

E. Pavement repairs shall be a minimum of 50 feet asphalt replacement with a 15 degree skew, centered on the trench, unless the re-

pair cannot be accomplished by this method and the town engineer approves an alternate method.

12-7-10 Inspection of work

A. All work is subject to inspection and ultimate approval by the town engineer. Total inspection may be provided by the town as set forth in this section, or the applicant may follow the self-certification processes outlined in this section.

B. Town inspection shall include, but is not limited to, the following procedures and requirements:

1. The town engineer will set up a schedule of notifications from the applicant at various stages of the work for inspection and approval.
2. The applicant shall be responsible for staking line and grade, subject to review by the town engineer.
3. Any required testing and/or inspection designated by the permit or required by the town engineer shall be at the expense of the applicant.
4. If applicable, the applicant shall be required to furnish evidence, acceptable to the town engineer, that the required compaction density has been obtained. This evidence shall be in the form of tests and certification from a certified testing laboratory or from any engineering technician certified by either the national institute for certification in engineering technologies at level II or higher or by the Arizona technical training institute field technician level or from any registered professional civil or geological engineer. The location of the test shall be clearly shown on the report from the applicant. The test report shall be submitted within 30 working days after tests are taken.
5. At the conclusion of the work, the town engineer shall conduct a final inspection and receive test reports, if any. When the project is satisfactorily completed and approved, the applicant will be notified.

C. The self-certification process for inspection shall include the following procedures and requirements:

1. The applicant shall choose an engineer of record, acceptable to the town engineer, to be responsible for the major inspection of the project.
2. An agreement for construction of public improvements shall be signed by the applicant, the engineer of record, and the town engineer. This contract shall detail the responsibilities of the engineer of record for the work.
3. The town engineer shall maintain oversight of the project, shall perform final inspections, and shall approve the project when all requirements have been satisfactorily completed.

D. The self-certification process for inspection for utilities shall include the following procedures and requirements:

1. The applicant shall file a letter with the town engineer indicating that the utility is authorized by the Arizona corporation commission to work within the public rights-of-way, is a permanent presence in the community, and will react promptly to a request from the town engineer to correct any deficiencies resulting from work done under a permit.

2. The applicant shall insure that, at all times when work is underway at the site, a responsible person shall be present who, by reason of experience and knowledge, is qualified to judge the quality of the work being performed.

3. The applicant shall provide records of test results performed by a laboratory approved by the town engineer or by a technician certified by the national institute for certification in engineering technologies or the Arizona technical training institute to show that standards of materials, density, and pavement replacement have been met.

E. If the work performed under the permit or in an emergency fails to pass final inspection, the applicant shall remove or replace the work within such time as specified by written notice from the town engineer. If any material used by the applicant in replacing or reconstructing any part of the work, or if any workmanship performed under the permit, proves defective, the applicant shall replace the work as specified by the town engineer.

12-7-11 Permit expiration

A. A permit shall expire if work is not started within 30 days of issuance or if not satisfactorily completed within ten days after the stated completion date. If a permit has expired, a new permit must be applied for, paid for and issued before beginning or completing construction.

B. Permits shall be issued for a period of no more than one year. A one-time extension of no more than six months may be obtained upon application and showing of cause for the delay.

12-7-12 Fees; late fees

Ordinance 2013.011 modified section 12-7-12 by clarifying the late fee provisions and adding paragraph D (the substance of which was previously covered in paragraph B)

A. Right-of-way permit fees shall be set forth by a fee schedule approved by the council and amended from time to time. A copy of the fee schedule is on file in the town engineer's office.

B. Permits obtained after work has started, other than work performed under section 12-7-6, shall cost double the normal permit fee and shall be subject to a late fee as established in the fee schedule.

C. Permits obtained under section 12-7-6 are also subject to double permit fees and the late fee as established in the fee schedule if the

permit application is not filed within two business days of commencing emergency work.

D. Paying a double permit fee and/or a late fee does not waive any other applicable penalties or violation fees for violation of this chapter.

12-7-13 Classification; penalties

Ordinance 2013.011 modified section 12-7-13 by changing its title and rewriting paragraph B

A. A violation of this chapter is a civil infraction.

B. Violations shall be enforced pursuant to chapter 5-7 of this code, except that upon issuing a finding in favor of the town, the magistrate shall impose a civil sanction of not less than $1,500.

C. Any person violating the provisions of this chapter shall be responsible for a separate offense for each and every day or portion of a day during which any violation of this chapter is committed or permitted.

D. In addition to any other penalties allowed by law, the magistrate shall order abatement as necessary.

CHAPTER 12-8. SOLICITATION OF EMPLOYMENT, BUSINESS OR CONTRIBUTIONS FROM OCCUPANTS OF VEHICLES TRAVELING ON TOWN STREETS OR HIGHWAYS

Ordinance 2008.11 added chapter 12-8

12-8-1 Purpose and intent

It is the purpose and intent of this chapter to protect the safety of pedestrians and occupants of motor vehicles and to promote the orderly flow of vehicular and pedestrian traffic.

12-8-2 Definition

For purposes of this chapter, "street" or "highway" means the entire width between the boundary lines of every way, including traffic medians, if a part of the way is open to the use of the public for purposes of vehicular travel.

12-8-3 Prohibited conduct

No person shall stand upon or otherwise occupy a street or highway and solicit or attempt to solicit employment, business, contributions, donations or sales of any kind from the occupant of any vehicle.

12-8-4 Violation; penalties

A. A violation of this chapter is a class 3 misdemeanor.

B. The magistrate may impose community service in lieu of a fine for violation of this chapter. For purposes of this chapter, community service work shall be credited at $10 per hour.

CHAPTER 12-9. OTHER PENALTIES

Ordinance 2008.04 and 2008.11 renumbered this chapter, and Ordinance 2006.31 added "other" to the chapter title

12-9-1 Other violations

Ordinance 2008.04 and 2008.11 renumbered section 12-8-1, which was renumbered and modified by Ordinance 2006.31

A. It is a civil traffic violation for any person to do any act forbidden or fail to perform any act required by this title, unless otherwise designated in this title or under state law.

B. A civil sanction of not more than $250 shall be imposed on any person found in violation of any other provision of this title unless otherwise designated in this title or under state law.

Title 13

Parks & Recreation

13

TITLE 13. PARKS & RECREATION

CHAPTER 13-1. PARKS AND RECREATION REGULATIONS 13-1

CHAPTER 13-2. FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECKS OF PARKS AND RECREATION PERSONNEL AND VOLUNTEERS 13-5

TITLE 13. PARKS & RECREATION

Ordinance 96.02 adopted title 13

CHAPTER 13-1. PARKS AND RECREATION REGULATIONS

13-1-1 Domestic animals and pets

A. No domestic animals or other pets are permitted to be at-large in town parks and recreation areas. Domestic animals and pets must be restrained by a cage or a leash of not more than six feet in length and of sufficient strength to control the animal. Dogs over four months of age must wear a valid license on a collar.

B. Animals participating in pet shows or classes approved by the town shall be exempt from the restraint requirement, provided that the animal is accompanied by and under the control of its owner or handler.

C. Dog owners or handlers must clean up all litter created by the animal and place it in trash cans. Owners of seeing eye dogs are exempted.

D. Certified police dogs, police dogs in training, certified human assistance animals or those in training, and their handler or trainers when directing those dogs or other animals are exempt from the provisions of subsection A of this section.

13-1-2 Spirituous liquor prohibited; permits; exception; definitions

Ordinance 2015.006 adopted the current version of section 13-1-2. For prior history, see Ordinance 97.20

A. It shall be unlawful for any person to consume or have in his possession any spirituous liquor in a town park, including any parkway, trail, recreational area, playground, mountain park, open space area or mountain preserve area or any parking lot or driveway associated with the foregoing, except as provided in paragraph B of this section.

B. The parks and recreation director is empowered to issue permits authorizing the consumption and possession of beer and wine in a park and to adopt rules and procedures for the issuance of such permits.

C. A person who has obtained a permit pursuant to paragraph B of this section shall display the permit upon request. The permit holder and all persons covered by the permit shall abide by the terms and conditions of use set forth in the permit. The permit may be revoked for failure to comply with the terms and conditions.

D. This section shall not apply to premises or events for which a liquor license has been issued pursuant to title 4, Arizona revised statutes.

E. For purposes of this chapter, the following definitions shall apply:

1. "Beer" means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley malt, hops, or other ingredients not drinkable, or any combination of them.

2. "Spirituous liquor" means alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one per cent of alcohol by volume.

3. "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four per cent of alcohol by volume.

13-1-3 Use and occupancy rules and regulations

A. It is unlawful in any town park to:

1. Operate motorbikes, motorcycles or other motor vehicles on trails, or cross country or on primitive unsurfaced roadways that have been posted, signed or barriered to prohibit vehicle use or on lawns or landscaping.

2. Operate a motor vehicle except on roads and parking areas designated for those purposes; to operate a motor vehicle at a speed greater than that posted or to fail to obey traffic signs. In all cases, motor vehicles shall be operated in compliance with the Arizona motor vehicle code as provided under title 28, A.R.S., while within the boundaries of any town parks or recreation area.

3. Destroy, damage, deface or remove any town regulatory sign, property or facility owned or administered by the town.

4. Use town park or recreation areas for commercial purposes, public meetings or assemblies, erection of signs, fences, barriers or structures, to distribute advertising materials or to sell any goods or services without first obtaining a written permit from the town.

5. Litter, deposit or abandon in or on any town park, parkway or recreational facility any garbage, sewage, refuse, trash, waste or other obnoxious materials except in receptacles or containers provided for those purposes. These receptacles are not to be used for residential trash disposal.

6. Enter upon or use for any purpose the land, water or facilities within the boundaries of town parks and recreation areas when a fee, rental, admission or other consideration has been established for that use, unless the person entering or using the land, water or facility has paid the fee, rental, admission or other consideration to the town.

7. Enter, use or occupy public parks or recreation areas under the supervision and control of the town for any purpose when the parks or areas are posted against that entrance, use or occupancy.

8. Shoot with bow and arrow except in designated archery ranges or for specific purposes, locations and seasons as licensed and permitted by Arizona game and fish regulations.

Ordinance 2007.15 modified paragraph 8

9. Bring saddle, pack or draft animals into a town park site unless it has been developed to accommodate them and is posted accordingly.

10. Allow grazing or forage consuming domestic livestock to graze or to roam at-large within the fenced or posted boundaries of town parks.

11. Build fires, except in designated places, or in fireplaces, stoves or grills either provided or approved by the town.

12. Operate any aircraft of any nature or parachute or hang glide on town park property except in areas designated for that use or in an emergency or by permit issued by the town.

13. Collect, remove, destroy, mutilate, damage or deface any natural resource including but not limited to all live and dead vegetation and all parts of it, wildlife, soil, rocks and water, except as otherwise provided for by law or without obtaining prior written approval from the town. Except as otherwise planned for and provided for by the town, all environmental settings shall be kept in their natural state.

14. Bicycle, skateboard, roller skate or roller blade on tennis or basketball courts, or on any other surface which is marked to prohibit these activities.

Ordinance 97.20 added paragraphs 14 and 15

15. Possess glass containers, except that the parks and recreation director is empowered to issue an exemption authorizing the possession of glass containers and to adopt rules and procedures for the issuance of such exemptions. The person issued the exemption and all persons covered by the exemption shall abide by any terms and conditions regarding the exemption. The exemption may be revoked for failure to comply with the terms and conditions..

Ordinance 2015.006 added everything after the first clause of paragraph 15

16. Discharge a firearm.

    a. This subparagraph 16 does not apply to a person who discharges a firearm under the following circumstances:

        i. As allowed pursuant to A.R.S. title 13, chapter 4;

        ii. On a properly supervised range as defined in A.R.S. § 13-3107;

        iii. In an area approved as a hunting area by the Arizona game and fish department; provided, however, that any

Paragraph 16 was originally added as paragraph 17 by Ordinance 2007.15. Ordinance 2010.09 renumbered it to paragraph 16, amended subparagraph a.iii to remove reference to the chief of police to conform to Laws 2010 Chapter 19, and amended subparagraph b to insert a definition of "firearm." A former paragraph 16 prohibiting possession of a firearm was added by Ordinance 2007.15 and repealed by Ordinance 2010.09 to conform to Laws 2010 Chapter 19.

such area may be closed when deemed unsafe by the director of the Arizona game and fish department;

iv. To control nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service;

v. By special permit of the chief of police;

vi. As required by an animal control officer in performing duties specified in A.R.S. § 9-499.04 and title 11, chapter 7, article 6 and title 6 of this code; or

vii. In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.

b. For the purposes of this subparagraph 16, "firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive, but does not include a firearm that is in permanently inoperable condition.

17. Smoke within 25 feet of any athletic field, athletic facility or children's play area. For purposes of this subparagraph 17, to "smoke" means to inhale, exhale, burn, carry or possess any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product.

Paragraph 17 was added as paragraph 18 by Ordinance 2009.15 and renumbered by Ordinance 2010.09

B. Hours of park established. The parks and recreation areas, unless otherwise posted, shall be open from 7:00 a.m. until 10:00 p.m.

Ordinance 97.20 added paragraph B

13-1-4 Violations; classification

Ordinance 2015.006 revised the title of and rewrote section 13-1-4. Ordinance 2007.15 added paragraph B

A. Except as provided in paragraph B of this section, any violation of this chapter is a class 1 misdemeanor.

B. Any violation of section 13-1-3A.16 is a class 2 misdemeanor.

13-1-5 Town employees

In addition to any authority created by state law, town employees designated by the town manager shall also have authority to order violators of the above rules and regulations to leave the parks and recreation areas.

CHAPTER 13-2. FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECKS OF PARKS AND RECREATION PERSONNEL AND VOLUNTEERS

Ordinance 2010.10 added Chapter 13-2

13-2-1 Authority to receive criminal history record information

Pursuant to A.R.S. § 41-1750, the town is hereby authorized to receive criminal history record information for the purpose of evaluating the fitness of current and prospective parks and recreation department employees, contract employees and volunteers who work directly with children under the age of 18 or vulnerable adults.

13-2-2 Definition

For purposes of this chapter, "vulnerable adult" means an individual who is 18 years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.

13-2-3 Fingerprinting of current and prospective parks and recreation personnel and volunteers; criminal history record information

Ordinance 2014.029 modified section 13-2-3 by amending paragraphs A and B and adding paragraph D

A. Each town of Marana parks and recreation department employee, contract employee or volunteer who works directly with children under the age of 18 or vulnerable adults and who has not furnished a full set of fingerprints to the town within 12 months of the effective date of this chapter, may be required, as a condition of continued employment, within 60 days of the effective date of this chapter and annually thereafter, to furnish a full set of fingerprints on a standard fingerprint card to the town. Any current employee, contract employee or volunteer who has furnished a full set of fingerprints to the town within 12 months of the effective date of this chapter, shall not be required to furnish another set of fingerprints until 12 months has passed since the furnishing of the fingerprints.

B. Each prospective town of Marana parks and recreation department employee, contract employee or volunteer who will work directly with children under the age of 18 or vulnerable adults may be required, as a condition of hire and annually thereafter, to furnish a full set of fingerprints on a standard fingerprint card to the town.

C. Pursuant to A.R.S. § 41-1750 and Public Law 92-544, the town shall submit all fingerprints obtained pursuant to this chapter to the Arizona department of public safety for the purpose of obtaining state and federal criminal history record information. The Arizona department of public safety is authorized to exchange this fingerprint data with the federal bureau of investigation.

D. For purposes of this section, a current or prospective parks and recreation employee, contract employee or volunteer may furnish a full set of fingerprints by resubmitting a previously-submitted full

set of fingerprints if Arizona department of public safety protocols allow for resubmission of the fingerprints.

13-2-4 Alternative background investigations

Ordinance 2014.029 added section 13-2-4

A. The town may choose to conduct background investigations to obtain criminal history record information regarding current and prospective employees, contract employees and volunteers covered under this chapter by using alternative methods instead of fingerprinting. Any alternative methods the town employs shall be at least as thorough as the national recreation and park association's recommended guidelines for credentialing volunteers.

B. If the town employs alternative background investigation methods pursuant to this section, the town shall conduct background investigation screenings on all employees, contract employees and volunteers covered under this chapter on at least an annual basis.

13-2-5 Use of criminal history record information

Ordinance 2014.029 renumbered section 13-2-5

Criminal history record information obtained by the town pursuant to this chapter shall be used only for the purpose of evaluating the fitness of current and prospective employees, contract employees and volunteers who work directly with children under the age of 18 or vulnerable adults. The town shall comply with all relevant state and federal rules and regulations regarding the dissemination of criminal history record information.

Title 14
Utilities

14

TITLE 14. UTILITIES

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TITLE 14. UTILITIES

Ordinance 2011.24 adopted title 14. For prior history, see Ordinance 96.06, 96.35, 98.19, 2005.17, 2005.22, 2007.31, 2009.03, 2009.11, and 2009.13

CHAPTER 14-1. GENERAL PROVISIONS

14-1-1 Intent and purpose

A. The intent and purpose of this title is to promote the health, safety, order and general welfare of the present and future utility customers of the town, and specifically to:

1. Provide safe and reliable service to utility customers of the town;
2. Provide for the financial integrity of the town utilities;
3. Manage the water resources of the town to protect the utility customers of the town and to facilitate the economic development of the town;
4. Develop water resources for the benefit of current and future residents and utility customers of the town;
5. Provide for the expansion and improvement of the town's water and wastewater utilities; and
6. Provide adequate water and wastewater system capacity in a fiscally responsible manner.

14-1-2 Definitions

A. In this title, unless the context otherwise requires:

1. "Applicant" means a person requesting the town to provide utility service.
2. "Application" means a request to the town for utility service.
3. "Commodity charge" means the unit cost of billed usage as set forth in the adopted utility rates and charges.
4. "Contributions in aid of construction" means funds provided to the town by the applicant under the terms of a utilities extension agreement or service connection agreement.
5. "Customer" means the person or entity in whose name service is rendered, as evidenced by the name on the application, the contract for service, or utility bills, regardless of the identity of the actual user of the utility service. Customer includes the customer's agent or contractor.
6. "Meter" means the instrument for measuring and indicating or recording the volume of water that has passed through it.
7. "Non-potable water" means water not suitable for human consumption.
8. "Point of delivery" means the point where facilities owned, leased or under license by a customer connect to the town water utility's pipes at the outlet side of the meter.

9. "Potable water" means water suitable for human consumption.
10. "Premises" means all of the real property and apparatus employed by a single enterprise on an integral parcel of land undivided by public streets, alleys or other rights-of-way or easements.
11. "Service line" means a water line that transports water from a common source (normally a distribution main) of supply to the customer's point of delivery.
12. "Wastewater facilities" means infrastructure used for the collection or treatment of wastewater.
13. "Water facilities" means infrastructure used for the extraction, storage, or delivery of potable water or non-potable water but not for the delivery of wastewater or stormwater.

CHAPTER 14-2. RESPONSIBILITIES

14-2-1 Responsibilities of the council

A. Adoption of comprehensive master plans. The council may adopt comprehensive utility system master plans. Upon adoption of the plans, the council shall assure that no extension, improvement or addition to a town utility shall be constructed or authorized unless and until the extension, improvement or addition conforms to the corresponding comprehensive utility system master plan.

B. Utility construction standards. The council may adopt and amend engineering design and construction standards for improvements to, extensions of, additions to, and modifications of the town's utilities.

C. Utilities to be operated as enterprise funds. A separate fund is established for the town's water utility and for the town's wastewater utility. All funds paid to the town pursuant to provisions of this title for, but not limited to, service charges, fees, construction of facilities, fines and penalties shall be deposited into the corresponding utility fund, and all expenditures made by the town in relation to the town's ownership, operation, maintenance, repair, expansion, acquisition, management, salaries, professional fees, debt service, bond payments and other costs and charges shall be paid from the corresponding utility fund. The town council may make loans from the general fund to the town utility funds from time to time to supplement revenues generated by the town utilities to assure the timely payment of all obligations, provided that the loans are timely repaid from the corresponding utility fund to the general fund. The town utilities shall be self-supporting and funded solely from revenues generated from utility operations. All fees and charges levied by the town in relation to its utilities shall be, to the degree practical, based on the cost of providing the service for which a fee or charge is levied.

14-2-2 Water director

Ordinance 2015.015 modified the title and introductory paragraph of section 14-2-2 by changing "utilities director" to "water director"

The town water director shall be responsible for the day to day management of the town utilities including, but not limited to:

A. Provision of safe and reliable service to town utility customers.

B. Compliance with federal, state, and local ordinances and regulations.

C. Preparation of utility system master plans.

D. Sufficiency of the town's water supply.

E. Adequacy of the town's wastewater utility capacity.

F. Inspection and repair of the utility systems.

G. Review of all engineering plans and contracts.

H. Collection of all funds due the town's utilities.

I. Development of utilities elements of the town's capital improvement plan

J. Preparation and administration of annual budgets.

K. Enforcement of this title.

CHAPTER 14-3. UTILITY SERVICE

14-3-1 Application for service

Ordinance 2015.015 modified section 14-3-1 by changing "utilities department" to "water department"

Water and/or wastewater utility service may only be provided pursuant to application to the town. Before providing service, the town shall collect all installation and other charges required by this title and all customer information deemed appropriate by the water department.

14-3-2 Deposits

A. Requirement of deposit; amount. The town may require a deposit from an applicant for service not to exceed twice the average monthly bill for the account or in the case of a new account, twice the estimated monthly bill, or in the case of an account which has shown delinquency for three consecutive months as a condition of providing service. A separate deposit may be required for each service connection.

B. Deposit; refund. Deposits shall be refunded when the customer moves or requests a discontinuance of service, as long as all bills are paid in full. No interest shall be paid to customers on deposits. Deposit refunds shall be made to the individual whose name is on the account at the time of the refund.

C. Use of deposit for payment of bill. Upon discontinuation of service, the deposit will be applied by the town toward settlement of the account.

D. Homeowner customers. The deposit may be waived for the primary residence of a new homeowner customer with favorable

credit references from three utility companies who serve or previously served the customer. Upon customer request, the deposit will be credited to the account after one year of no delinquency.

14-3-3 Grounds for refusal of service

A. The town may refuse to establish utility service if any of the following conditions exist:

1. The applicant has an outstanding amount due for utility service with the town, and the applicant does not bring current any outstanding bills.
2. A condition exists which in the town's judgment is unsafe or hazardous to the applicant, a resident of the town or the town's personnel or facilities.
3. Refusal by the applicant to provide the town with a utility deposit.
4. Failure of customer to furnish such funds, service, equipment or rights-of-way necessary to serve the customer and which has been specified by the town as a condition for providing utility service.
5. Applicant provides false information for the purpose of obtaining service.

14-3-4 Service lines, valves and water meters

A. An applicant for utility service shall be responsible for the cost of installing all customer piping up to the water meter and/or discharge point for the sewer connection.

B. Where water service is being provided for the first time or to a new customer, the customer shall provide and maintain a private cutoff valve within eighteen inches of the meter on the customer's side of the meter.

C. The town will install its water meter at the property line or in the public right-of-way.

D. Where the meter or service line location is changed at the request of the customer or due to alterations on the customer's premises, the customer shall provide and have installed at his expense all piping necessary for relocating the meter, and the town may charge for moving the meter or service line.

E. The customer's lines or piping must be installed in a way that prevents cross-connection or backflow.

14-3-5 Easements and rights of-way

A. Each town utility customer shall grant adequate easements or rights-of-way satisfactory to the town to ensure that customer service connections are accessible by the town.

B. The customer's failure to grant adequate easements or rights-of-way shall be grounds for the town to refuse utility service.

C. When the town discovers that a customer is performing work or has constructed facilities adjacent to or within an easement or right-of-way and the work, construction or facility poses a hazard or is in violation of federal, state or town laws, ordinances, statutes, rules or regulations, or may significantly interfere with the town's access to its utility facilities or equipment, the town shall notify the customer and shall take whatever actions are necessary to eliminate the hazard, obstruction or violation at the customer's expense.

CHAPTER 14-4. CONSTRUCTION AND FINANCING OF UTILITY FACILITIES

14-4-1 Agreements to construct new facilities

A. Approval of agreements to construct new facilities. The council may permit the construction of facilities to provide utility service in areas where no water or sewer service is available, or where existing water or sewer facilities are inadequate.

1. Agreements for construction of utility facilities shall provide that all costs be at the sole expense of the applicant for service, except as otherwise noted in the agreement.
2. Costs shall include, but not be limited to, engineering and design fees, materials, labor, applicable taxes, permits and inspection fees.
3. Facilities shall include, but are not limited to, the following within an applicant's proposed development as well as outside the development if the facilities are deemed necessary or desirable in the sole opinion of the town to serve the new development:
   a. Wells, pumps, storage tanks and reservoirs, mains, valves, meters and other appurtenances to the water system
   b. Customer connections, collection system, lift stations, treatment facilities, and other appurtenances to the sewer system.
4. All agreements for the construction of utility facilities shall be subject to the final approval of the council.
5. No agreement for the construction of utility facilities shall be submitted for approval by the council unless the engineering plans have been approved by the town engineer and the water director.

Ordinance 2015.015 modified paragraph 5 by changing "utilities director" to "water director"

14-4-2 Construction other than by town

A. Construction. The council, at its sole discretion and option, may permit construction of water and/or sewer facilities by private

contract. The facilities shall be constructed at the sole expense and cost of the applicant within public streets, alleys, rights-of-way and/or easements.

B. Approval of construction plans and inspections. Plans for construction of facilities to be constructed other than by the town shall be provided by applicant, certified by a registered professional engineer and approved by the town engineer and the town water director. The construction of facilities authorized and approved by the council shall be inspected by the town engineer and shall comply in every respect with the engineering, construction, material and installation standards of the town.

Ordinance 2015.015 modified paragraphs B and C by changing three instances of "utilities director" to "water director"

C. Construction agreement. With each application for a permit for the construction of facilities authorized by this section, the applicant shall execute and deliver to the town water director the agreement for construction of utility facilities by private contract. If the agreement conforms to the provisions of this title, the town water director may submit the agreement for approval to the council.

14-4-3 Capacity requirements

A. Water or wastewater system capacity requirements. The town water director may require an applicant to install "on-site" or "off-site" water and/or wastewater facilities of a size greater than is required to provide service to applicant's development. This requirement to install oversized facilities is referred to as oversizing.

Ordinance 2015.015 modified paragraph A by changing "utilities director" to "water director"

B. Refunds. Refunds of the cost of oversizing shall be solely by agreement approved by the council. If infrastructure is installed pursuant to this section so as to provide service to a property not participating in the construction cost (a "non-participating property"), the town may enter into an agreement for partial refund of the cost of the infrastructure, subject to the following:

1. In no case will the agreed refunded amount exceed the total funds to be collected as oversizing charges pursuant to this section.
2. Refunds shall continue for a term set forth in the agreement, and any balances remaining unpaid upon termination shall be canceled, and the town shall be fully discharged from any further obligation under the agreement.
3. No interest shall accrue on any costs advanced by an applicant which are agreed to be refunded by the town.

C. Oversizing recovery charge. The council may, at its sole option, establish an "oversizing recovery charge" to be charged proportionately to each subsequent connection by non-participating property owners made to or benefiting from the oversizing.

CHAPTER 14-5. PROVISION OF UTILITY SERVICE

14-5-1 Customer responsibility

A. Each town utility customer shall be responsible for the following:

1. Maintaining all facilities on the customer's side of the point of connection in a safe and efficient manner and in accordance with all applicable federal, state, and local rules and regulations. The point of connection is the meter for water service and is where the house sewer connects to the sewer collection system for sewer service.
2. Safeguarding all town utility property installed in or on the customer's premises for the purpose of providing utility service to that customer.
3. Exercising all reasonable care to prevent loss or damage to town utility property, excluding ordinary wear and tear. The customer shall be responsible for loss of or damage to town utility property on the customer's premises arising from neglect, carelessness or misuse and shall reimburse the town for the cost of necessary repairs or replacements.
4. Payment of any equipment damage resulting from unauthorized breaking of seals, tampering or bypassing the town water meter.
5. Notifying the town of any town utility equipment failure.
6. Paying all utility rates, charges and fees when due.

B. Special provisions relating to water service.

1. Water furnished by the town shall be used only on the customer's premises and shall not be resold to any other person.
2. During critical water conditions, as determined by the council, the customer shall use water only for those purposes specified by the council.
3. Disregard for this provision shall be sufficient cause for refusal or discontinuance of water utility service by the town.

C. Special provisions relating to sewer service.

1. Sewer service provided by the town shall be only for the benefit of the customer's premises and shall not be extended to any other property.
2. Nothing shall be discharged into the sewer collection system which is prohibited by law, may lead to a sanitary sewerage overflow, or adversely affects the operation or maintenance of the collection system. This prohibition includes but is not limited to oil, grease, and flammable material.
3. Disregard for this provision shall be sufficient cause for refusal or discontinuance of sewer service by the town.

D. Each customer shall provide the town and its employees and agents the right of safe ingress and egress to the customer's premises for any purpose reasonably related to the town's provision of utility service to the premises.

14-5-2 Payment of bills

Utility rates, charges or fees are due and payable to the town upon billing. Any rates, charges or fees not paid in full by the next billing date are subject to a late charge, in addition to the balance due, in an amount established by a fee schedule adopted by the council and amended from time to time.

14-5-3 Grounds for termination of service

A. Utility service to a customer may be terminated by the town upon ten days advance written notice for any of the following reasons:

1. Customer violation of any of the provisions of this title;
2. Failure of the customer to meet or maintain the utility department's credit and deposit requirements;
3. Failure of the customer to provide the town reasonable access to its utility equipment and property;
4. Failure of a customer to pay a delinquent bill for utility service.

14-5-4 Nonpayment of delinquent bill; filing of lien; interest

A. If any bill for a utility rate, charge or fee made to the customer pursuant to this title is not paid by the next billing date, the customer shall be given written notice specifying that the bill is delinquent and outlining the procedure by which the customer may challenge the accuracy of the bill. If a delinquent bill is not paid and no challenge has been made to the accuracy of the bill after the notice of delinquency, the water supply will, without further notice, be turned off, and not turned on until all sums due are paid in full, together with a charge for reconnection after delinquency as provided in chapter 14-6.

B. Pursuant to A.R.S. § 9-511.02, the town may file a lien on the property for unpaid fees that are at least 90 days delinquent. The town may enforce the lien by any method permitted by law. Unpaid fees shall accrue interest at the rate provided by A.R.S. § 44-1201.

14-5-5 Reconnection of service

In no case shall any individual or plumber turn on the water supply to any building or any supply pipe where the supply has been turned off for the nonpayment of the monthly water bill or for the violation of any provision of this title. All water that has been turned off by the town water utility shall only be turned on again by the employees or agents of the town water utility.

14-5-6 Challenge of accuracy of utility bill

A. The procedure by which a customer may challenge the accuracy of a utility bill and the determination of the validity of the challenge shall be as follows:

1. The customer shall notify the town, in writing, of the challenge of the accuracy of the bill and the reasons for it. If the customer has received a notice of delinquency, the challenge shall be filed within ten days of the date of the notice of delinquency.

2. The customer may request that the water meter be re-read or tested, provided the customer pays the meter re-read charge or the meter test charge in advance in the amount established by a fee established by the schedule adopted by the council and amended from time to time. A request for meter re-read or meter test, paid for by the customer, shall constitute a challenge to the accuracy of the bill.

3. The town shall send the customer a corrected bill and refund the cost of the meter re-read or meter test if the bill is found to be in error either because the meter was misread or because a meter test shows that the meter over-calculated the volume by more than 3%. Customer shall have 20 days to pay the corrected bill.

4. The water director is authorized to negotiate a mediation process mutually acceptable to the water director and the customer. The customer shall deposit the full estimated cost of the mediation process with the water department. The mediation shall make a final determination of the validity of the customer's challenge and whether the town should be required to pay all or a portion of the cost of the mediation process.

Ordinance 2015.015 modified paragraph A 4 by changing "utilities director" to "water director" and "utilities department" to "water department"

5. The customer's utility service shall not be terminated during the mediation process.

14-5-7 Deposit requirement after termination

If utility service is terminated due to nonpayment of a delinquent bill, the town shall require payment in full of all amounts due and owing and payment of a utility deposit as a condition of reestablishing service.

14-5-8 Termination without notice

A. Utility service may be terminated by the town without advance written notice under the following conditions:

1. Existence of an obvious hazard to the safety or health of the customer or the general population;

2. Evidence of water meter tampering or fraud;

3. Evidence of unauthorized resale of water or utility services;

4. A customer's failure to comply with the curtailment procedures imposed by the council during water supply shortages.

14-5-9 Service obligations of town

A. Level of service. The town shall make reasonable efforts to provide quality, continuous service to its customers.

B. Non-liability. The town shall not be responsible for any damage attributable to any interruption or discontinuation of service resulting from any of the following:

1. Any cause against which the town could not have reasonably foreseen or made provision for, such as but not limited to any condition or event not reasonably within the control of the town, including without limitation, acts of public enemies, insurrection, civil disturbances, riots, epidemics, landslides, lightning, earthquakes, subsidence, fires, storms, droughts, and floods.

2. Intentional service interruptions to make repairs or perform routine maintenance.

3. Curtailment procedures imposed by the council during water supply shortages.

C. Service interruptions. The town shall make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur.

1. If there is a national emergency or local disaster resulting in disruption of normal service, the town may, in the public interest, interrupt service to provide necessary service to civil defense, fire protection or other emergency service agencies on a temporary basis until normal service can be restored.

2. When the town plans to interrupt service for more than four hours to perform necessary repairs or maintenance, the town shall attempt to inform affected customers at least 24 hours in advance of the scheduled day and the estimated duration of the service interruption.

3. Notice to customers shall not be required if there is an emergency or an outage due to unanticipated events or causes.

D. Minimum water delivery pressure. The town shall maintain a minimum standard water delivery pressure of 20 pounds per square inch at the customer's meter or point of delivery, except during water outages.

E. Construction standards. The town shall construct all facilities in accordance with all applicable federal, state and local laws and regulations.

14-5-10 Meter reading; measurement of service

A. Each customer's water meter shall be read monthly on as close to the same day as practical.

B. All utility service provided by the water department shall be billed:

1. On the basis of metered water volume, or
2. Based on historic usage when a meter has malfunctioned or cannot be read for reasons beyond the town's control. Each bill based on estimated usage will indicate that it is an estimated bill.

Ordinance 2015.015 modified paragraph B by changing "utilities department" to "water department"

14-5-11 Billing and collection

A. Minimum bill information. Each bill for utility service will contain the following minimum information:

1. Bill date.
2. Date and meter reading at the start of the billing period.
3. Previous month's meter reading.
4. Water volume used during the billing period.
5. Utility department's email address and telephone number.
6. Customer's name and address.
7. Service account number and service address.
8. Amount due and due date.
9. Past due amount.
10. Other applicable charges and taxes.

CHAPTER 14-6. RATES AND CHARGES

14-6-1 Monthly charges

A. Customers shall be charged for utility services monthly, at rates designed to recover the cost to secure, develop and deliver utility services, and all capital, operational and maintenance costs associated with or attributable to providing utility services, plus applicable state and local taxes.

B. Service fees shall be established by a fee schedule adopted by the council and amended from time to time.

14-6-2 Installation charges

A. There shall be an installation charge for all utility service connections, established by a fee schedule adopted by the council and amended from time to time.

B. All applicable permit fees, right-of-way costs or unusual construction costs shall be paid for by the applicant at the time of application.

C. Installation charges assume availability of an existing water main contiguous to the applicant's property. If a main extension is required, applicant shall pay all costs for the main extension, which costs shall be non-refundable.

D. In addition to the adopted installation fee, the applicant shall pay all actual costs of installation incurred due to unusual site conditions, such as pavement cutting, excessive length, rocky ground, or any other additional cost inflating factors.

E. Installation of meters larger than two inches typically require additional labor and equipment not covered by the base fee. These extra actual costs shall be charged to the customer.

F. Meters larger than two inches may be installed by the customer's contractor if the work meets town standards and the contractor furnishes proof of its contractor's license and town business license. All final inspections and approvals shall be made by Marana utility personnel.

14-6-3 Other service charges

The following service charges are established, the amounts of which are set forth in a fee schedule adopted by the council and amended from time to time.

Ordinance 2015.015 modified paragraphs A and K by changing "utilities department" to "water department"

A. <u>After-hours new service establishment fee</u>. An after-hours new service establishment fee shall be charged for the cost of establishing the new customer service account after hours, on weekends or on holidays. The amount of the fee shall be the actual labor and material costs incurred by the water department to connect the new service.

B. <u>After-hours reconnect fee</u>. An after-hours reconnect fee shall be charged for the cost of reconnecting service after hours, on weekends or on holidays.

C. <u>Backflow permit fee</u>. A backflow permit fee is charged to incorporate information concerning a new backflow device into the utility department's database, to track annual device testing.

D. <u>Backflow permit replacement fee</u>. A backflow permit replacement fee is charged when a device fails and must be replaced rather than repaired.

E. <u>Customer-requested meter re-read fee</u>. A customer requested meter re-read fee shall be charged each time a customer requests that its meter be re-read. This fee shall be refunded if the meter is found not to be reading accurately, defined as an error of greater than 3%.

F. Customer-requested meter test fee. A customer-requested meter test fee shall be charged each time a customer requests that its meter be tested. This fee shall be refunded to the customer if the meter is found not to be reading accurately, defined as an error of greater than 3%.

G. Delinquency. If there is a delinquent balance due, the delinquent balance must be paid in full before service is reconnected.

H. Hydrant meter relocation fee. The hydrant meter relocation fee is charged each time a hydrant meter is relocated.

I. Hydrant meter setup fee. The hydrant meter setup fee is the fee assessed on all hydrant meter installations. This fee is in addition to the security deposit.

J. Late payment fee. A late payment fee shall be added to a customer's water bill if any water rates, charges or fees are not paid in full by the next billing date.

K. New service establishment fee. The new service establishment fee is for the cost of establishing the new customer service account during normal working hours, and requires 24 hours notice. No service connections will be made after hours, weekends or holidays except in an emergency situation as determined by the water department.

L. Reconnect fee. The reconnect fee shall be for the cost of reestablishing service after it has been terminated for any reason and requires 24 hours notice.

M. Returned check fee. A returned check fee shall be added to a customer's bill if the check for payment is returned unpaid due to insufficient funds, closed account or stop payment. An additional fee calculated at 25% of the total outstanding balance shall be added to any bill sent to outside collections for payment.

N. Standpipe card replacement fee. The standpipe card replacement fee is the fee to replace a standpipe card.

O. Standpipe setup fee. The standpipe setup fee is a new service fee for a standpipe account.

P. Vacation service fee. A vacation service fee shall be the fee charged for one disconnect when the customer leaves on vacation and one reconnect when the customer returns.

Q. Water modeling fee. A water modeling fee is charged to cover the town's cost to update the water distribution and operation model to account for a development's potable water and fire flow demands.

CHAPTER 14-7. EMERGENCY WATER CONSERVATION RESPONSE

14-7-1 Declaration of policy

It is hereby declared that because of varying conditions related to water resource supply and distribution system capabilities operated by the town, it is necessary to establish and enforce methods and procedures to ensure that in time of emergency shortage of the local water supply, (1) the water resources available to the customers of the water system are put to the maximum beneficial use, (2) the unreasonable use, or unreasonable method of use is prevented, and (3) the conservation of water is accomplished in the interests of the customers of the town water utility, customers of other water utilities located within the town and for the public health, safety, and welfare of the residents of the town.

14-7-2 Definitions

A. In this chapter, unless the context otherwise requires:

1. "Economic hardship" means a threat to an individual's or business' primary source of income.
2. "Notification to the public" means notification through local media, including interviews, and issuance of news releases.
3. "Outdoor watering day" means a specific day, as described in a specific outdoor watering plan, during which irrigation with sprinkler systems or otherwise may take place.

14-7-3 Application

A. This chapter applies to all municipal and industrial water utility customers who own, occupy, or control water used on any premises as defined in this chapter. This chapter shall not apply to any agricultural use of water furnished by an irrigation district.

B. No person shall make, cause, use, or permit the use of water received from the town water utility or any other municipally owned or privately owned water utility providing water service within the town for residential, commercial, industrial, governmental or any other purpose in any manner contrary to any provision in this chapter.

C. Mandatory emergency conservation measures shall be implemented based upon the declaration of an emergency pursuant to section 14-7-4.

14-7-4 Declaration of water emergency authorized

The council, or in the absence of a quorum, the mayor or the vice mayor, upon the recommendation of the town manager, is hereby authorized to declare a water emergency and to implement mandatory conservation measures as set forth in this chapter.

14-7-5 Implementation; termination

A. The town manager shall develop guidelines which set forth general criteria to assist the council, or in the absence of a quorum the mayor or the vice mayor, in determining when to declare a water emergency. Upon declaration of a water emergency, the town manager shall report in writing to the council providing the reasons for and expected duration of the emergency and describing implementation of emergency water conservation measures.

B. A water emergency may be declared for a specific water utility system, such as, but not limited to, the town water utility system, the city of Tucson water utility system located within the town, or any other public or private water utility system located within the town, which is unable to provide adequate quantities, qualities or pressure of water delivery in compliance with Arizona department of environmental quality standards or regulations, or fire flow requirements, and which constitutes a danger to the public health, safety and welfare of the residents of that water utility system.

C. The declaration of a water emergency shall be specific to the water utility system which is unable to provide adequate quantities, qualities or pressure of water delivery in compliance with Arizona department of environmental quality standards or regulations, or fire flow requirements, and to the water customers of that water utility system.

D. The owner or operator of a water utility system located within the town boundaries may request, in writing, that the town declare a water emergency pursuant to this chapter for its water utility system, setting forth the reasons and justification for it.

E. The water emergency shall be declared terminated when the condition or conditions giving rise to the water emergency end. The declaration terminating the emergency shall be adopted by the agency with jurisdiction over the emergency, or if none, upon majority vote of the council, or in the absence of a quorum, the mayor or the vice mayor. Upon termination, the mandatory conservation measures shall no longer be in effect.

14-7-6 Mandatory emergency water conservation measures

A. Upon declaration of a water emergency and notification to the public, the mandatory restrictions upon nonessential users set forth in the adopted drought preparedness plan and/or the following restrictions shall be enforced as to the customers of the water utility system for which the water emergency was declared.

The Marana Drought Preparedness Plan adopted by Marana Resolution 2007-177 can be found here

1. All outdoor irrigation is prohibited, except for irrigation water provided by an irrigation district for agricultural use. If the town manager deems it appropriate, a schedule designating certain outdoor watering days may be implemented in place of the irrigation ban.

2. Washing of sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas with water, except to alleviate immediate health or safety hazards, is prohibited.
3. The outdoor use of any water-based play apparatus is prohibited.
4. The operation of outdoor misting systems used to cool public areas is prohibited.
5. The filling of swimming pools, fountains, spas, or other related exterior water features is prohibited.
6. The washing of automobiles, trucks trailers and other types of mobile equipment is prohibited, except at facilities equipped with wash water recirculation systems, and for vehicles requiring frequent washing to protect public health, safety and welfare.

14-7-7 Variance

The town manager, or the town manager's designee, is authorized to review hardship cases and special cases within which strict application of this chapter would result in serious hardship to a customer. A variance may be granted only for the reasons involving health, safety, or economic hardship. Application for a variance from requirements of this chapter must be made on a form provided by the town manager.

14-7-8 Violation

A. If there is any violation of this chapter, the water utility for which the emergency was declared shall:
   1. Place a written notice of violation on the property where the violation occurred; and
   2. Mail a duplicate notice to:
      a. The person who is regularly billed for the service where the violation occurred; and
      b. Any person responsible for the violation, if known to the town or the water utility.

B. The notice of violation shall:
   1. Order that the violation be corrected, ceased, or abated within a specified time the town or water utility determines is reasonable under the circumstances, and
   2. Contain a description of the fees and penalties associated with the violation.

C. The town or the water utility may disconnect the service where the violation occurred for failure to comply with the order set forth in the notice of violation.

D. Nothing in this section shall conflict with the rules and regulation and approved tariffs of the Arizona corporation commission as

they may apply to public service corporations furnishing water service within the town.

14-7-9 Enforcement

The provisions of this chapter shall be enforced by employees of the water utility that serves the property where the violation occurred.

CHAPTER 14-8. BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL

14-8-1 Purposes

A. To protect the public potable water supply from the possibility of contamination or pollution.

B. To promote the elimination and control of actual or potential customer cross-connections.

C. To provide for a continuing program of cross-connection control.

14-8-2 Backflow prevention required

A. An approved backflow prevention method or device shall be utilized or installed at every water system service connection and usage point when required by applicable state and federal regulations.

B. The town shall determine the backflow prevention method based on the degree of hazard.

14-8-3 Definitions

A. Contamination: An impairment of the quality of the water which creates an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, waste, etc.

B. Cross-connection: Any unprotected actual or potential connection or structural arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substance other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices through which or because of which backflow can occur are considered to be cross-connections.

1. Direct cross-connection: A cross-connection which is subject to both backsiphonage and backpressure.

2. Indirect cross-connection: A cross-connection which is subject to backsiphonage only.

C. Degree of hazard: Either a pollutional (non-health) or contamination (health) hazard, derived from the evaluation of conditions within a system.

D. Hazard: An actual or potential threat which could damage public water utility infrastructure or negatively affect potable water quality.

1. Plumbing hazard: An internal or plumbing type cross-connection in a consumer's potable water system that may be either a pollutional or a contamination type hazard. Plumbing type cross-connections can be located in many types of structures including homes, apartment houses, hotels and commercial or industrial establishments. Such a connection, if permitted to exist, must be properly protected by an appropriate type of backflow prevention assembly.

2. System hazard: An actual or potential threat of severe danger to the physical properties of the public or the consumer's potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

E. Pollution: An impairment of the quality of the water to a degree which does not create a hazard to the public health but which does adversely and unreasonably affect the esthetic qualities of such waters for domestic use.

14-8-4 Backflow prevention methods or devices

A. A backflow prevention method or device is any assembly or other means that prevents backflow. The following are recognized backflow prevention methods the town may require under section 14-8-2 or 14-8-5.

1. Air gap: A physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel. An approved air gap shall be at least double the diameter of the supply pipe measured vertically above the overflow rim of the vessel, and in no case less than one inch.

2. Reduced pressure principle assembly ("RPA"): An assembly containing two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located resilient seated test cocks and tightly closing resilient seated shut off valves at each end of the assembly.

3. Double check valve assembly ("DCVA"): An assembly composed of two independently acting, approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located re-

silient seated test cocks. This assembly shall only be used to protect against a non-health hazard (i.e., pollutant).

4. Double check-detector assembly ("DCDA"): A specially designed assembly composed of a line-size approved double check valve assembly with a bypass containing a specific water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly shall only be used to protect against a non-health hazard (i.e., pollutant). The DCDA is primarily used on fire sprinkler systems.

5. Pressure vacuum breaker assembly ("PVB"): An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly shall be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard (i.e., pollutant) or a health hazard (i.e., contaminant) under a backsiphonage condition only.

B. The water director may approve a backflow prevention method not listed above if it has received the approval of the foundation for cross-connection control and hydraulic research of the University of Southern California.

Ordinance 2015.015 modified paragraph B by changing "utilities director" to "water director"

14-8-5 Backflow prevention methods required

A. The activities listed below require an RPA at each service connection to the potable water system:

1. Cooling tower, boiler, condenser, chiller, or other cooling system
2. Tank, water vessel, water receptacle, and any other water connection without an approved air gap, including a mobile unit (except emergency vehicles and private swimming pools)
3. Commercial ice maker
4. Water cooled equipment, booster, pump or autoclave
5. Commercial or industrial water treatment facility or water processing equipment
6. Commercial or industrial washer for bottles, bedpans, garbage cans, and the like
7. Commercial or industrial pesticide, herbicide, fertilizer, or chemical applicator
8. Aspirator

9. Commercial dishwasher, food processing or preparation equipment, carbonation equipment, or other food service process
10. Decorative fountain, baptismal, or similar feature where water is exposed to the air (except at a private residence)
11. X ray equipment, plating equipment, or photographic processing equipment
12. Auxiliary water supply or connection to a water supply system other than the town potable water system
13. Recreational vehicle sewer dump station or any other location where potable water may be exposed to bacteria, viruses, or gas
14. Any premises where chemicals, oils, solvents, pesticides, disinfectants, cleaning agents, acids or other pollutants and/or contaminants may come in direct contact with potable water (other than normal, infrequent residential applications)
15. Any material or piping system not approved by the uniform plumbing code or the environmental protection agency for potable water usage
16. Any premises with a cross-connection that requires internal backflow protection under the uniform plumbing code
17. Any on-site water system served by more than one meter
18. Any structure having any portion of the water distribution system located 34 feet or more above, or three or more stories above, where the potable water supply enters the structure
19. Any fire system falling within American water works association classes 3 through 6

B. The activities listed below require the following specified method or methods of backflow prevention at each service connection to the potable water system.

1. Separately metered or unprotected irrigation systems and construction water services: RPA or PVB.
2. Unless exempted by an applicable fire code, any fire system falling within American water works association classes 1 and 2 or constructed of a piping material not approved for potable water pursuant to the UPC as adopted by the town: DCVA or DDCVA
3. Where backflow protection is required on premises containing both industrial and domestic service, backflow protection shall be provided on the fire service connection for the highest degree of hazard affecting either system.

C. When two or more of the activities listed above are conducted on the same premises and serviced by the same service connection or

multiple service connections, the most restrictive backflow prevention method required for any of the activities conducted on the premises shall be required at each service connection. The order of most restrictive to least restrictive backflow prevention methods shall be as follows:

1. Air gap
2. RPA
3. DCVA
4. PVB

14-8-6 Backflow assembly installation requirements

A. Each backflow prevention assembly shall have a diameter at least equal to the diameter of the service connection.

B. Each backflow prevention assembly shall be in an accessible location approved by the water department.

Ordinance 2015.015 modified paragraphs B and E by changing "utilities department" to "water department"

C. Each RPA, PVB, and DCVA backflow prevention assembly shall be installed at least 12 inches above ground.

D. When a continuous water supply is required, two parallel backflow prevention assemblies shall be installed at the service connection to avoid interruption of water supply during backflow prevention assembly testing.

E. No person shall alter, modify, bypass or remove a backflow prevention assembly or method without the approval of the water department.

14-8-7 Installation of backflow prevention assemblies for fire systems

In addition to the requirements of section 14-8-5, the following shall also apply:

A. Fire protection systems consist of sprinklers, hose connections, and hydrants. Sprinkler systems may be dry or wet, open or closed. Systems of fixed-spray nozzles may be used indoors or outdoors for protection of flammable-liquid and other hazardous processes. It is standard practice, especially in towns, to equip automatic sprinkler systems with fire department pumper connections.

B. A meter (compound, detector check) should not normally be permitted as part of a backflow prevention assembly. An exception may be made, however, if the meter and backflow prevention assembly are specifically designed for that purpose.

C. For cross-connection control, fire protection systems shall be classified on the basis of water source and arrangement of supplies as follows:

1. Class 1: direct connections from public water mains only; no pumps, tanks, or reservoirs; no physical connection from other water supplies; no antifreeze or other additives of any kind; all sprinkler drains discharging to atmosphere, dry wells, or other safe outlets.

2. Class 2: same as class 1, except that booster pumps may be installed in the connections from the street mains. Booster pumps do not affect the potability of the system; it is necessary, however, to avoid drafting so much water that pressure in the water main is reduced below 20 psi.

3. Class 3: direct connection from public water supply main plus one or more of the following: elevated storage tanks; fire pumps taking suction from above-ground covered reservoirs or tanks; and pressure tanks (all storage facilities are filled or connected to public water only, the water in the tanks to be maintained in a potable condition.) Otherwise, class 3 systems are the same as class 1 systems. Class 3 systems will generally require minimum protection (approved double check valves) to prevent stagnant waters from backflowing into the public potable water system.

4. Class 4: directly supplied from public mains similar to classes 1 and 2, and with the auxiliary water supply on or available to the premises; or an auxiliary supply may be located within 1,700 feet of the pumper connection. Class 4 systems will normally require backflow protection at the service connection. The type (air gap or RPA) will generally depend on the quality of the auxiliary supply.

5. Class 5: directly supplied from public mains, and interconnected with auxiliary supplies, such as pumps taking suction from reservoirs exposed to contamination, or rivers and ponds; driven wells, mills or other industrial water systems; or where antifreeze or other additives are used. Class 4 and 5 systems normally would need maximum protection (air gap or RPA) to protect the public potable water system.

6. Class 6: combined industrial and fire protection systems supplied from the public water mains only, with or without gravity storage or pump suction tanks. Class 6 system protection would depend on the requirements of both industry and fire protection, and could only be determined by a survey of the premises.

D. When a backflow prevention assembly is required for a water service connection supplying water only to a fire system, the assembly shall be installed on the service line in compliance with standard specifications adopted by the town. (Installation of DCVAs or DDCVAs in a vertical position on the riser may be allowed on fire systems with the approval of the water director.)

Ordinance 2015.015 modified paragraph D by changing "utilities director" to "water director"

14-8-8 Inspections

A customer's water system shall be available at all times during business operations for premises inspection by the water department. The inspection shall be conducted to determine whether any cross-connection or other hazard potentials exist and to determine compliance with this chapter.

Ordinance 2015.015 modified section 14-8-8 by changing "utilities department" to "water department"

14-8-9 Backflow permit required

Ordinance 2015.015 modified section 14-8-9 by changing three instances of "utilities department" to "water department"

A. Installation: Unless included as a component of a building permit for new construction, a separate backflow permit shall be obtained from the water department for the installation of each backflow prevention assembly required by this chapter, including a replacement assembly.

B. Notification: The person performing work authorized by a backflow permit shall notify the water department at least 24 hours before the work is ready to be inspected.

C. Permit suspension or revocation: The water department may suspend or revoke a permit issued in error or in violation of any applicable ordinance or regulation.

14-8-10 Test; maintenance; records

Ordinance 2015.015 modified section 14-8-10 by changing four instances of "utilities department" to "water department"

A. The customer shall test and service backflow prevention assemblies at least once a year. If the testing reveals that the assembly is defective, the customer shall repair, replace, or overhaul the assembly to satisfactory operating condition.

B. If the water department or a customer learns or discovers between tests that an assembly is defective, the customer shall repair, replace, or overhaul the assembly to satisfactory operating condition.

C. The annual testing shall be performed by an individual certified by an entity approved by the water department to test backflow prevention assemblies. The water department will maintain and make available upon request a list of individuals certified to test backflow prevention assemblies.

D. The customer shall maintain records of all test results and all servicing, repairs, overhauls or replacements of the backflow prevention assembly. The records shall be maintained on forms approved by the water department. A copy of the records shall be promptly submitted to the water department after completion of the activity for which the record is made.

E. Fire systems shall not be out of service for more than eight consecutive hours due to testing, maintenance, or repairs. The local fire department shall be notified immediately of any changes in fire service status.

14-8-11 Modification of backflow prevention requirements

Ordinance 2015.015 modified section 14-8-11 by changing "utilities department" to "water department"

The water department may modify the requirements of section 14-8-5 if both of the following apply:

A. Inspection of the customer's system indicates that a backflow prevention method less restrictive than required in section 14-8-5 will provide adequate protection of the public potable water supply from the degree of hazard potential by the customer's water system.

B. The less restrictive method is supported by industry best management practices.

14-8-12 Discontinuance of water service

Ordinance 2015.015 modified section 14-8-12 by changing two instances of "utilities department" to "water department"

A. If a required backflow prevention method is not installed or has been bypassed or removed, or an unprotected cross-connection exists in the customer's water system, the water service to that service connection shall be disconnected. The water department shall take reasonable steps to notify the customer before, and if unable to do so, after the disconnection. The service shall not be restored until the condition is corrected.

B. If a required backflow prevention method is not properly tested or maintained, the water department shall issue a notice to the customer requiring the condition to be corrected within the time specified in the notice, which shall be not less than seven days. If not corrected within the time specified in the notice, water service shall be disconnected. The service shall not be restored until the condition is corrected.

C. Water service to a fire sprinkler system shall not be disconnected unless a cross-connection exists and presents an imminent threat to the public potable water supply.

14-8-13 Fees

The fee for any permit required pursuant to the terms of this chapter shall be established by a fee schedule adopted by the council and amended from time to time.

14-8-14 Violation

It shall be a civil offense, punishable by a $250 fine, for any person to violate any of the requirements of this chapter. Each day a violation continues shall be considered a separate offense.

CHAPTER 14-9. VIOLATIONS

14-9-1 Unauthorized installation and repair prohibited

Town utilities shall be connected only by authorized town employees or agents. It is unlawful for any person to connect to or repair any town utility service.

14-9-2 Turning on water without authority prohibited

It is unlawful for any unauthorized person to connect to the town water utility a water service that the water department has disconnected.

Ordinance 2015.015 modified section 14-9-2 by changing "utilities department" to "water department"

14-9-3 Escaping water prohibited; applicability; exceptions

Ordinance 2012.12 comprehensively revised section 14-9-3, formerly entitled "Escaping water flow or runoff prohibited"

A. No person shall allow water to escape from his or her premises onto public property, such as drainageways, alleys, roads or streets.

B. No person shall allow water to escape from his or her premises onto any other person's property without that other person's express written permission.

C. This section shall apply to all property located within the Marana town limits and to all property located outside the Marana town limits that is served by the Marana water utility.

D. This section shall not apply to the following:

1. Stormwater runoff.
2. Irrigation of landscaping on public property as expressly authorized by the owner of the public property.
3. Reasonable, short-duration runoff from the washing of vehicles.
4. Broken or malfunctioning irrigation equipment, provided that the escape of water is halted promptly and in any event not more than 24 hours after the responsible party has actual notice of the break or malfunction.
5. Disposal of pool or spa backwash water in conformance with section 314 of the 2006 Marana pool and spa code.
6. Any escape of water which is, in the opinion of the investigating code compliance officer, similar in nature or scope to the exceptions set forth in this section.

14-9-4 Interference, tampering with utility facilities

No person shall do any of the following without a permit from the water department or in violation of permit conditions, except under the fire department's direction during a fire:

Ordinance 2015.015 modified the introductory paragraph of section 14-9-4 by changing "utilities department" to "water department"

A. Open or close any fire hydrant or valve connected to the town's water system.

B. Lift or remove any valve, shutoff cover, or manhole lid.

C. Tap into the town water distribution system or wastewater collection system.

D. Otherwise remove water from the town water utility system.

E. Otherwise discharge into the town wastewater collection system.

14-9-5 Damaging or defacing facilities

It is unlawful for any person to destroy, deface, impair, damage, or force open any gate, door, reservoir, building, storage tank, manhole, treatment facility, pump station, fence, fixture, or other property appertaining to town utilities.

14-9-6 Penalties

A. Any violation of this title shall be a civil offense punishable by a fine of not more than $250. This shall be in addition to any other available remedy. Each day a violation continues is a separate offense.

B. Under appropriate circumstances a violation of this title may also be prosecuted under the public health security and bioterrorism preparedness and response act of 2002.

CHAPTER 14-10. INDUSTRIAL WASTEWATER ORDINANCE

Ordinance 2015.004 added chapter 14-10

14-10-1 Purpose and authority

A. The purpose of this chapter is to manage the acceptance of industrial wastewater into the sewerage system to provide for the protection of the town's sanitary system and the process being utilized; groundwater resources; effluent; surface water resources; wastewater sludge disposal methods; and operating personnel through adequate regulation of industrial wastewater discharges including septage.

B. This regulation is accomplished in compliance with a publicly owned treatment works (POTW) pretreatment program mandated by the Arizona pollutant discharge elimination system (AZPDES) permits issued by the Arizona department of environmental quality (ADEQ) to the town in conformity with Arizona administrative code (AAC) R18-9-A905(A)(3)(d) adopting by reference 40 CFR § 122.44.j, A.R.S. § 49-391 and the federal clean water act (CWA), federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 U.S.C. §§ 1251 through 1376); and AAC R18-9-A905(7) and R18-9-A906.

C. It applies to all users discharging non-domestic wastewater to the POTW.

14-10-2 Title of ordinance

The ordinance codified in this chapter shall be known as the "industrial wastewater ordinance."

14-10-3 Administration

The water director shall administer, implement and enforce the provisions of the industrial wastewater ordinance.

Ordinance 2015.015 modified section 14-10-3 by changing "utilities director" to "water director"

14-10-4 Incorporation by reference

The industrial wastewater ordinance codified in this chapter incorporates the federal categorical pretreatment standards codified at 40 CFR § 403.6 and § 405 through 471 adopted by reference in AAC R18-9-A905(A)(8)(b) and R18-9-A905(A)(9).

14-10-5 Definitions

A. The following terms as used in this chapter have the following meanings:

1. Act or "the act": The federal water pollution control act, also known as the clean water act, as amended, 33 U.S.C. § 1251 *et seq*.

2. Authorized representative: A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described in subparagraph 14-10-13 A. 5 below; and

   b. The authorization specifies either a named individual or any individual occupying a named position having responsibility for the overall operation of the regulated facility or activity such as plant manager, operator of a well, a well field superintendent, or a position of equivalent responsibility for environmental matters for the user.

3. Best management practices (BMPs): Include:

   a. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in sections 14-10-6 and 14-10-7 below; and

   b. Treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage; and

   c. For food service facilities, those BMPs outlined in the grease management program (section 14-10-30 below).

4. Biosolids: Sewage sludge, also known as biosolids, is the solid material separated during treatment at a domestic or municipal wastewater treatment plant and treated to stabilize and reduce pathogens.

5. Blowdown: The minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding established limits.

6. Bypass: The intentional diversion of a wastestream from any portion of a treatment facility.

7. Categorical pretreatment standard or categorical standard: Any regulations defining pollutants or setting pollutant discharge

limits promulgated by the EPA in accordance with sections 307(b) and (c) of the clean water act (33 U.S.C. § 1317), that apply to specific categories of users (40 CFR § 403.6 and 405 – 471) adopted by reference in AAC R18-9-A905(A)(8)(b) and R18-9-A905(A)(9). This term includes prohibitive discharge standards under 40 CFR § 403.5, including local limits 40 CFR § 403.5(d).

8. Compliance schedule: Increments of progress, in the form of dates, for the commencement or completion of major events leading to the construction and operation of pretreatment facilities.

9. Composite sample: A combination of no fewer than four individual samples obtained at equal time intervals for 24 hours or for the duration of the discharge, whichever is shorter. In the case of a batch discharge with flow duration of less than 15 minutes, a single grab sample will meet the intent of a composite sample.

10. Days: Any specific reference to a number of days shall be calendar days unless otherwise specified.

11. Department or water department: The Marana water department.

12. Director or water director: The director of the Marana water department or the director's designated representative.

Ordinance 2015.015 modified paragraphs 11 and 12 to reflect the change from "utilities department" to "water department"

13. Discharge: The intentional or unintentional release of a substance into the POTW.

14. Discharge limit: A limit on the amount or concentration of a regulated waste that is discharged to the POTW.

15. Domestic user: Any person who discharges only domestic wastewater.

16. Domestic wastewater: Any water-borne wastes, derived from the ordinary living processes in a residential dwelling unit, of such character as to permit satisfactory disposal without special treatment by conventional POTW processes.

17. Existing source: A source that is not a new source or a new indirect discharger.

18. Fats, oils and grease (FOG): A polar material either liquid or solid composed primarily of fat, oil and grease from animal or vegetable origin. The terms oils and grease, and oil and grease substances shall be included in this definition.

19. Food service facility: Any facility that prepares or packages food or beverages for sale or consumption on or off-site, with the exception of private residences. The term includes, but is not limited to: restaurants, bakeries, grocery stores, cafeterias, food courts, food manufacturers, food packagers, bars, lounges, hotels, movie theaters, sororities, fraternities, social clubs, private clubs, and schools.

20. Grab sample (discrete): An individual sample collected over a period of time not to exceed 15 minutes.

21. Gravity grease interceptor (GGI): A device that is installed in a sanitary drainage system to intercept nonpetroleum fats, oils, and grease from a wastewater discharge and is identified by volume, a minimum 30-minute retention time, baffles, a minimum of two compartments, a minimum total volume of 300 gallons, and gravity separation.

22. Hazardous substance: Any substance meeting the definition of "hazardous substance" found in the comprehensive environmental response, compensation, and liability act (CERCLA) § 101(14) (42 U.S.C. § 9601(14)) including but not limited to, those substances listed at 40 CFR § 300.5.

23. Hazardous waste: As defined in 40 CFR § 261.3.

24. Hydromechanical grease interceptor (HGI): A device installed in a sanitary drainage system to intercept nonpetroleum fats, oils, and grease from a wastewater discharge and is identified by flow rate, separation and retention efficiency. The design incorporates air entrainment, hydromechanical separation, interior baffling, and/or barriers in combination or separately, and one of the following: external flow control with air intake (vent) directly connected; external flow control without air intake (vent) directly connected; without external flow control directly connected; and without external flow control indirectly connected.

25. Indirect discharge: The introduction of pollutants into the POTW by any non-domestic source.

26. Industrial user: A source of indirect discharge, the introduction of pollutants into the POTW by any non-domestic source.

27. Industrial wastewater: Wastewater generated in a commercial or industrial process.

28. Industrial wastewater discharge permit: An individual control mechanism, authorization letter, or contract issued by the director, which allows a discharge into the POTW of industrial wastewater.

29. Interference: A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

    a. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

    b. Therefore is a cause of a violation of any requirement of the POTW's AZPDES permit, including an increase in the magnitude or duration of a violation or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued hereunder (or more stringent state or local regula-

tions): § 405 of the clean water act, the solid waste disposal act, clean air act, toxic substances control act, and the marine protection, research and sanctuaries act.

30. Liquid waste hauler: Any person carrying on or engaging in the vehicular transport of wastewater or wastes as part of, or incidental to, any business for the purpose of discharging such waste into the POTW.

31. New source:

    a. Any building, structure, facility, or installation from which there is (or may be) a Discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

        i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

        ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

        iii. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these sources are substantially independent, factors such as the extent to which the new facility is integrated with the existing facility, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

    b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 14-10-5 A. 31. a. ii or iii above but otherwise alters, replaces, or adds to existing process or production equipment.

    c. Construction of a new source as defined under this paragraph has commenced if the owner or operator has done either of the following:

        i. Begun, or caused to begin, as part of a continuous onsite construction program

            a) any placement, assembly, or installation of facilities or equipment; or

            b) significant site preparation work including clearing, excavation, or removal of existing buildings, struc-

tures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

ii. Entered into a binding contractual obligation for the purchase of facilities or equipment intended to be used within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

32. Oil and sand interceptor: A tank designed to intercept and collect sand, grit, petroleum, oil, and grease, and prevent their entry into the sanitary sewer system.

33. Operator: A person who operates a business and therefore controls the operation and indirect discharge.

34. Owner: The property or business owner.

35. Pass through: A discharge that exits the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's AZPDES permit, including an increase in the magnitude or duration of a violation.

36. Person: An individual, firm, company, association, partnership, corporation, joint stock company, trust, estate, municipality, state or federal agency, or an agent or employee of any of the foregoing.

37. Petroleum, oil and grease (POG): A nonpolar material either liquid or solid and is composed primarily of petroleum or mineral origin.

38. Pollutant: Something that causes pollution, including but not limited to: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste, pesticides, and certain characteristics of wastewater (pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor) discharged into the POTW.

39. Pollution: The man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

40. Pretreatment: The reduction of the amount of industrial wastewater, the elimination of industrial wastewater, or the alteration of the nature of industrial wastewater properties in wastewater prior to or in lieu of discharging or otherwise introducing such waste into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes,

process changes or by other means, except by dilution as a substitute for Pretreatment.

41. Pretreatment standards: Prohibited discharge standards, categorical pretreatment standards, and local limits.
42. Publicly owned treatment works (POTW): All of the wastewater collection, treatment, and disposal systems that are owned, operated or contracted in part or in whole by the town of Marana, Arizona.
43. Representative sample: A sample portion of material or wastestream that is as nearly identical in content and consistency as possible to that in the material or industrial Wastewater being sampled.
44. Satellite collection system: Any upstream collection system under the ownership and operational control of a separate jurisdictional government agency or native American nation.
45. Septage: An anaerobic wastewater originating from a residential, commercial, or industrial facility that is not a hazardous waste and is compatible with the biological Wastewater treatment plant process.
46. Septage discharge permit: An individual control mechanism, authorization letter, or contract issued by the director, which allows a discharge into the POTW of septage.
47. Significant industrial user:
    a. Except as provided for in subparagraphs b and c of this definition, an industrial user that:
        i. Is subject to categorical pretreatment standards;
        ii. Discharges an average of 25,000 gallons per day or more of process wastewaters (excluding sanitary, non-contact cooling and boiler blowdown wastewater);
        iii. Contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW; or,
        iv. Has a potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR § 403.8(f)(6).
    b. The director may determine that an industrial user subject to categorical pretreatment standards under § 403.6 and 40 CFR Chapter I, subchapter N is a non-significant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater unless specifically included in the pretreatment standard) and the following conditions are met:

i. The industrial user, prior to the director's finding, has consistently complied with all applicable pretreatment standards and requirements;

ii. The industrial user annually submits the certification statement required in 40 CFR § 403.12(q) together with any additional information necessary to support the certification statement; and,

iii. The industrial user never discharges any untreated concentrated wastewater.

c. Upon finding that a user meeting the criteria in subparagraph a ii of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the director may at any time, on the director's own initiative or in response to a petition received from an industrial user, and in accordance with the procedures in 40 CFR § 403.8(f)(6), determine that such user should not be considered a significant industrial user.

48. Significant noncompliance: An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined in 40 CFR § 403.3(l).

b. Technical review criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits as defined in 40 CFR § 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, and FOG, and 1.2 for all other pollutants except pH).

c. Any other violation of a pretreatment standard or requirement as defined by 40 CFR § 403.3(l) (daily maximum, longer-term average, instantaneous limit, or narrative standard) that the director determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public).

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the director's exercise of emergency au-

thority under section 14-10-21 below to halt or prevent such a discharge.

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

f. Failure to provide, within 45 days after due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.

g. Failure to accurately report noncompliance.

h. Any other violation or group of violations, which may include a violation of best management practices, which the director determines will adversely affect the operation or implementation of the local pretreatment program.

49. Slug load: Any industrial wastewater discharged at a volume or concentration that will cause interference or upset of the POTW; any sample, the concentration of which exceeds five times the allowable discharge limitation; or any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

50. Solid waste: any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the atomic energy act of 1954, as amended (68 Stat. 923).

51. Source: Any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

52. Spill protection facilities: A physical barrier that provides protection from accidental discharge or spill into the POTW of prohibited, hazardous, or other industrial Wastewaters that are regulated through this ordinance.

53. Toxic pollutant: Any pollutant listed as toxic under § 307(a)(1) of the CWA of 1977, 40 CFR 122.2 definitions, or, in the case of "sludge use or disposal practice," any pollutant identified in regulations implementing § 405(b) of the CWA.

54. Upset: An exceptional incident in which there is unintentional and temporary noncompliance with discharge limits because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by opera-

tional error, improperly designed treatment facilities, inadequate treatment facilities, and lack of preventive maintenance or careless or improper operation.

55. User: An industrial user or a significant industrial user.

56. Wastewater: The liquid and water-carried industrial or domestic waste from dwellings, commercial establishment, industrial facilities, and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

57. Wastewater sludge: The solids or semisolids, residues, and precipitate separated from or created in wastewater.

14-10-6 Regulated wastes—general prohibitions

A. No person shall discharge or cause to be discharged to any sewer that directly or indirectly connects to the POTW, any waste which:

1. may have an adverse or harmful effect on the POTW, POTW personnel or equipment, POTW effluent quality, or public or private property;

2. may otherwise endanger the public, the environment or create a public nuisance;

3. exceeds limitations as set by this chapter or the director;

4. causes the POTW to violate state or federal regulations or permits.

B. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.

C. Prohibited wastes described in this chapter shall not be discharged to the POTW. Included within the prohibition is the discharge of any wastes that adversely affect water reclamation, water reuse, sludge disposal, or air quality.

D. The director, in determining the acceptability of specific wastes, shall consider the nature of the waste and the adequacy and nature of the collection, treatment and disposal system available to accept the waste.

E. The director may establish discharge limitations for industrial users that have a reasonable potential to degrade wastewater quality to the level that it prevents or inhibits the POTW's efforts to reclaim the water, for sludge disposal, or causes any unusual operation or maintenance problems in the POTW.

F. The director may grant a variance from this chapter for any technological standard as outlined in section 14-10-9 below.

G. The current water quality standards for phenolics, codified at AAC R18-11-101 through 304, are suspended, pending further administrative rule making proceedings by the director of ADEQ, and shall not be enforced against any user pursuant to A.R.S. title 49. Until such further administrative rule making proceedings are concluded, no person shall discharge phenol compounds to surface waters at levels or in combinations sufficient to be toxic to humans or local animal, plant or aquatic life. Phenol (total) is an indicator and, in and of itself, is not a violation unless there is a corresponding violation of the appendix A numeric water quality standards for surface waters table 1, water quality criteria by designated use, found in AAC R18-11.

14-10-7 Prohibited wastes

Except as provided elsewhere in this Article, prohibited wastes shall include:

A. Industrial wastewater that may be adverse or harmful to the POTW, the sewerage conveyance system, POTW personnel, POTW equipment, or POTW effluent quality, including, but not limited to:

1. Any gasoline, benzene, naphtha, solvent, fuel oil or any other liquids, solids, or gases which may create or tend to create a fire or explosion hazard in the POTW, or may be injurious in any other way to the POTW, including, but not limited to, wastestreams with a closed cup flash point of less than 140° F using the test method specified in 40 CFR § 261.21;

2. Any solids or viscous substances of such size or in such quantities that they may cause obstruction to flow in the sewer or be detrimental to POTW operations. These objectionable substances include, but are not limited to, asphalt, dead animals, ashes, sand, mud, straw, industrial process shavings, metal, glass, rags, feathers, grass clippings, tar, plastic resins, wood, blood, manure, grease, bones, hair, fleshings, entrails, paper cups, paper dishes, milk cartons or other similar paper products, either whole or ground;

3. Any amounts of petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that would cause or tend to cause interference or pass through;

4. Any biodegradable fats, oils, or greases, such as lard, tallow or vegetable oil, in concentrations that may cause adverse effects on the POTW;

5. Any wastes containing a concentration in excess of the discharge limitations specified in section 14-10-8 below or in any permit;

6. Any waste in such concentration or volume that is toxic to humans, animals, and the local environment or to biological

Wastewater treatment processes or which causes interference, upset, or pass-through at the POTW;

7. Any waste having a pH lower than 5.0 or greater than 11 standard units; or which causes incrustations, scale, or precipitates on sewer walls; or having any corrosive or detrimental characteristics that may cause injury to the POTW or service and maintenance personnel;

8. Any waste having a temperature of 140° F or higher at the discharge point, or which causes the POTW influent to exceed 104° F;

9. Any waste containing substances that may precipitate, solidify, gel, polymerize, or become viscous under conditions normally found in the sewerage system, causing reduced capacity;

10. Any waste producing discoloration of treatment plant effluent, which may violate water quality standards;

11. Any solid waste, other than that normally found in domestic wastewater, that is not ground sufficiently to pass through a 3/8-inch mesh screen;

12. Any waste containing detergents, surface active agents, or other substances, which may cause excessive foaming in the sewerage system;

13. Any sludge from a water or wastewater treatment plant not owned or operated by the town. The director may issue an industrial wastewater discharge permit for a user to discharge this substance upon a finding that the discharge will not adversely affect the operation of the POTW and that the pollutant concentrations do not exceed those in the sludge produced by the POTW. No such permit shall be issued that would violate any other federal, state or local rule, regulation or standards;

14. Any hazardous wastes discharged to any portion of the POTW by truck, rail or dedicated pipeline;

15. Any trucked or hauled pollutants except at discharge points designated within the POTW by the director, or septage receiving facility;

16. Any slug load; or,

17. Pollutants, including oxygen-demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either alone or in combination with other pollutants, may cause interference with the POTW.

B. Industrial wastewater which may be dangerous to the public, the environment, or which creates a public nuisance, including, but not limited to:

1. Radioactive materials;

2. Any waste containing toxic or poisonous solids, liquids or gases in such quantities that, alone or in combination with other waste substances, may create a hazard for humans, animals, or the local environment; interfere detrimentally with wastewater treatment processes; cause a public nuisance; or cause any condition requiring emergency response in the POTW;
3. Any pollutants which can result in the formation or presence of toxic gases, vapors, or fumes within the POTW that may cause or tend to cause worker health and safety problems;
4. Any strongly odorous waste or waste tending to create odors;
5. Any industrial wastewater in such concentration or volume that may cause failure in effluent toxicity testing; or,
6. Any recognizable portions of the human anatomy.

C. Industrial Wastewater that may cause dilution or POTW hydraulic loading problems, including, but not limited to:

1. Any water added for the purpose of diluting wastes which would otherwise exceed maximum concentration limits;
2. Any rainwater, stormwater runoff, groundwater, street drainage, roof drainage, yard drainage, water from yard fountains, ponds, lawn sprays or uncontaminated water;
3. Any deionized water, steam condensate or distilled water in amounts which could cause problems with hydraulic loading;
4. Any blowdown or bleed water from heating, ventilating, air conditioning or other evaporative systems exceeding one-third of the makeup water in a 24-hour period; or,
5. Any single pass cooling or heating water.

14-10-8 Discharge limits

A. The amount and nature of allowable discharges will be specified in the permit, and the characteristics of any discharge shall not exceed those specified in this chapter.

1. Discharge limits for regulated substances—composite sample:

	Substance	Limit (mg/l)
a.	Arsenic – total	0.4
b.	Barium – total	10.0
c.	Boron – total	5.0
d.	Cadmium – total	0.10
e.	Chromium – total	1.20
f.	Copper – total	1.2

	Substance	Limit (mg/l)
g.	Lead – total	0.5
h.	Manganese – total	83.0
i.	Mercury – total	0.05
j.	Nickel – total	3.98
k.	Silver – total	5.0
l.	Zinc – total	2.6
m.	Cyanide – total	0.6[1]
n.	Selenium – total	0.5
o.	Oil and grease	200[1]
p.	Sulfide – total	2.0[1]
q.	Chlorine – total	10.0[1]
[1]	Based on a grab sample	

2. Discharge limits based upon fume toxicity (mg/l) (based on grab samples):

	Compound	Limit (mg/l)
a.	Acrylonitrile	1.24
b.	Benzene	0.13
c.	Bromomethane	0.002
d.	Carbon disulfide	0.06
e.	Carbon tetrachloride	0.03
f.	Chlorobenzene	2.35
g.	Chloroethane	0.42
h.	Chloroform	0.42
i.	Methylchloride (chloromethane)	0.007
j.	1,2-Dichlorobenzene	3.74
k.	1,4-Dichlorobenzene	3.54
l.	1,1-Dichloroethane	4.58
m.	1,2-trans-Dichloroethene	0.28

	Compound	Limit (mg/l)
n.	1,2-Dichloropropene	3.65
o.	1,3-Dichloropropene	0.09
p.	Ethylbenzene	1.59
q.	1,2-Dichloroethane (ethylene dichloride)	1.05
r.	Heptachlor	0.003
s.	Hexachloro-1,3-butadiene	0.0002
t.	Hexachloroethane	0.96
u.	Methyl ethyl ketone (2-butanone) (MEK)	249.0
v.	Methylene chloride (dichloromethane)	4.15
w.	Tetrachloroethylene	0.53
x.	Toluene	1.35
y.	1,2,4-Trichlorobenzene	0.43
z.	1,1,1-Trichloroethane	1.55
aa.	Trichloroethylene	0.71
bb.	Vinyl chloride	0.003
cc.	1,1-dichloroethylene (vinylidene chloride)	0.003
dd	Aroclor 1242	0.01
ee.	Aroclor 1254	0.005

14-10-9 Variances

A. The Director may allow variances in this Ordinance when strict adherence would less adequately provide for the protection of the POTW. The variance shall secure substantially the objectives of the portion of the Ordinance to which the variance is granted. Variances may be allowed when:

1. A substitution for or change in a standard material results in the use of a material which can be clearly demonstrated to be of equal or superior quality;

2. A strict adherence to a design standard or standard details would be impractical or impossible because of field conditions

such as existing utility facilities or incompatible existing sewerage facilities; or

3. An emergency situation prohibits strict adherence to a design standard or standard detail.

14-10-10 Additional discharge limits

A. Quantitative or other limitations intended for application to general users and not for inclusion only on individual permits, shall be proposed to the council by the director after a public hearing. The director shall provide notification at least 45 days prior to the public hearing by publication in a newspaper of general circulation in the town and by a written notice to any person who has filed a request for notification with the director. The notice shall contain a brief description of the nature of the proposal to be considered, the time and place of the hearings, and the projected date that a proposal shall be made to the council for approval of discharge limits.

B. When the director determines that a user is discharging to the POTW any waste not previously identified as prohibited in such amounts as may interfere, pass through, or upset the operation of the POTW, the director shall: (1) advise the user of the impact of the contribution on the POTW; (2) develop a discharge limitation for such user to correct the interference with the POTW; and (3) require the user to comply with the discharge limits.

14-10-11 Health care related wastes

A. Regulated facilities. Hospitals, clinics, offices of medical doctors and dentists, mortuaries, morgues and long-term health care facilities:

1. May Discharge through a waste grinder after director approval as a condition of the industrial wastewater discharge permit. The installation will have inlet size and design features suitable for its intended use and constructed such that all particles pass through a maximum 3/8-inch mesh opening;

2. Shall not Discharge to the sewer by any means:

a. Solid wastes generated in the rooms of patients who are isolated because of a suspected or diagnosed communicable disease;

b. Recognizable portions of the human anatomy;

c. Equipment, instruments, utensils and other materials of a disposable nature that may harbor or transmit pathogenic organisms and that are used in the rooms of patients having a suspected or diagnosed communicable disease which by the nature of the disease is required to be isolated by public health agencies;

d. Wastes excluded by other provisions of this chapter.

B. Limit of authority. Nothing in this section shall be construed to limit the authority of public health authorities to define wastes as being infectious and, with the concurrence of the director, to require that they will not be discharged to the POTW.

14-10-12 Septage disposal

A. Approval to discharge

1. No hauler shall discharge septage to the POTW without first obtaining a septage discharge permit.
2. Haulers of septage will discharge at the town POTW site designated in their permit.

B. Discharge requirements

1. The hauler shall use the POTW septage tracking form specified in the permit to record each load that is delivered to the POTW.
2. Prior to discharge of septage, the hauler shall allow the director to sample and analyze the contents to ensure compliance with discharge limits and requirements. The hauler shall provide a suitable sampling tap or equivalent appurtenance. The hauler may be required to suspend discharging septage until the analysis is complete. The director shall refuse authorization to discharge any septage that does not provide for the protection of the POTW, groundwater resources, effluent and wastewater sludge disposal methods, and operating personnel.

C. Sanitation and safety standards. The hauler shall discharge wastes in way that keeps the area clean and free from spills or other debris, and shall promptly clean up all spills.

D. General requirements and applicability.

1. The hauler is responsible for protecting the POTW by ensuring that the hauled septage is not hazardous waste and is compatible with the biological wastewater treatment process.
2. The hauler shall comply with all requirements, rules, and regulations established by public health and environmental regulatory agencies.

E. Septage discharge permit application.

1. A septage discharge permit is required to discharge hauled septage waste into the POTW.
2. The permit application, or reapplication, shall contain at least the following information:
   a. A completed septage discharge permit application/ questionnaire form signed and dated by a person described in subparagraph 14-10-13 A. 5 below or by a duly authorized representative;

b. Type of waste sources serviced: Domestic/commercial, industrial, septic tank, cesspool, chemical toilet, airline sewage cart, or grease traps;

c. Vehicle information including year, make, model, license plate and tank capacity information for each vehicle in the fleet that will be carrying septage to the septage receiving station.

3. The application fee for a septage wastewater discharge permit application is in the amount set forth in the current comprehensive fee schedule, and shall be paid to the town at the time of application.

4. The director may require the submittal of other information to assist in the determination of permit requirements.

5. The director shall issue a written or electronic notice of administrative completeness or deficiencies to a permit applicant within 15 business days. If the director determines that the application is not administratively complete, the director shall include a comprehensive list of the specific deficiencies. The administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the director receives the missing information from the applicant. The director may issue an additional written or electronic notice of administrative completeness or deficiencies based on the applicant's submission of missing information. Once the application is administratively complete, the substantive review time frame begins and the director shall respond to permit applications within 30 business days of receipt of a completed permit application. During the substantive review time frame, the director may make one comprehensive written or electronic request for additional information. The substantive review time frame and overall time frame are suspended from the date the request is issued until the date that the town receives the additional information from the applicant. The total overall timeframe for the permit application process shall be 45 business days not counting time response time by the applicant. By mutual written or electronic agreement, the director and an applicant for a permit may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed 25% of the overall time frame.

F. All users shall reply to the director and submit any permit application or questionnaire forms and any other related lists, plans, analyses, flow information or other materials, as requested by the director, within 30 days of receipt of any such forms or requests unless given an extension by the director.

G. Permit decisions may be appealed to the director by responding in writing to the director within 33 days of the issuance of the permit

decision. The appeal should include a detailed description of the portion of the permit and/or permit decision the applicant is appealing and their justification for the requested revision of the permit. The director shall respond to the applicant in writing within 30 business days.

H. After an appeal to the director, an appeal may be made to the council by filing a request with the town clerk.

14-10-13 Industrial wastewater discharge permit application

A. A permit is required to discharge industrial wastewater.

1. No person shall discharge or cause to be discharged any industrial wastewater directly or indirectly to the POTW without first obtaining an industrial wastewater discharge permit. The director shall set requirements at least as stringent as applicable state or federal rules, regulations or pretreatment standards.

2. A permit shall be required for all food service facilities. Facilities shall be responsible for ensuring that the discharges from their operations are in compliance with the provisions set forth in this chapter. Any food service facility found to be in violation with any part of this chapter may be required to obtain an industrial wastewater discharge permit and correct the deficiencies.

3. The director shall require a separate permit for each connection to the POTW.

4. The director may require a separate permit from each tenant as well as the owner or manager of any multi-tenant property, including, but not limited to: shopping centers, medical centers, and industrial or commercial parks.

5. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

i. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

ii. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations; to initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; to ensure that the necessary systems are estab-

lished or actions taken to gather complete and accurate information for control mechanism requirements; and to whom authority to sign documents has been assigned or delegated in accordance with corporate procedures.

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or,

c. For a municipality, state, federal or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

i. the chief executive officer of the agency, or,

ii. a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

6. All reports required by permit and other information requested by the director shall be signed by a person described in subparagraph 14-10-13 A. 5 above or by a duly authorized representative of that person. If an authorization under this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph 14-10-13 A. 5 above must be submitted to the director prior to or together with any reports to be signed by the individual.

7. Any person signing a document shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

B. Application submittal: All users.

1. All users required to obtain a permit shall file with the director an application in the form prescribed by the director and accompanied by the permit application fee.

2. The permit application, or reapplication, shall contain at least the following information:

a. A completed industrial wastewater discharge permit application/questionnaire form signed and dated by a person

described in subparagraph 14-10-13 A. 5 above or by a duly authorized representative;

b. Any drawing, plan, diagram, site plan, or plumbing plan of the property requested by the director showing accurately all plumbing and sewerage necessary to satisfy permitting requirements;

c. Wastewater discharge flow information and water consumption information;

d. The north American industry classification system (NAICS) code and standard industrial classification (SIC) code required by state law or 40 CFR which best characterizes the industrial discharge activities undertaken on the property;

e. Identification and listing of all hazardous materials or hazardous substances that are, or are expected to be generated, consumed, used or stored on the property including the quantities thereof, storage and spill prevention facilities, and method of disposal for any such materials or wastes.

3. In addition to the information in subparagraph 14-10-13 B. 2 above, significant industrial users shall provide:

a. Chemical analysis of any industrial wastewater constituent that may be discharged to the POTW for the determination of permit requirements;

b. Identification and listing of all environmental control permits held by the applicant that are applicable to the property or to any operation, process, or facility located on the property;

c. Any applicable U.S. EPA categorical determination made by the applicant using 40 CFR § 405 to 471 as adopted in AAC R18-9-A905(A)(9). If the applicant is regulated under the above provisions, the applicant shall identify all applicable pretreatment standards (for existing or new sources as appropriate) by section. If the applicant determines that it is not so regulated it shall so state. At least 90 days prior to commencement of discharge, new sources shall submit a report which contains the information in a baseline monitoring report as required by 40 CFR § 403.12(b) as adopted in AAC R18-9-A905(A)(8)(b). Within 90 days following commencement of the introduction of wastewater into the POTW, new sources shall submit a 90-day compliance report as required in 40 CFR § 403.12(d) as adopted in AAC R18-9-A905(A)(8)(b).

4. The director may require the submittal of other information to assist in the determination of permit requirements.

5. The director shall issue a written or electronic notice of administrative completeness or deficiencies to a permit applicant within 15 business days.

a. If the director determines that the application is not administratively complete, the director shall include a comprehensive list of the specific deficiencies.

b. The administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the director receives the missing information from the applicant.

c. The director may issue an additional written or electronic notice of administrative completeness or deficiencies based on the applicant's submission of missing information.

d. Once the application is administratively complete, the substantive review time frame begins and the director shall respond to permit applications within 30 business days of receipt of a completed permit application.

e. During the substantive review time frame, the director may make one comprehensive written or electronic request for additional information.

f. The substantive review time frame and overall time frame are suspended from the date the request is issued until the date that the county receives the additional information from the applicant.

g. The total overall timeframe for the permit application process shall be 45 business days not counting time response time by the applicant.

h. By mutual written or electronic agreement, the director and an applicant for a permit may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed 25% of the overall time frame.

6. All users shall reply to the director and submit any permit application or questionnaire forms and any other related lists, plans, analyses, flow information or other materials, as requested by the director, within 30 days of receipt of any such forms or request unless the director grants an extension.

7. Permit decisions may be appealed to the director by responding in writing to the director within 33 days of the issuance of the permit decision. The appeal should include a detailed description of the portion of the permit and/or permit decision the applicant is appealing and their justification for the requested revision of the permit. The director shall respond to the applicant in writing within 30 business days.

8. After an appeal to the director, an appeal may be made to the council by filing a request with the town clerk.

14-10-14 Industrial wastewater discharge permit fees

Fees in amounts set forth in the comprehensive fee schedule shall be paid to the town upon application for, or renewal or modification of, all wastewater discharge permits.

14-10-15 General requirements

A. State and federal requirements. All users shall comply with all applicable federal rules, regulations or pretreatment standards, or any applicable more stringent state or local rules, regulations or standards, whether or not contained in a permit.

B. Separation of wastes. All domestic wastewater from restrooms, showers, drinking fountains, and similar sources shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through any required pretreatment facility or device and the industrial wastewater monitoring facility. The director may waive this condition if the combined wastewater formula at paragraph 14-10-15 E is utilized.

C. Sample location. As a condition of the permit, all discharged industrial wastewater shall pass through a designated sampling location where the director has unrestricted physical access.

D. Accidental discharge protection (spill protection and slug discharge control). Each user shall provide and maintain, at the user's expense, protection from the accidental discharge or spill into the POTW of prohibited, hazardous or other waste materials which are regulated through this chapter. No user shall commence discharge to the POTW without accidental discharge protection facilities or procedures. The user shall notify the POTW immediately of any changes at its facility affecting potential for a slug discharge.

E. Combined wastewater formula.

1. The combined wastewater formula will be used by users that mix regulated wastewaters with other regulated or unregulated wastewaters prior to pretreatment. The alternative concentration limits shall be derived using the formula found in 40 CFR § 403.6(e):

$$C_T = \left(\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

Where:

C_T = the alternative concentration limit for the combined wastestream.

C_i = the Categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i.

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (a) boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to pretreatment, with an industrial user's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; or (b) sanitary wastestreams where such are not regulated by a categorical pretreatment standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle (568 F.2d 1369 (DC Cir. 1977)) consent decree for one or more of the following reasons: (1) the pollutants of concern are not detectable in the effluent from the industrial user; (2) the pollutants of concern are present only in trace amounts and are neither causing or likely to cause toxic effects; (3) the pollutants of concern are present in amount too small to be effectively reduced by technologies known; or, (4) the wastestreams contain only pollutants which are compatible with the POTW.

F_T = the average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i and F_D and unregulated streams).

N = the total number of regulated streams.

2. An alternative discharge limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants. As a result, the combined wastewater formula cannot be used, and wastestreams must be segregated.

F. Duty to reapply. The user shall submit a new application with the appropriate fee 90 days before the existing permit expires.

G. Duty to comply.

1. The user must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of this chapter and is grounds for enforcement action.

2. The user shall comply with effluent standards or prohibitions established under § 307(a) of the clean water act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

H. Need to halt or reduce activity not a defense. It shall not be a defense for a user in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

I. Duty to mitigate. The user shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

J. Proper operation and maintenance. The user shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the user to achieve compliance with the conditions of a permit or this chapter. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a user only when the operation is necessary to achieve compliance with the conditions of the permit.

K. Duty to provide information. The user shall furnish within 30 days, any information the director may request to determine whether cause exists for modifying, revoking and reissuing, or to determine compliance with the permit. The user shall also furnish to the director upon request, copies of records required to be kept by the permit.

L. Inspection and entry.

1. Upon the town's compliance with A.R.S. § 9-833, the user shall allow the director to:

a. Enter upon the user's premises, at reasonable times, where a regulated facility or activity is located or conducted, or where records must be kept under conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under conditions of the permit.

c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this chapter, any substances or parameters at any location.

e. The user has the right to a split or duplicate of any samples taken during the inspection if the split or duplicate of any

samples, where appropriate, would not prohibit an analysis from being conducted or render an analysis inconclusive.

2. The director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

3. The director may require the User to install monitoring equipment as necessary.

   a. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense.

   b. All devices used to measure wastewater flow and quality shall be calibrated based on manufacturer recommendation to ensure their accuracy.

4. Unreasonable delays in allowing the director access to the user's premises shall be a violation of this chapter.

5. Where a user has security measures in place which require proper identification and clearance before entry onto its premises, the user shall make necessary arrangements with its security group so that, upon presentation of suitable identification, the director shall be permitted to enter without delay for the purposes of performing inspections and monitoring.

M. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the permitted activity.

2. The user shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, documentation associated with best management practices (BMPs), copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.

3. Records of monitoring information shall include all of the following:

   a. The date, exact place, and time of sampling or measurements.

   b. The individual(s) who performed the sampling or measurements.

   c. The date(s) analyses were performed.

   d. Laboratory(ies) which performed the analyses.

   e. The analytical techniques or methods used.

   f. Chain of custody forms.

g. Any comments, case narrative or summary of results produced by the laboratory. These comments should identify and discuss QA/QC analyses performed concurrently during sample analyses and should specify whether analyses met project requirements and 40 CFR 136. The summary of results must include information on initial and continuing calibration, surrogate analyses, blanks, duplicates, laboratory control samples, matrix spike and matrix spike duplicate results, sample receipt conditions, holding times and preservation.

h. The results of such analyses.

4. Collection, preservation and analysis of compliance samples must be conducted according to test procedures approved by 40 CFR § 136 as adopted in AAC R18-9-A905(A)(7), unless other test procedures have been specified in the permit.

a. Except as indicated in subparagraphs b and c below and unless time-proportional composite or grab sampling is approved by the director (sampling must be representative of the discharge), the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques.

b. Samples for oil and grease, temperature, pH, cyanide, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Samples collected may be composited prior to the analysis as follows: for cyanide, and sulfides, the sample may be composited in the laboratory or in the field; for volatile organic compounds and oil and grease, the samples may be composited in the laboratory.

c. For sampling required in support of baseline monitoring and 90-day compliance reports in 40 CFR § 403.12(b) and (d), a minimum of four grab samples must be used for pH, cyanide, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For reports required by 40 CFR § 403.12(e) and (h), the user is required to collect the number of grab samples necessary to assure compliance with applicable pretreatment standards and requirements.

5. All compliance samples shall be analyzed by an environmental laboratory licensed in conformance with Arizona revised statutes title 36, chapter 4.3, article 1 (A.R.S. § 36-495 through -495.16).

N. Compliance schedule. The director shall require the development of a compliance schedule by users for the installation of technology required to meet applicable categorical pretreatment standards and

requirements. When a new requirement is placed upon a user, a compliance schedule may be established to allow the user to come into compliance.

O. Signatory requirement. All applications, reports, or information submitted to the director shall be signed and certified by a person meeting the requirements of subparagraph 14-10-13 A. 5 above or by an authorized representative.

P. Re-opener clause. A permit shall be modified to incorporate an applicable standard or limitation promulgated or approved after the permit is issued if that standard or limitation is more stringent than the limitation in the permit, or controls a pollutant not limited in the permit.

Q. Minor modification of permit. The director may modify a permit to make corrections or allowances for changes in the permitted activity listed in this paragraph. Any permit modification not processed as a minor modification under this paragraph must be made for cause. Minor modifications may only:

1. Correct typographical errors;
2. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
3. Allow for a change in ownership or operational control of a facility (after notice to the director) where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new user has been submitted to the director; or,
4. Implement the compliance schedule for a user which is a new source. No such change shall affect a user's obligation prior to discharge.

R. Major modification or termination of permit. The director may modify or terminate a permit for cause. The following are causes for modifying or terminating a permit during its term, or for denying a permit renewal application:

1. Significant noncompliance (as defined in paragraph 14-10-5 A. 48 above) by the user with any condition of the permit;
2. The user's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the user's misrepresentation of any relevant facts at any time;
3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by modification or revocation; or,

4. A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit.

S. Availability of reports. Except for data determined to be confidential by 40 CFR § 2.201 subpart B, all reports prepared in accordance with the terms of the permit shall be available for public inspection at the water department after director approval. Permit applications, permits, and effluent data shall not be considered confidential. Environmental audit reports prepared in accordance with A.R.S. § 49-1401 *et seq*. shall be held as confidential and not disclosed as provided for in A.R.S. § 49-1404.

Ordinance 2015.015 modified paragraph S by changing "utilities department" to "water department"

T. Removed substances. Regulated wastes or other pollutants removed in the course of treatment or control of wastewaters shall be properly disposed of in a manner such as to prevent any pollutant from such materials from entering the POTW.

U. Severability of permit conditions. The provisions of the permit are severable, and if any provision of the permit, or the application of any provision of the permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of the permit, shall not be affected thereby.

V. Civil and criminal liability. Except as provided in permit conditions on by-pass and upset, nothing in the permit shall be construed to relieve the user from civil or criminal penalties for noncompliance.

W. Permit actions. The permit may be modified, suspended or revoked for cause. The filing of a request by the user for a permit modification, reissuance, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

X. Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

Y. Comment period. The permit holder has 33 days from the date the permit is mailed to the permit holder to comment in writing to the director.

Z. Permit duration. Permits shall be issued for a specified time period, not to exceed five years.

14-10-16 Notification requirements

A. Notification of accidental discharge, spill, slug loading, bypass, upset or other noncompliance.

1. Notification of bypass, upset, accidental discharge, spill, or slug load.

a. In the event of bypass, upset, accidental discharge, spill, or slug load that may endanger health, the environment, or the POTW, the user shall notify the water department by telephone immediately upon discovery of the occurrence.

Ordinance 2015.015 modified subparagraphs a and b by changing "utilities department" to "water department"

b. The user shall notify the water department by telephone within 24 hours after the user becomes aware of that any discharge exceeds any effluent limitation in the permit, or exceeds a maximum discharge limitation for any of the pollutants listed in this chapter.

c. The notification shall include location of discharge, type of waste, discharge concentration and volume, and corrective actions taken by the user.

d. Within five days following initial notification, the user shall submit to the director a detailed written report containing such information and describing the cause of the discharge and measures to be taken by the user to prevent similar future occurrences. This notification shall not relieve the user of any expense, loss, damage, fines, civil penalties or other liability which may be incurred as a result of damage to the POTW or any other person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

e. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the exceedance.

2. Other noncompliance notification. The user shall report all instances of noncompliance at the time monitoring reports are submitted. The reports shall contain the information listed in subparagraphs 14-10-16 A. 1. c and d above.

3. Other information. Immediately upon discovery, the user shall promptly submit facts or information it failed to submit or incorrectly submitted in a permit application or in any report to the director.

B. Bypass.

1. Bypass not exceeding limitations: The user may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is also for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subparagraphs 14-10-16 B. 3 and 4 below.

2. Notice

a. Anticipated bypass: If the user knows in advance of the need for a bypass, it shall submit prior notice, at least ten days before the date of the bypass.

b. Unanticipated bypass: The user shall submit notice of an unanticipated bypass as required in paragraph 14-10-16 A. 1 above.

3. Prohibition of bypass: Bypass is prohibited, and the director may take enforcement action against a user for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can be reasonably expected to occur in the absence of a bypass. Severe property damage does not mean economic loss by delays in production;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities or retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

c. The user submitted notices as required under subparagraph 14-10-16 B. 2 above.

4. Anticipated bypass. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subparagraph 14-10-16 B. 3 above.

C. Upset.

1. Effect of an upset: An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of subparagraph 14-10-16 C. 2 below are met.

2. Conditions necessary for a demonstration of upset: A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the user can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The user submitted notice of the upset as required in paragraph A. 1 of this section; and,

d. The user properly operated and maintained all facilities and systems of treatment and control as required under paragraph 14-10-15 J above.

3. Burden of proof: In any enforcement proceeding, the user, seeking to establish the occurrence of an upset, has the burden of proof.

14-10-17 Reporting requirements

A. Planned changes. The user shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility in one of the following circumstances:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.

2. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to categorical pretreatment standards and requirements shall submit to the director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process.

   a. The report shall state whether the applicable categorical pretreatment standards or requirements are being met and, if not, what additional operations and maintenance or pretreatment is necessary.

   b. This statement shall be reviewed by an authorized representative of the user and certified.

3. Any anticipated facility expansions, production increases, or process modifications which will result in new, different, or increased discharges of pollutants must be reported by submission of a new permit application or, if such changes will not violate the discharge limitations specified in the permit, by notice to the water department.

   a. Following such notice, the permit may be modified to specify and limit any pollutants not previously limited or change existing limits or other requirements.

   b. Approval must be obtained prior to any new discharges.

   c. The user shall allow 45 business days for review.

Ordinance 2015.015 modified paragraph 3 by changing "utilities department" to "water department"

B. Anticipated noncompliance. The user shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

C. Transfers. Permits are not transferable to any person except after notice to the director. The director may require modification or reissuance of the permit to change the name of the user and incorporate such other requirements as may be necessary under this chapter.

D. Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.

1. Monitoring results must be reported on a self-monitoring report form (SMRF), or a form approved by the director to the ex-

tent that the information reported may be entered on the form for the report period.

2. If the user monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR § 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the SMRF.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

4. In cases where the pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the user must submit documentation required by the director or the pretreatment standard necessary to determine the compliance status of the user.

E. Reduced periodic reporting. The director may reduce the requirement for periodic compliance reports to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the EPA or the state, where the industrial user's total categorical wastewater flow does not exceed 5,000 gallons per day.

1. Reduced reporting is not available to industrial users that have in the last two years been in significant noncompliance, as defined in paragraph 14-10-5 A. 48 above.

2. Reduced reporting is not available to an industrial user with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the director, decreasing the reporting requirement for this industrial user would result in data that are not representative of conditions occurring during the reporting period.

F. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each scheduled date.

14-10-18 Issuance of notification of violation

A. Notification of violation. Whenever the director finds that a user is in violation of this chapter, any part of a permit, or any order for corrective action, the director shall serve or cause to be served upon such user, a written notification of violation describing the nature of the alleged violation. The notification of violation may include, but is not limited to:

1. An order for corrective action;

2. A schedule to attain compliance;

3. An order to show cause why the matter should not be referred to the town's legal department for appropriate legal action;
4. An order to cease discharge;
5. A suspension or revocation of the user's permit; or
6. An order to respond in writing to the allegations.

B. Additional orders after notification of violation. Additional orders and changes to a suspension or revocation may follow the initial order at the discretion of the director or as additional information becomes available.

C. Response to notification of violation.

1. The user shall respond in writing to the director within the time specified in the notification of violation, or if not specified, within ten days of the user's receipt of the notification.
2. The user's response shall be complete, containing all information and data required by the notification of violation.
3. If the response to a notification of violation requires an order to show cause, the user shall respond by demonstrating why the director should not ask the town's legal department to file an action in superior court requesting injunctive relief and penalties.

D. Resolution of notification of violation. Upon review of a response to a notification of violation, the director may accept the response as complete and satisfactory, and consider the notification of violation closed. In that event, the Director shall notify the user in writing that the notification of violation has been closed. Closure of a notification of violation does not preclude further enforcement action.

E. Deficient response to notification of violation. If the director determines a response to a notification of violation is deficient, the director may take any one or more of the following actions:

1. Require submission of additional or incomplete information;
2. Suspend or revoke the user's permit;
3. Order the user to cease discharge;
4. Seek penalties as justified by the violations; or
5. Any other action the director determines to be appropriate.

F. Compliance schedule. When the user is found to be in noncompliance, a compliance schedule may be made part of an enforcement order. The deadline dates in the enforcement order will be subject to the same civil penalties and will be as enforceable as a discharge limit.

G. Published list of significant violators. To comply with the public participation requirements of 40 CFR Part 25 as outlined in A.R.S. § 49-391(C) for the enforcement of national pretreatment stand-

ards, the director shall at least annually publish notification, in a newspaper of general circulation that provides meaningful public notice in the town, of industrial users in significant noncompliance with applicable pretreatment requirements at any time during the previous 12 months. For purposes of this provision, a significant industrial user (or any industrial user that violates 40 CFR § 403.8 paragraphs (f)(2)(viii)(C), (D), or (H)) is in significant noncompliance if its violation meets the definition of significant noncompliance set forth in paragraph 14-10-5 A. 48 above.

14-10-19 Notification of permit suspension

A. Reason for permit suspension. The director shall use the emergency authority specified below as reason to suspend a permit when:

1. The suspension is necessary to cease a discharge that may present a hazard to the public health, safety or welfare, or to the environment or pass-through, interference, or upset to the POTW; or

2. The suspension is necessary to cease the discharge of a user that has displayed a pattern of noncompliance with the provisions of this chapter.

B. User response to permit suspension. When notified of a permit suspension, the user shall immediately cease discharge of all industrial wastewater to the POTW.

C. Failure to comply with permit suspension. If the user fails to comply voluntarily with the notification of permit suspension, the director shall take such steps as necessary to ensure compliance up to and including termination of service by court order or physical barrier.

D. Reinstatement of suspended permit. The director shall, by written statement, reinstate the user's permit upon proof of satisfactory compliance with all requirements of the notification of permit suspension. Before the director reinstates the permit, the user shall pay damages and costs incurred by the town in suspending the permit and disconnecting the industrial sewer.

14-10-20 Notification of permit revocation

A. Reason for revocation of permit. The director may revoke a permit upon finding that the user has violated any provision of this chapter, including but not limited to any of the following:

1. Failure to notify the director of significant changes to the wastewater prior to the changed discharge.

2. Failure to comply with the reporting requirements of section 14-10-17 above.

3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.

4. Falsifying self-monitoring reports and certification statements.
5. Tampering with monitoring equipment.
6. Refusing to allow timely access to the facility premises or records.
7. Failure to meet effluent limitations.
8. Failure to pay penalties.
9. Failure to pay sewer user fees as required by the users industrial wastewater discharge permit.
10. Failure to meet compliance schedules.
11. Failure to provide advanced notice of transfer of business ownership of a permitted facility.
12. Violation of any pretreatment standard or requirement, BMP or any other terms of the wastewater discharge permit or this chapter.

B. Transfer of facility ownership. Individual wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership.

C. User response to permit revocation. Any user whose permit has been revoked shall immediately cease all discharge of any industrial wastewater to the POTW.

D. Failure to comply with permit revocation. If the user fails to comply voluntarily with the notification of permit revocation, the director shall take such steps as necessary to ensure compliance up to and including termination of service by court order or physical barrier.

E. Resolution of permit revocation. Before re-commencing discharge of industrial wastewater, the user whose permit was revoked must apply for and obtain a new industrial wastewater discharge permit, pay all charges that would be required upon initial application, and pay all delinquent fees, charges and such other sums the user may owe to the town. Before the director issues a new permit, the user shall pay damages and costs incurred by the town in revoking the permit and disconnecting the industrial sewer.

14-10-21 Emergency termination of service

A. The director may suspend wastewater treatment service to any person when it is necessary to stop an actual or threatened discharge that presents or may present any imminent and substantial endangerment to the health or welfare of persons or the environment, or will cause Interference to the POTW.

B. A person notified of the suspension of wastewater treatment service shall immediately stop or eliminate the discharge.

1. If the person fails to comply with the suspension notification, the director shall take necessary steps, including immediate

severance of the sewer connection, to prevent or minimize damages to the POTW, endangerment to individuals or the environment.

2. The director may reinstate wastewater treatment service upon proof of the elimination of the noncompliant discharge.

C. Nothing in this section shall be interpreted as requiring a show cause hearing prior to any emergency termination of service under this section.

14-10-22 User enforcement appeal

A user may appeal any enforcement action to the council by filing a request with the town clerk.

14-10-23 Liability of user

Any user who discharges or causes the discharge of wastewater which causes damage to the POTW, interference, pass-through, upset, bypass or SSO or any other damages resulting in costs to the POTW shall be liable for all damages occasioned thereby.

14-10-24 Judicial proceedings

A. Initiation of legal action. Whenever the director finds that a user has violated any provision of this chapter, the director may request the town's legal department to take appropriate legal action. The town's legal department is authorized to take legal action to enforce this chapter. This legal action may include, among other things, one or more of the following:

1. Prohibitive injunctions.
2. Mandatory injunctions for corrective action and cleanup.
3. Civil penalties in accordance with this chapter and A.R.S § 49-391.
4. Criminal penalties pursuant to paragraph 14-10-24 E below.
5. Recovery of civil damages, penalties, and costs to the POTW;
6. Recovery of expenses experienced by the POTW in responding to or repairing damages for which the user is liable under section 14-10-23 above.

B. Civil and criminal penalties for violation.

1. Except as set forth in subparagraph 14-10-24 B. 2 below, civil penalties for violation of any article of this chapter, any part of a permit written and issued in compliance with this chapter, or any requirement of a notification of violation issued in compliance with this chapter, shall not exceed $25,000 for each violation. For continuing violations, each day constitutes a separate offense.

2. Civil penalties for non-submittal of reports, noncompliance with the reporting or application requirements required in this chapter or permit, or failure to complete an increment of progress of a compliance schedule, shall not exceed $1,000 for each day the requirements are not satisfied.

3. Any person who attempts to deceive a government agency by submitting documents to the agency or by making statements to a representative of the agency which the person knows to be false, or by destroying or concealing or refusing to deliver papers or records required by the agency to be kept for its information, is subject to prosecution for tampering with a public record, or fraudulent schemes and practices. Tampering with a public record is a class 6 felony (A.R.S. § 13-2407), and carries a maximum penalty of 1.5 years imprisonment and/or a $150,000.00 fine. Fraudulent schemes and practices is a class 5 felony (A.R.S. § 13-2311), and carries a maximum penalty of 2.0 years imprisonment and/or a $150,000.00 fine.

14-10-25 Levels of action

A. Enforcement of judicial action. Participation in any communication concerning violations will not exempt a user from formal enforcement or judicial action.

B. Written permission requirement. All final determinations from the director will be in writing.

C. Separate actions. Any judicial proceedings initiated to enforce a violation of any section of this chapter shall not exempt a user from judicial proceedings to enforce a violation of any other provision of this chapter.

14-10-26 Notices

Any notice required to be given by the director under this chapter shall be in writing and served in person or by certified mail, return receipt requested. The notice shall be served upon a representative of the user, at the last address known to the director, or the occupants or owners of record of the property where the alleged violation occurred.

14-10-27 Time limits

Any time limit provided in any written notice or in any provision of this chapter or in any regulation adopted by the water department to carry out the provisions of this chapter shall be extended only by written directive of the director, in response to a written request of the affected user containing adequate justification for the extension of the time limit.

Ordinance 2015.015 modified section 14-10-27 by changing "utilities department" to "water department"

14-10-28 Severability

If any provision of this chapter is invalidated by judicial action, the remaining provisions shall not be affected and shall continue in full force and effect.

14-10-29 Hazardous waste discharge

A. The user shall notify the POTW and ADEQ waste management division in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR § 261.

B. The user shall make notification of any hazardous waste discharges. By lack of this notification, the user is asserting that it is not discharging a waste that, if otherwise disposed of, would be considered a hazardous waste as defined by 40 CFR 261. The user shall comply with 40 CFR § 403.12(p), which sets forth reporting and notification requirements for the discharge into the POTW of a substance which, if otherwise disposed of, would be defined as a hazardous waste by 40 CFR § 261.

C. At no point shall discharge covered by this domestic sewer exclusion for discharge of hazardous waste exceed the local discharge limits set forth in section 14-10-8 above.

14-10-30 Grease management program

A. Statement of policy.

1. The water department is authorized to determine the compliance status of food service facilities (FSF) where fats, oils and grease (FOG) of vegetable or animal origin are discharged directly or indirectly to the POTW. These discharges can contribute to line blockages or sanitary sewer overflows.

Ordinance 2015.015 modified subparagraph A 1 by changing "utilities department" to "water department"

2. For the purpose of this chapter and pretreatment requirement determination, FSFs are defined as those facilities required by applicable state or local health regulations to install and utilize a manual ware-washing three compartment sink.

3. The purpose of these rules is to set forth uniform requirements for all food service facilities that discharge into any public or private collection system connected to the POTW.

   a. Any new FSF or existing facility making a modification requiring the submittal of plans for construction or tenant improvements must meet the requirements of the grease management program set forth in this section.

   b. Facilities without pretreatment, or whose grease-bearing wastestreams are not connected to a pretreatment device, must upgrade their system to the requirements of the grease management program set forth in this section or obtain an industrial wastewater discharge permit.

4. An existing facility that was built in conformance with standards in the then-applicable plumbing code need not bring current its pretreatment system unless the director finds that the facility caused or contributed to grease accumulation in the line or odor generated by grease accumulation.

B. Operation and maintenance of pretreatment devices.

1. All pretreatment devices shall be maintained in efficient operation at all times by the owner or operator at their expense.

2. Food service facilities are required to have a suitable and adequate pretreatment device, and must regularly inspect, clean and maintain the device in accordance with the grease management program set forth in this section or in the manufacturer's recommendations for the device.

3. In maintaining pretreatment devices, the owner/operator shall be responsible for the proper removal and disposal of the captured material and shall maintain records of the dates, name of person/company, and the amount of material removed.

4. Pretreatment device maintenance performed by liquid waste haulers shall consist of removing the FOG, solids and water from the device and properly disposing of the material in accordance with all federal, state and local laws. Proper maintenance practices include evacuating the entire contents in the following manner:

   a. Remove floatable FOG material;

   b. Remove settled solids;

   c. Remove and scrape baffles, baffle slots, interior walls and other detachable components;

   d. Remove remaining FOG, solid material and water ("pump-in-full"—no "skimming"); and

   e. Reinstall all components removed during the cleaning process.

5. Under no circumstances shall any liquid removed from any pretreatment device be placed back into any pretreatment device.

C. Hydromechanical and gravity grease interceptor and other alternative pretreatment device design criteria. Pretreatment devices shall be designed and installed in accordance with the sizing criteria found in this paragraph. A sampling port/box/T, which will accommodate the collection of a valid oil and grease sample, shall be included on all pretreatment device installations.

1. Hydromechanical grease interceptors (HGI), which are generally installed inside, may be used when there are four or fewer fixtures.

   a. The minimum size HGI installed shall be rated no less than 25 gallons per minute with a 50 pound grease retention capacity.

   b. A flow control device shall be installed so that the flow through the device shall at no time be greater than the rated flow.

c. If a dishwasher or food waste disposal unit is used in the facility, an HGI cannot be used and an appropriately sized GGI or alternative pretreatment device capable of accepting these wastes must be installed.

d. Each HGI must be cleaned at least monthly.

e. An HGI located indoors should be cleaned during non-business hours to prevent objectionable odors/germs from being released into the facility.

2. A gravity grease interceptor (GGI) is typically installed outside and in the ground when a FSF has greater than four fixtures, or when dishwasher or food waste disposal units are used in the facility.

a. The minimum sized GGI to be installed shall be 300 gallons.

b. A GGI shall be installed so that it is easily accessible for inspection, cleaning and the removal of FOG and solid material.

c. A GGI shall meet the following minimum criteria:

i. No obstruction to prevent the proper access and cleaning of the GGI.

ii. Access covers located such that the influent and effluent sanitary "T" and compartment transition points (if applicable) are accessible for proper cleaning and inspection.

iii. An access cover for each chamber and constructed with the appropriate traffic rating.

d. The GGI must be pumped-in-full at least every six months or when the total accumulation of surface FOG (including floating solids) and settled solids reaches 25% of the GGI's overall depth.

e. The GGI shall be sized to meet the following equation: V(min) = F x R x S

Where:

V(min)=minimum gravity grease interceptor operating volume, in gallons

F=flow rate (maximum), in gallons per minute

R=retention time of 30 minutes

S=storage factor of 25%

Thus: V(min) = F x 30 x 1.25

f. To calculate flow rate (F), use drainage fixture units (DFU) values found in the accompanying GGI fixture counts tables. The flow rate shall be determined based on the total

flow rate from all equipment and plumbing fixtures connected to the gravity grease interceptor using one of the following equations:

i. Drainage Fixture Units less than or equal to 40: F = (0.8 x DFU)

ii. Drainage Fixture Units greater than 40: F = (0.3 x DFU) + 20

a) Where: DFU = drainage fixture units, defined by the accompanying GGI fixture counts tables.

GGI fixture counts tables	
DFUs for food service facilities	
Fixture type	**DFU value**
2-Compartment Sink	2
3-Compartment Sink	3
Automatic Dishwasher greater than 2 inch Drain	6
Automatic Dishwasher less than 2 inch Drain	3
Food Prep Sink	2
Food Waste Grinder	4
Hand Sink	1
Mop Sink/Mop Basin	2
Pre-Rinse Sink	3
Pre-Rinse Sink w/Food Waste	4
Rotisserie w/Drain	3
Tilt Soup Kettle	3
Wok Stove	4
For fixtures ***not*** listed, use table 709.2 of the 2012 international plumbing code	
DFUs for fixture drains or traps	
Fixture drain or trap size	**DFU value**
1 ½ inches	1
1 ½ inches	2
2 inches	3
2 ½ inches	4
3 inches	5
4 inches	6
GGI sizing summary	
Number of DFUs	**Minimum size (gallons)**
Up to 10 DFUs	300
11-16 DFUs	500
17-25 DFUs	750
26-33 DFUs	1000
34-44 DFUs	1250

GGI fixture counts tables	
DFUs for food service facilities	
Fixture type	**DFU value**
45-66 DFUs	1500
67-111 DFUs	2000
112 or more DFUs	Contact director

3. If an alternative pretreatment device is used instead of an HGI or GGI, the design must be submitted to the director for prior approval. The information submitted to the director must include, but not be limited to, the number of DFUs the device is going to service, and the manufacturer's recommended sizing criteria.

4. The introduction of emulsifying agents such as chemicals, solvents or enzymes, either directly or indirectly into the pretreatment device, other than what is considered typical business operational practices such as dishwashing or sanitation, is strictly prohibited.

5. Products that reduce FOG, such as bacteria, may be used in the pretreatment device, in addition to the regular maintenance program, but shall not be a consideration in determining sizing or maintenance frequency.

D. Fats, oils and grease sources.

1. All fixtures, equipment and drain lines located in a facility's food preparation or clean-up areas, which are sources of FOG, shall be connected to a pretreatment device except as outlined in section 14-10-30 above.

   a. Dishwashers or other fixtures discharging emulsifying agents, such as detergents, should be located such that their potential to adversely impact the operation is minimized.

   b. All wastestreams containing FOG within FSF shall be directed to a pretreatment device.

2. The following types of equipment or fixtures have been identified as sources of FOG and shall be connected to a pretreatment device (with applicable exceptions and supplemental requirements noted for the respective device):

   i. Pre-rinse and or pre-wash sinks.

   ii. Two, three or four compartment sinks.

   iii. Meat prep sinks.

   iv. Wok stoves.

   v. Kitchen floor drains.

   vi. Floor sinks.

   vii. Mop sinks. Depending on the use of the mop sink, the requirement to drain through a pretreatment device

may be the subject of a variance from the director under section 14-10-9 above.

viii. Food prep sinks.

ix. Hand wash sinks. A hand wash sink located in the kitchen area shall either discharge through a pretreatment device or have a sign posted above it stating clearly in all employees' primary languages: "HANDWASH SINK ONLY! NO FOOD PREPARATION OR DISHWASHING ALLOWED."

x. Dishwashers.

xi. Self cleaning ventilation/exhaust hood.

xii. Food waste disposal units. Discharges from food waste disposal units must drain through a minimum 3/8 inch screen or solids separator prior to the pretreatment device.

E. Best management practice requirements. Best management practices (BMPs) are policies, practices, or procedures implemented to mitigate the adverse effects of FOG. All FSFs must develop and implement BMPs which, at minimum, shall include the following:

1. Pouring all grease and oil from pots and pans into a waste grease container stored in close proximity to the pot washing sink and not down the drain.

2. Scraping off of all solids or FOG on plates, pots and pans into the garbage can.

3. Pre-washing plates with cold water over a small screened catch basin positioned over the drain and disposing the contents of the catch basin in a garbage can.

4. Disconnecting all food waste disposal devices, unless the discharge is screened or goes through a solids separator prior to discharge.

5. The posting of signs above vegetable prep sinks not protected by a grease pretreatment device, stating clearly in all employees' primary languages: "NO WASHING OF POTS, PANS, DISHES OR UTENSILS – VEGETABLE PREP SINK ONLY."

6. Periodic training of current and new employees regarding the effective use of the BMPs.

F. Record-keeping requirements.

1. All pretreatment device maintenance, compliance reports and related correspondence must be retained on-site by the user for a minimum of three years.

a. A separate maintenance log shall be maintained on-site for each device.

b. Maintenance logs shall include all of the following information:

i. Device location and volume.

ii. Maintenance dates.

iii. Volume removed in gallons.

iv. The name of the company and the person performing the maintenance.

v. Identification of the facility where the material was disposed.

2. Records associated with waste cooking oil collection and disposal shall be kept on-site by the user for a minimum of three years. Waste cooking oil collection logs shall include all of the following information:

a. Collection date.

b. Volume collected in gallons.

c. The name of the company and the person performing the collection.

d. The disposal methods.

3. Records of compliance with BMP training shall be maintained by each FSF.

14-10-31 Satellite collection systems

A. Applicability. All entities owning or operating a satellite collection system shall comply with the requirements of this section.

B. Publicly-owned satellite collection systems. A satellite collection system under control of a separate jurisdictional governmental agency or native American nation shall enter into an agreement with the town that addresses the following requirements:

1. Agreement by the contributing jurisdiction to adopt a pretreatment sewer use ordinance that is no less stringent than the town's ordinance.

2. Compliance with industrial wastewater ordinance requirements by industries that would be subject to the town's ordinances if they discharged to the collection system owned and operated by the town. Specifically, the contributing jurisdiction shall agree to adopt local limits for industrial discharges into its collection system that are at least as stringent as the town's local limits, or should agree to a specific maximum total mass loading of pollutants for discharge to the town's POTW.

3. Indication of whether the contributing jurisdiction or the town is responsible for issuing control mechanisms to industrial users located within the contributing jurisdiction. If joint control mechanisms are to be issued, the agreement should indicate

which party will take the lead in preparing the draft control mechanisms.

4. Agreement by the contributing jurisdiction to providing the town access to all records compiled as part of the contributing jurisdiction's pretreatment program activities, including notice to the town of key activities such as enforcement actions and permit issuances.

5. Granting the town the power to enter into the facilities of industrial users to periodically verify compliance with applicable pretreatment standards and requirements. Procedures and responsibility for conducting inspections and other compliance evaluation activities should be established explicitly.

6. Agreement as to whether the contributing jurisdiction or the town has primary responsibility for enforcing pretreatment standards and requirements against industrial users located within the contributing jurisdiction. If the contributing jurisdiction has primary responsibility for enforcing the ordinance, the agreement should specify that the town can enforce if the contributing jurisdiction fails to do so.

7. Where it has primary responsibility for permitting, compliance monitoring, and/or enforcement, the contributing jurisdiction should agree that the town has the right to take legal action as necessary to enforce the terms of the agreement and/or to take action directly against noncompliant industrial users in the event that the contributing municipality is unable or unwilling to do so. The agreement should also provide for remedies available against the noncomplying municipality, including indemnification and specific performance of pretreatment activities.

8. If no industrial users are located within the contributing jurisdiction, or if the only existing nondomestic users are light commercial establishments, the agreement should state:

    a. No industrial users are currently located within the contributing jurisdiction, and

    b. No industrial users shall be allowed to operate unless prior notification is provided to the town and a new agreement is entered into addressing implementation and enforcement of the pretreatment program.

9. Operation of the contributing jurisdiction's collecting system so as to comply with the requirements of the town's CMOM permit.

10. Prevention or reduction to the extent possible of stormwater or infiltration of groundwater from entering the town's sewer collection system.

11. Notification of new connections to the town's sewer collection system, and assurance of compliance with the town's capacity assurance program.
12. Assurance of the payment of town-adopted connection and user fees.
13. Provision for spill-reporting systems.
14. Operations and maintenance provisions that protect the system, including proper operations and maintenance as required by 40 CFR § 122.41(d).
15. Reporting of unpermitted discharges from satellite systems to waters of the United States or storm sewer systems owned or controlled by the town.
16. All reasonable steps to minimize or prevent any discharge in violation of the town's permit that have a reasonable likelihood of adversely affecting human health or the environment.

Title 15

Marana Regional Airport

15

TITLE 15. MARANA REGIONAL AIRPORT

CHAPTER 15-1. GENERAL 15-1

CHAPTER 15-2. AIRCRAFT OPERATIONS 15-6

CHAPTER 15-3. FUELING OPERATIONS 15-9

CHAPTER 15-4. MOTOR VEHICLE OPERATIONS 15-11

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TITLE 15. MARANA REGIONAL AIRPORT

Ordinance 2004.10 adopted title 15. Ordinance 2004.13 changed "Marana Northwest Regional Airport" to "Marana Regional Airport" throughout title 15. Ordinance 2005.22 rewrote, reorganized, and conformed title 15 to standard town code style.

CHAPTER 15-1. GENERAL

15-1-1 Definitions

A. "Airport" means Marana Regional Airport, formerly known as Marana Northwest Regional Airport, formerly known as Avra Valley Airport.

B. "Airport director" means the town airport director, any person directed by the town manager to act as the airport director, or the airport director's authorized representative.

C. "Airport property" means the entire land area encompassing the airport, including without limitation any and all leased spaces, aircraft, motor vehicles and buildings located at or on the airport property.

D. "AOA" means the airport operation area, which is the area of the airport used for aircraft landing, takeoff, or surface maneuvering including the areas around hangars, navigation equipment, and communication facilities.

E. "Apron" means the area intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, or maintenance.

F. "Holdshort line" means markings consisting of four yellow lines, two solid and two dashed, extending across the width of the taxiway or runway indicating where an aircraft is required to stop.

G. "NWFD" means the Northwest Fire District.

H. "NWFD fire chief" means the fire chief of NWFD or a person duly authorized to act on behalf of the NWFD fire chief.

I. "Runway" means a defined rectangular area prepared for the landing and takeoff run of aircraft along its length.

J. "Taxilane" means the portion of the apron, or any other area, used for access between taxiways and aircraft parking or storage areas.

K. "Taxiway" means a defined path established for the taxiing of aircraft from one part of the airport to another.

L. "Tiedown" means a defined area outdoors where parked aircraft are tied down with chains or rope.

15-1-2 Applicability

Unless a particular regulation states otherwise, the regulations set forth in this title shall apply only on the airport property.

15-1-3 Conditions of use

A. The conditions under which the airport or any of it facilities may be used shall be as established pursuant to this title or otherwise by the town council.

B. Any permission directly, indirectly, expressly or implicitly granted by the town to enter upon or use the airport or any part of it is conditioned upon compliance with this title and any rules, regulations or minimum operating standard promulgated under this title.

C. Entry upon the airport property by any operator, off-airport user, crew member, passenger, spectator, sightseer, vehicle driver, airline officer or employee, lessee, sublessee, permittee, person doing business with the airport, or any other person shall be deemed to constitute an agreement by that person to comply with all of the following:

1. This title.
2. The requirements of any grant agreement to which the town is bound relating to the airport.
3. Any and all orders or regulations promulgated by the airport director.
4. Any and all signs posted by or under the authority of the town or the airport director.
5. Any and all applicable laws and regulations of the United States and the state.

D. The town reserves the right to deny any or all use of or access to the airport to any person for any reasonable cause.

E. Unless expressly provided otherwise, any consent or permission of the town required under this title must be obtained in advance, in writing and signed by the airport director.

F. Unless expressly provided otherwise, any notice or application to the town required under this title must be given in writing to the airport director during normal business hours at the airport office.

G. The privilege of using the airport and its facilities is conditioned upon the user's assumption of full responsibility and risk for that use. By using the airport and its facilities, the user releases and agrees to hold harmless and indemnify the town and its officers, employees and agents from and against any liability or loss resulting from that use.

H. Owners and operators of all aircraft based at the airport shall comply with all of the applicable provisions of title 28, chapter 25, Arizona revised statutes.

15-1-4 Incorporation of rules and standards by reference

The following, as they may be amended from time to time, are hereby incorporated by reference as if set out at length in this title:

A. The Marana regional airport minimum operating standards.

B. The Marana regional airport rates and fees schedule.

C. The Marana regional airport ultralight standards.

D. The Marana regional airport architecture and landscape design standards.

E. The Marana regional airport commercial leasing policy and application.

15-1-5 Airport director's authority

In addition to other powers and duties set forth elsewhere in this title, the airport director has the following authority:

A. To issue rules, regulations, orders, and instructions necessary to administer this title, including posting signs at the airport which state or apply those rules, regulations, orders, or instructions.

B. To waive any portion of this title to ensure public safety or the efficient use of the airport for up to 30 days.

C. To close the airport or any portion of it using applicable FAA procedures, as appropriate, upon determining that conditions are unfavorable for aircraft operations.

15-1-6 Airport staff's authority

Each member of the staff of the airport director, as a representative of the airport director, and any party acting under the direction of the airport director based on a contract with the town, is empowered to enforce the provisions of this title and all orders and regulations issued by the airport director.

15-1-7 Airport operation

A. The airport shall be conducted as a public air facility for the promotion and accommodation of civil aviation and associated activities.

B. The airport shall be open for public use.

15-1-8 Conflicting laws, ordinances, regulations and contracts

The reformatted Town Code adopted by Ordinance 2005.22 incorrectly numbered this section as 15-1-5. On February 17, 2006, the town attorney renumbered it 15-1-8 as a scrivener's correction, under authority confirmed by Ordinance 2008.16

A. Whenever a provision of this title, rules and regulations, minimum operating standards, or rates and fees schedule adopted under this title is or is determined to be in conflict with any other provision of this title, regulations adopted under this title, or any zoning, building, fire, safety, health or other law, ordinance or code of the town, the Federal Aviation Administration, the United States Government or the state, the more restrictive provision shall prevail.

B. It is not intended by this title to repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this title, or to excuse any person from performing obligations to the town under any lease or other contract.

C. No existing or future town contract, lease, agreement or other contractual arrangement, and no payment or performance under it, shall excuse full and complete compliance with this title.

D. Compliance with this title shall not excuse a party's full and complete compliance with any obligations to the town under any existing or future town contract, lease, agreement or other contractual arrangement.

E. Compliance with this title does not excuse failure to comply with any other law.

F. All lease agreements and permits and other contractual or governmental arrangements shall be subordinate to the provisions of any existing or future agreement with the United States or the state to which the town is a party relating to the operation and maintenance of the airport.

15-1-9 General rules of conduct

The reformatted Town Code adopted by Ordinance 2005.22 incorrectly numbered this section as 15-1-6. On February 17, 2006, the town attorney renumbered it 15-1-9 as a scrivener's correction.

A. No person shall do any of the following:

1. Commit any criminal act or nuisance.
2. Camp.
3. Sleep.
4. Loiter.
5. Ignite a fire.
6. Maintain a temporary or permanent residence.

B. All children under the age of 13 years must be accompanied by an adult 18 years of age or older at all times.

C. No person shall dispose of garbage, papers, refuse, or other similar material except in receptacles provided for that purpose.

D. No person shall destroy, injure, deface, or disturb any building, sign, equipment, marker or other structure, tree, flower, lawn, or other public property.

E. No person shall alter, make additions to, or erect any building or sign or make any excavations without the permission of the airport director.

F. No person shall abandon any personal property.

G. No person may ride horses without permission of the airport director.

H. No person shall hunt, pursue, trap, catch, injure, or kill any bird or animal, except in connection with pest control activities authorized by the airport director.

I. No weapon or explosive, shall be carried, openly or concealed, by any person except an on-duty and authorized: peace officer, post officer, air carrier, airport employee, or member of the United States Armed Forces. This paragraph shall not apply to broken down, unloaded and encased firearms being transported by air. For the purpose of this paragraph, the terms "weapon" and "explosive" include any "deadly weapon," "explosive," "firearm" or "prohibited weapon" as defined in A.R.S. § 13-3101.

J. No person shall solicit fares or funds for any purpose without permission of the airport director.

K. No person shall post, distribute, or display signs, advertisements, circulars, or other printed or written matter on airport property without permission of the airport director.

L. No person may enter the airport with a dog or other animal unless it is restrained by a leash or properly confined as determined by the airport director. Animals shall not be permitted to wander unrestrained.

M. No person shall do any of the following without the express authorization of the airport director:

1. Enter the AOA.
2. Enter or cross an apron.
3. Enter or cross a taxiway.
4. Enter or cross a runway.
5. Enter any area posted as being restricted or closed to the public.

N. No person shall use a rest room other than in a clean and sanitary manner.

O. No person shall smoke any substance on any apron, taxiway, taxilane, or runway.

P. No person shall bicycle, skateboard, rollerblade, scooter or perform similar activities in the AOA without permission of the airport director.

Q. No person shall walk in a picket line or take part in a labor or other public demonstration except in a place specifically assigned for that purpose by the airport director.

R. No person shall enter an office without the permission of the legal occupant.

CHAPTER 15-2. AIRCRAFT OPERATIONS

15-2-1 General

A. No person shall navigate, land aircraft upon, or conduct any aircraft or other operations on or from the airport, or engage in any other aviation activity at the airport or elsewhere within the town, except in conformity with the requirements of the Federal Aviation Administration and all other applicable laws, statutes, ordinances, rules, regulations and minimum operating standards of the United States, the state, town, or any other governmental entity with jurisdiction.

B. All aircraft traffic shall conform to the established traffic pattern as approved by the airport director.

C. No person shall conduct experimental flight or ground demonstrations without prior permission of the airport director.

D. No person while under the influence of intoxicating liquor or drugs shall operate any aircraft.

E. Parked transient aircraft shall be registered with the office of the airport director as soon as possible after landing.

F. All aircraft based at the airport shall be registered with the office of the airport director before beginning operations. Any change in ownership of the aircraft shall be reported immediately.

G. No aircraft engine shall be started or run without a competent person at the engine controls.

H. No aircraft engine shall be operated in a way that endangers life or property.

15-2-2 Runways, taxiways, aprons and helipads

A. No person shall

1. Take off or land an aircraft on the airport except on a runway or an approved helipad unless otherwise authorized by the airport director,
2. Land on a closed runway,
3. Take off on a closed runway,
4. Land on a taxiway,
5. Take off on a taxiway,
6. Taxi, hover or enter onto a closed runway,
7. Taxi, hover or enter onto a closed taxiway,
8. Taxi, hover or enter onto a closed apron,
9. Taxi, hover or enter onto a closed taxilane,
10. Park or loiter an aircraft on any runway or taxiway,

11. Board or exit passengers in an area that has not been established for that purpose by the airport director, except in an emergency, or
12. Board or exit any aircraft on a runway or in the takeoff or landing area except in an emergency or with prior approval of the airport director.
13. Move an aircraft in a negligent or reckless manner.

B. No person shall, without the owner's permission,

1. Taxi an aircraft,
2. Fly an aircraft,
3. Interfere or tamper with an aircraft,
4. Enter an aircraft, or
5. Remove fuel from an aircraft.

C. No person shall start or taxi any aircraft where the air or exhaust blast is likely to cause injuries to persons or property or create a nuisance or safety hazard. If an aircraft cannot be taxied without violating this paragraph, it must be towed to the desired destination.

D. All aircraft shall be taxied at slow and reasonable speeds and shall not be taxied across or onto a runway without first stopping at the holdshort line and waiting for any approaching aircraft preparing to land.

E. No aircraft capable of movement on the ground shall be operated unless it is equipped with wheels and wheel brakes.

15-2-3 Hangars, tiedowns and storage

A. No person shall:

1. Enter an aircraft hangar or storage room without the permission of the legal occupant,
2. Leave an aircraft unattended unless it is properly tied down or placed in a hangar,
3. Park or store an aircraft except in areas designated by the airport director, or
4. Use a tiedown without authorization

B. No aircraft shall be operated in or taxied into or out of a hangar or covered tiedown.

C. Aircraft shall not occupy any hangar, shade or tiedown, nor shall aircraft be operated, in areas:

1. Where the aircraft's wingspan exceeds the maximum approved wingspan designation for that area as specified by the airport director or as published, or

2. Where the aircraft's weight exceeds the maximum approved weight restriction for that area as specified by the airport director or as published.

D. To avoid being considered abandoned and being removed from the airport property by the airport director at the aircraft owner's expense, aircraft stored outside must:

1. Have a current annual certification, and
2. Be supported by its own landing gear with fully inflated tires and in a condition to tow.

E. Inoperable, abandoned or junked aircraft, and aircraft awaiting major repair, shall be stored in a fully enclosed hangar or will be removed from the airport property by the airport director at the aircraft owner's expense.

F. Aircraft stored outside shall not leak fuel, oil, or other materials on the ground or aprons.

G. Each hangar lessee shall provide suitable metal receptacles for storing waste, rags, and other rubbish and shall remove all rubbish from the airport property at least weekly.

15-2-4 Aircraft maintenance

A. Preventive maintenance, as defined in title 14 code of federal regulations part 43, appendix A(c), may be performed by the aircraft owner in a secured hangar.

B. An aircraft owner who possesses a current mechanic rating from the federal aviation administration may perform in a secured hangar maintenance work permitted under his or her mechanic rating.

C. No aircraft maintenance shall be performed in the open tiedowns, covered tiedowns, or aprons.

D. No aircraft shall be permitted to remain on any part of the landing or takeoff areas for the purpose of repairs.

E. All aircraft maintenance shall be performed on pavement.

15-2-5 Rotorcraft

A. No person shall operate or move a rotorcraft while its rotors are turning unless there is a clear area of at least 50 feet from the outer tip of each rotor.

B. No person shall hover taxi a rotorcraft on taxilanes between the hangars, covered tiedowns or open tiedown areas.

C. Rotorcraft shall only take off and land on an approved helipad or helistop.

D. Rotorcraft stored in hangars or tiedowns must be towed to an approved helipad or helistop before starting the engine.

E. Rotorcraft shall not be operated in a manner that will produce dirt, rocks or debris on any runway, taxiway, taxilane or apron.

15-2-6 Hang gliders, paragliders and ultra-light aircraft

No person shall operate a hang glider, powered paraglider, ultra-light aircraft or any other device falling under title 14 code of federal regulations part 103 at, onto or from the airport without the prior written approval of the airport director.

15-2-7 Hot air balloons

Hot air balloons shall not be operated at the airport without the prior written approval of the airport director.

15-2-8 Aircraft accident procedures

A. Any person involved in an aircraft accident shall make a full report of the accident to the airport director within 24 hours after the accident.

B. Any person whose operation of an aircraft results in property damage shall report the damage to the airport director immediately and shall be fully responsible for the cost of repairs.

C. The pilot and owner of a disabled aircraft shall promptly remove the disabled aircraft or its parts as directed by the airport director, subject to accident investigation requirements.

D. Aircraft accidents that are subject to accident investigation requirements shall be secured by the airport director with assistance from the Marana police department and NWFD.

E. The airport director shall be the incident commander for all accidents on the airport property.

CHAPTER 15-3. FUELING OPERATIONS

15-3-1 General requirements

A. Except as provided in section 15-3-2, aircraft may be fueled or defueled only by a contractually authorized commercial enterprise that holds a valid permit from the town authorizing fueling and defueling.

B. Aviation fuels, oils or lubricants shall be transported or delivered only by the holder of a valid permit from the town authorizing the transportation or delivery of aviation fuels, oils or lubricants.

C. No person shall

1. Fuel or defuel an aircraft while its engine is running or is being warmed by applying external heat,

2. Fuel or defuel an aircraft while it is in a hangar or enclosed space,

3. Fuel or defuel an aircraft containing passengers unless a passenger loading ramp is in place at the cabin door, the door is open, and a cabin attendant is at or near the door and a "No Smoking" sign is displayed in the cabin and enforced,
4. Start the engine of an aircraft if there is any gasoline or other volatile flammable liquid on the ground beneath it of sufficient quantity to constitute a hazard, or
5. Operate a cell phone, radio transmitter, radio receiver or switch electrical appliances on or off in or within 50 feet of an aircraft while it is being fueled or defueled.

D. All commercial fuelers shall have their fueling equipment inspected and approved by NWFD annually. A written letter from NWFD shall be presented to the airport director showing an approved inspection annually.

E. During the fueling of an aircraft, the dispensing apparatus and the aircraft shall both be grounded.

F. Each person engaged in fueling or defueling shall exercise care to prevent the overflow of fuel and shall have readily accessible and adequate fire extinguishers.

G. During the fueling or defueling of an aircraft, no person shall, within 50 feet of the aircraft, smoke or use any material that is likely to cause a spark or be a source of ignition.

H. Each hose, funnel, or appurtenance used in fueling or defueling an aircraft shall be maintained in a safe, sound, and non-leaking condition and must be properly grounded to prevent ignition of volatile liquids.

I. All persons shall comply with the provisions of the fire code adopted by NWFD.

J. NWFD may inspect as often as may be necessary all buildings and premises for the purpose of determining and causing to be corrected any conditions which would reasonably tend to endanger life or property by causing fire or contributing to its spread. All orders and notices of the NWFD fire chief shall be complied with by all persons without delay.

K. When backing gasoline tenders, the driver shall remain in the vehicle and shall not stand on the running board or fender.

L. Gasoline tenders shall at all times be positioned to facilitate their rapid removal.

M. All fuelers shall:

1. Pay a flowage fee as established in the airport rates and charges,
2. Provide the airport director with monthly fuel purchase and delivery documents in a form acceptable to the airport director,

3. Train their employees annually on safe fuel handling practices, fire fighting procedures, and spill containment, and
4. Provide the airport director with proof of training certification NFPA# 407 and FAA AC 15/5230-4.

15-3-2 Self-fueling

A. Aircraft may be "self-fueled"; that is, fueled by the aircraft's owner, provided that:
   1. The self-fueler holds a valid permit from the town authorizing self-fueling,
   2. The self-fueler is the lessee of a valid and enforceable hangar or tiedown lease with the town, and
   3. The requirements of section 15-3-1 and this section are met.

B. Aircraft owned by:
   1. An individual may be self-fueled only by the individual owner,
   2. A partnership may be self-fueled only by a partner in the partnership, and
   3. A corporation may be self-fueled only by an officer or employee of the corporation.

C. Self-fueling shall take place on the lessee's leased area or directly in front of lessee's hangar.

D. Aircraft owners who desire to self-fuel shall
   1. Provide proof of public liability and environmental impairment liability insurance,
   2. Obtain a permit from the airport director, and
   3. Have their fueling equipment inspected and approved annually by the NWFD, as evidenced by a written approval from the NWFD and provided to the airport director.

CHAPTER 15-4. MOTOR VEHICLE OPERATIONS

15-4-1 General

A. No person shall
   1. Operate any motor vehicle in violation of this title or rules promulgated and posted by the airport director or the laws of the state,
   2. Operate a motor vehicle in a negligent or reckless manner,
   3. Operate a motor vehicle in the AOA in excess of 15 miles per hour,
   4. Operate a vehicle onto or across a runway except when authorized by the airport director,

5. Operate a vehicle onto or across a taxiway except when authorized by the airport director,
6. Operate an uncovered vehicle to haul trash,
7. Operate a vehicle for hauling trash, dirt, or any other material unless it is built to prevent its contents from dropping, sifting, leaking, or otherwise escaping,
8. Spill dirt or any other material from a vehicle,
9. Clean or make any repairs to motor vehicles anywhere except in an enclosed hangar or building, or
10. Operate a bicycle, go-cart, ATV, sand dune or any other type of unlicensed vehicle in the AOA.

B. No motor vehicle shall be operated if it is constructed, equipped or located in a way that endangers people or property.

C. Operators of motor vehicles in the AOA shall yield the right-of-way to taxiing aircraft.

D. All motor vehicles in the AOA shall pass to the rear of aircraft whose engines are running.

15-4-2 Motor vehicle accident procedure

Each operator of a motor vehicle involved in an accident that results in personal injury or in total property damage of more than $50 shall make a full report of the accident to the airport director as soon as possible after the accident. The report shall include the name and address of the person reporting.

15-4-3 Motor vehicle parking and storage

A. No person shall

1. Park or stand a motor vehicle except in an area specifically designated for parking or standing,
2. Park a vehicle in a restricted or reserved area unless a parking permit issued by the airport director for that area is displayed in the manner prescribed by the airport director,
3. Park a vehicle on a runway, taxiway or taxilane,
4. Park a vehicle in a runway safety area,
5. Park a vehicle in a taxiway safety area,
6. Park a vehicle in a taxilane safety area,
7. Park or stand a motor vehicle in violation of any validly posted sign,
8. Park or stand a motor vehicle within 15 feet of a fire hydrant,
9. Park in a way that blocks any fire gate or entrance,
10. Park in a way that causes a motor vehicle to occupy more than one marked space,

11. Park a motor vehicle in individual storage hangars or aircraft shelters unless permitted by the legal occupant the structure,
12. Park a vehicle for more than three days unless the vehicle is parked in an area designated for long term parking,
13. Park an inoperable motor vehicle,
14. Park or operate an unregistered motor vehicle,
15. Abandon a motor vehicle, or
16. Leave a motor vehicle standing unattended or parked on the airport with:
    a. A key in the ignition switch,
    b. The motor running,
    c. A key in the door lock, or
    d. An open door.

B. Vehicles, motor homes, boats, trailers and recreational vehicles may be stored only in an enclosed hangar or building structure occupied by an airworthy and flyable aircraft with a current FAA registration.

C. Motor homes, boats, trailers and recreational vehicles
1. Shall not be parked in an open parking area for more than two days, and
2. Shall only be parked in areas approved by the airport director, and
3. Are not permitted in the AOA.

D. Mini-mobiles or other similar types of storage containers are permitted only upon approval of the airport director.

15-4-4 Removal of violations

The airport director or his agent may remove, at the owner's expense, any motor vehicle, motor home, boat, trailer, recreational vehicle, storage container, or any other type of vehicle or storage device which is in violation of this title. The vehicle or storage device shall be subject to a lien for the cost of removal.

CHAPTER 15-5. MISCELLANEOUS

15-5-1 Hazardous materials and explosives

A. No person shall
1. Store any combustible materials, flammable liquids, or other hazardous materials in an aircraft hangar or other building except in locations and containers approved by NWFD,
2. Park an aircraft which is carrying explosives or inflammable material,

3. Use a flammable volatile liquid having a flash point of less than 100 degrees Fahrenheit to clean an aircraft, aircraft engine, propeller, or appliance in an aircraft hangar or similar type building or within 50 feet of another aircraft, building, or hangar,
4. Store or stock material or equipment in a way that creates a fire hazard,
5. Use in any passenger loading area or other public area any material (such as oil absorbents or similar material) that creates an eye hazard when picked up, swirled, or blown about by the blast from an aircraft engine, or
6. Conduct a painting or doping process on the airport except in a properly designed fire-resistive and ventilated room or building in which all lights, wiring, heating, ventilating equipment, switches, outlets, and fixtures are approved for use in hazardous areas and in which all exit facilities are approved and maintained for that use, as evidenced by a written approval from NWFD and provided to the airport director.

B. Explosives or inflammable material may only be loaded or unloaded from an aircraft in areas designated by the airport director.

C. No open flame, flame-producing device, or other source of ignition shall be permitted in any hangar or similar-type building except in locations approved by the airport director.

D. Any person to whom space on the airport is leased, assigned or made available for use shall keep the space free and clear of oil, grease, or other foreign materials that could cause:

1. A fire hazard,
2. A slippery or otherwise unsafe condition, or
3. A violation of the airport's stormwater permit.

E. The following shall be stored in a fully enclosed area consistent with stormwater guidelines:

1. Used and new batteries.
2. Used and new oil, fuel and other fluids and material.

15-5-2 Airport tenant obligations

A. Persons provided with either a code or access device for the purpose of obtaining access to the airport shall

1. Only use airport-issued codes or devices
2. Not allow any other person to use the code or device
3. Not divulge, duplicate, or otherwise distribute the code or device to any other person.

B. No lessee or sublessee shall knowingly allow their leased or sub-leased property to be used or occupied for any purpose prohibited by this title or by their lease.

C. No tenant, lessee, concessionaire, or agent of any of them shall keep uncovered trash containers on a sidewalk or road or in a public area.

D. Each lessee of a hangar or other operational area specified by the airport director shall maintain a bulletin board in a conspicuous place in the hangar or area where all of the following shall be posted and visible to occupants:

1. Current workers' compensation notices.
2. A list of competent physicians.
3. A list of the lessee's liability insurance carriers.
4. A copy of this title.
5. A copy of each pertinent order or instruction issued under this title.

E. No tenant or lessee of a hangar, shop facility, or other operational area specified by the airport director shall store or stack equipment or material in a manner hazardous to persons or property.

F. No tenant or lessee shall store any objects, parts or any other items except within their own hangar or a screened outside storage facility approved by the airport director.

G. Each tenant or lessee of a hangar, shop facility, or other operational area specified by the airport director shall supply and maintain adequate and readily accessible fire extinguishers.

H. The airport director shall have the right at all reasonable times to inspect all areas under lease to or occupied by tenants.

15-5-3 Commercial operations

A. No person shall engage in any business or commercial activity without a lease approved by the airport director or a town approved sublease from a duly authorized master lessee, or a license or permit from the town.

B. No person shall sell any item without a lease approved by the airport director or a town approved sublease from a duly authorized master lessee, or a license or permit from the town.

C. No person shall take still, motion or sound pictures of, at, or on the airport for commercial purposes without first receiving a written temporary activity permit issued by the airport director.

D. No person shall post, distribute or displays signs, advertisements, circulars or printed or written matter except in an approved area or with permission from the airport director.

CHAPTER 15-6. VIOLATIONS

15-6-1 Criminal penalties

A person convicted of violating any of the provisions of this title shall be guilty of a misdemeanor punished by a fine of not less than $500 and not more than $2,500 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.

15-6-2 Civil penalties

In addition to any other remedy available as a matter of law, violations of this title or of any rule, regulation, order, or instruction issued by the airport director may result in withdrawal of permission to use the airport.

Title 16

Utilities Board

16

TITLE 16. UTILITIES BOARD

CHAPTER 16-1. GENERAL.....16-1

TITLE 16. UTILITIES BOARD

Ordinance 2005.20 added title 16

CHAPTER 16-1. GENERAL

16-1-1 Creation.

There is created the utilities board of the town for the purpose of managing and operating the utility operations of the town including water, wastewater, street lights, electric and other authorized utility functions in compliance with this title and the provisions of applicable law.

16-1-2 Membership.

Ordinance 2011.33 amended section 16-1-2 to revise and update the membership of the utilities board. Ordinance 2015.015 changed "utilities director" to "water director" and "utilities department" to "water department."

The membership of the utilities board shall consist of the town water director or a water department employee designated by the water director, three council-appointed members who are either town residents or utility customers of the town, two town employees appointed by the town manager, and the town finance director or a finance department employee designated by the finance director. The council shall choose the chair of the utilities board from among its membership.

16-1-3 Powers and duties.

A. The utilities board shall have the following powers and duties:

1. Keep and submit minutes to the council for information.
2. Subject to the provisions of paragraph C of this section, manage and operate the water, wastewater, street lights, electric and other utility functions of the town in accordance with the provisions of this code and applicable law.
3. Adopt and amend bylaws of the board, which shall be effective upon review and approval by the council.

B. Notwithstanding the provisions of paragraph A of this section, responsibility for the daily operations of the utilities of the town shall be vested in and performed by the water director under the supervision of the town manager. The chair of the utilities board, on behalf of the board, shall consult with the town manager with respect to the operations of the town's utilities.

Ordinance 2015.015 modified paragraph B by changing "utilities director" to "water director"

C. The council shall be responsible for approval of utility rates, adoption of the budget, capital acquisitions and approval of contracts as required by chapter 3-4 of the town code and applicable law.

Title 17

Land Development

17

TITLE 17. LAND DEVELOPMENT

CHAPTER 17-1. [RESERVED] 17-1

CHAPTER 17-2. [RESERVED] 17-1

CHAPTER 17-3. [RESERVED] 17-1

CHAPTER 17-4. [RESERVED] 17-1

CHAPTER 17-5. [RESERVED] 17-1

CHAPTER 17-6. [RESERVED] 17-1

CHAPTER 17-7. [RESERVED] 17-1

CHAPTER 17-8. [RESERVED] 17-1

CHAPTER 17-9. [RESERVED] 17-1

CHAPTER 17-10. [RESERVED] 17-1

CHAPTER 17-11. [RESERVED] 17-1

CHAPTER 17-12. [RESERVED] 17-1

CHAPTER 17-13. [RESERVED] 17-1

CHAPTER 17-14. [RESERVED] 17-1

CHAPTER 17-15. [RESERVED] 17-1

CHAPTER 17-16. [RESERVED] 17-1

CHAPTER 17-17. DEVELOPMENT IMPACT FEE ORDINANCE 17-1

TITLE 17. LAND DEVELOPMENT

Ordinance 2014.011 added title 17, and adopted chapter 17-17 (development impact fee ordinance). The rest of the Marana land development code may be found in a here. Chapters 17-1 through 17-16 of the town code are reserved for the future insertion of the reformatted land development code into this title.

CHAPTER 17-1. [RESERVED]

CHAPTER 17-2. [RESERVED]

CHAPTER 17-3. [RESERVED]

CHAPTER 17-4. [RESERVED]

CHAPTER 17-5. [RESERVED]

CHAPTER 17-6. [RESERVED]

CHAPTER 17-7. [RESERVED]

CHAPTER 17-8. [RESERVED]

CHAPTER 17-9. [RESERVED]

CHAPTER 17-10. [RESERVED]

CHAPTER 17-11. [RESERVED]

CHAPTER 17-12. [RESERVED]

CHAPTER 17-13. [RESERVED]

CHAPTER 17-14. [RESERVED]

CHAPTER 17-15. [RESERVED]

CHAPTER 17-16. [RESERVED]

CHAPTER 17-17. DEVELOPMENT IMPACT FEE ORDINANCE

Ordinance 2014.011 adopted chapter 17-17 (development impact fee ordinance)

Sections:

17-17-1 Title 17-2
17-17-2 Legislative intent and purpose 17-2
17-17-3 Definitions 17-2
17-17-4 Applicability 17-9
17-17-5 Authority for development impact fees 17-9
17-17-6 Administration of development impact fees 17-11
17-17-7 Land use assumptions 17-11
17-17-8 Infrastructure improvements plan 17-12
17-17-9 Adoption and modification procedures 17-15
17-17-10 Timing for the renewal and updating of the infrastructure improvements plan and the land use assumptions 17-17
17-17-11 Collection of development impact fees 17-18

17-17-12 Development impact fee credits and credit agreements.....17-20
17-17-13 Development agreements 17-24
17-17-14 Appeals.....17-26
17-17-15 Refunds of development impact fees 17-27
17-17-16 Oversight of development impact fee program.....17-28

17-17-1 Title

This chapter shall be known and may be cited as the "Marana development impact fee ordinance."

17-17-2 Legislative intent and purpose

A. This chapter is adopted for the purpose of promoting the health, safety and general welfare of the residents of the town by:

1. Requiring new development to pay its proportionate share of the costs incurred by the town that are associated with providing necessary public services to new development.

2. Setting forth standards and procedures for creating and assessing development impact fees consistent with the requirements of A.R.S. § 9-463.05, including requirements pursuant to A.R.S. § 9-463.05, subsection K that, on or before August 1, 2014, the town replace its development impact fees that were adopted prior to January 1, 2012 with development impact fees adopted pursuant to the requirements of A.R.S. § 9-463.05 as amended by the state legislature in SB 1525, fiftieth legislature, first regular session.

3. Providing for the temporary continuation of certain development impact fees adopted prior to January 1, 2012 until otherwise replaced pursuant to this chapter.

4. Setting forth procedures for administering the development impact fee program, including mandatory offsets, credits, and refunds of development impact fees. All development impact fee assessments, offsets, credits, or refunds shall be administered in accordance with the provisions of this chapter.

B. This chapter shall not affect the town's zoning authority or its authority to adopt or amend its general plan, provided that planning and zoning activities by the town may require amendments to development impact fees as provided in section 17-17-7 below.

17-17-3 Definitions

When used in this chapter, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural.

1. Age restricted multi-family residential land use subcategory: Development where more than a single residential unit occurs on a single lot in a community that restricts residents to 55-

years or older with no one in the household under age 18. See ITE land use category 252.

2. Age restricted single family residential land use subcategory: Detached and attached residential structures characteristic of a primary residence, even if the residence is subsequently rented, in a community that restricts residents to 55-years or older with no one in the household under age 18. See ITE land use category 251.

3. Applicant: A person who applies to the town for a building permit.

4. Appurtenance: Any fixed machinery or equipment, structure or other fixture, including integrated hardware, software or other components, associated with a capital facility that are necessary or convenient to the operation, use, or maintenance of a capital facility, but excluding replacement of the same after initial installation.

5. Aquatic center: A facility primarily designed to host non-recreational competitive functions generally occurring within water, including, but not limited to, water polo games, swimming meets, and diving events. The facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities, including but not limited to, locker rooms, offices, snack bars, bleacher seating, and shade structures.

6. Building permit: Any permit issued by the town that authorizes vertical construction, increases square footage, authorizes changes to land use, or provides for the addition of a residential or non-residential point of demand to a water or wastewater system.

7. Capital facility: An asset having a useful life of three or more years that is a component of one or more categories of necessary public service provided by the town. A capital facility may include any associated purchase of real property, architectural and engineering services leading to the design and construction of buildings and facilities, improvements to existing facilities, improvements to or expansions of existing facilities, and associated financing and professional services. "Infrastructure" shall have the same meaning as "capital facilities."

8. Category of necessary public service: A category of necessary public services for which the town is authorized to assess development impact fees, as further defined in subsection 17-17-8 A. 1 below.

9. Category of development: A specific land use category against which a development impact fee is calculated and assessed. The town assesses development impact fees against residential, retail, high traffic retail, industrial, general office, medical facil-

ities, institutional, and recreational land use categories, each of which is defined in this list of definitions.

10. Congregate care land use subcategory: Group housing with a central eating facility, smaller rooms, and care for its tenants. This includes nursing homes, group homes, prisons, and similar uses as determined by the town engineer. See ITE land use categories 253, 254, 255, 571, and 620.

11. Credit: A reduction in an assessed development impact fee resulting from developer contributions to, payments for, construction of, or dedications for capital facilities included in an infrastructure improvements plan pursuant to section 17-17-12 below (or as otherwise permitted by this chapter).

12. Credit agreement: A written agreement between the town and a developer or landowner that allocates credits to the development pursuant to section 17-17-12 below. A credit agreement may be included as part of a development agreement pursuant to section 17-17-13 below.

13. Credit allocation: A term used to describe when credits are distributed to a particular development or parcel of land after execution of a credit agreement, but are not yet issued.

14. Credit issuance: A term used to describe when the amount of an assessed development impact fee attributable to a particular development or parcel of land is reduced by applying a credit allocation.

15. Developer: An individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation, state agency, or other person or entity undertaking land development activity, and their respective successors and assigns.

16. Development agreement: An agreement prepared in accordance with the requirements of section 17-17-13 below, A.R.S. § 9-500.05, and any applicable requirements of the town code.

17. Direct benefit: A benefit to an EDU resulting from a capital facility that: (a) addresses the need for a necessary public service created in whole or in part by the EDU; and that (b) meets either of the following criteria: (i) the capital facility is located in the immediate area of the EDU and is needed in the immediate area of the EDU to maintain the level of service; or (ii) the capital facility substitutes for, or eliminates the need for a capital facility that would have otherwise have been needed in the immediate area of the EDU to maintain the town's level of service.

18. Dwelling unit: A house, apartment, mobile home or trailer, group of rooms, or single room occupied as separate living quarters or, if vacant, intended for occupancy as separate living quarters.

19. Equipment: Machinery, tools, materials, and other supplies, not including vehicles, that a capital facility needs to provide the level of service specified by the infrastructure improvement plan, but excluding replacement of the same after initial development of the capital facility.

20. Equivalent demand unit (EDU): A unit of development within a particular category of development, defined in terms of a standardized measure of the demand that a unit of development in that category of development generates for necessary public services in relation to the demand generated by a detached single-family dwelling unit. For all categories of necessary public services, the EDU factor for a detached single-family dwelling unit is one, while the EDU factor for a unit of development within another category of development is represented as a ratio of the demand for each category of necessary public services typically generated by that unit as compared to the demand for such services typically generated by a detached single-family dwelling unit. An EDU shall be a "service unit" for purposes of A.R.S. § 9-463.05 (T) (10).

21. Excluded library facility: Library facilities for which development impact fees may not be charged pursuant to A.R.S. § 9-463.05, including that portion of any library facility that exceeds 10,000 square feet, and equipment, vehicles or appurtenances associated with library operations.

22. Excluded park facility: Park and recreational facilities for which development impact fees may not be charged pursuant to A.R.S. § 9-463.05, including amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, or zoo facilities.

23. Fee report: A written report developed pursuant to section 17-17-12 below that identifies the methodology for calculating the amount of each development impact fee, explains the relationship between the development impact fee to be assessed and the plan-based cost per EDU calculated in the infrastructure improvements plan, and which meets other requirements set forth in A.R.S. § 9-463.05.

24. Financing or debt: Any debt, bond, note, loan, interfund loan, fund transfer, or other debt service obligation used to finance the development or expansion of a capital facility.

25. General office land use category: Office uses, office parks, corporate headquarters, governmental offices, business parks, research and development parks, and similar uses as determined

by the town engineer. Doctor, dentist, and veterinary offices fall under this category instead of medical facilities. See ITE land use categories 700-799.

26. General plan: The most recently adopted Marana general plan.

27. Gross impact fee: The total development impact fee to be assessed against a subject development on a per unit basis, prior to subtraction of any credits.

28. High traffic retail land use category: Fast food restaurants, service stations, convenience stores, high-turnover restaurants, and similar uses as determined by the town engineer. See ITE land use categories 900-999.

29. Hotel/motel land use subcategory: Temporary lodging facilities such as hotels, motels, time shares/fractional shares, recreational vehicle parks, and similar uses as determined by the town engineer. See ITE land use categories 310 and 320.

30. Industrial land use category: Light and heavy industry, industrial parks, manufacturing, warehousing, mini-storage, utilities, and similar uses as determined by the town engineer. See ITE land use categories 100-199.

31. Infrastructure improvements plan: A document or series of documents that meet the requirements set forth in A.R.S. § 9-463.05, including those adopted pursuant to section 17-17-9 below to cover any category or combination of categories of necessary public services.

32. Institutional land use category: Churches, schools, colleges, universities, cemeteries, libraries, fraternal lodges, day care centers, and similar uses as determined by the town engineer. See ITE land use categories 500-599.

On July 9, 2014, the town attorney changed capitalization in paragraphs 32 based on the authority granted by town code section 1-4-5

33. Interim fee schedule: The Marana development impact fee schedule as established prior to January 1, 2012 in accordance with then-applicable law, and which shall expire not later than August 1, 2014.

34. ITE land use categories: Land use categories found in the Institute of Transportation Engineers' *Trip Generation Manual* (9th Edition, 2012).

35. Land use assumptions: Projections of changes in land uses, densities, intensities and population for a service area over a period of at least ten years as specified in section 17-17-7 below.

36. Level of service: A quantitative and/or qualitative measure of a necessary public service that is to be provided by the town to development in a particular service area, defined in terms of the relationship between service capacity and service demand, accessibility, response times, comfort or convenience of use, or other similar measures or combinations of measures. Level of service may be measured differently for different categories of

necessary public services, as identified in the applicable infrastructure improvements plan.

37. Medical facilities land use category: Hospitals, urgent care facilities, clinics, veterinary hospitals and clinics, and similar uses as determined by the town engineer. See ITE land use categories 600-699.

38. Multifamily residential land use subcategory: Predominantly rental multi-unit development such as apartments, student housing, mobile home parks, and similar uses as determined by the town engineer. See also ITE land use category 220.

39. Necessary public services: Has the meaning prescribed in A.R.S. 9-463.05 (T) (7).

On July 9, 2014, the town attorney corrected the statutory reference in paragraph 39 based on the authority granted by town code section 1-4-5

40. Offset: An amount which is subtracted from the overall costs of providing necessary public services to account for those capital components of infrastructure or associated debt that have been or will be paid for by a development through taxes, fees (except for development impact fees), and other revenue sources, as determined by the town pursuant to section 17-17-8 below.

41. Parks and recreational facilities: A category of necessary public services including but not limited to parks, swimming pools and related facilities and equipment located on real property not larger than 30 acres in area, as well as park facilities larger than 30 acres where such facilities provide a direct benefit. Parks and recreational facilities do not include excluded park facilities, although parks and recreational facilities may contain, provide access to, or otherwise support an excluded park facility.

42. Plan-based cost per EDU: The total future capital costs listed in the infrastructure improvements plan for a category of necessary public services divided by the total new equivalent demand units projected in a particular service area for that category of necessary public services over the same time period.

43. Qualified professional: A professional engineer, surveyor, financial analyst, or planner providing services within the scope of his or her license, education or experience.

44. Recreational land use category: Parks, camp grounds, golf courses, bowling alleys, movie theaters, racetracks, skating rinks, tennis courts, health/fitness clubs, community recreational centers, and similar uses as determined by the town engineer. See ITE land use categories 400-499.

45. Residential land use category: Includes all uses in the single family residential, multifamily, hotel/motel, congregate care, age restricted single family residential, and age restricted multifamily residential land use subcategories.

46. Retail land use category: Land uses providing retail sales, discount sales, and similar uses as determined by the town engineer. See ITE land use categories 800-899.

47. Service area: Any specified area within the boundaries of the town within which: (a) the town will provide a category of necessary public services to development at a planned level of service; and (b) within which (i) a substantial nexus exists between the capital facilities to be provided and the development to be served, or (ii) in the case of a park facility larger than 30 acres, a direct benefit exists between the park facilities and the development to be served, each as prescribed in the infrastructure improvements plan. Some or all of the capital facilities providing service to a service area may be physically located outside of that service area provided that the required substantial nexus or direct benefit is demonstrated to exist.

48. Single family residential land use subcategory: Detached and attached residential structures characteristic of a primary residence, even if the residence is subsequently rented. Mobile homes and manufactured homes on individual parcels, and duplexes, triplexes, condominiums, and townhomes are assessed at the single family residential land use rate. See also ITE land use category 210.

49. Street facilities: A category of necessary public services including arterial or collector streets or roads that have been designated on an officially adopted plan of the town, traffic signals and rights-of-way and improvements thereon.

50. Storm drainage: A category of necessary public services including but not limited to storm sewers constructed in sizes needed to provide for stormwater management for areas beyond major street projects and stormwater detention/retention basins, tanks, pump stations and channels necessary to provide for proper stormwater management, including any appurtenances for those facilities.

51. Subject development: A land area linked by a unified plan of development, which must be contiguous unless the land area is part of a development agreement executed in accordance with section 17-17-13 below.

52. Substantial nexus: A substantial nexus exists where the demand for necessary public services that will be generated by an EDU can be reasonably quantified in terms of the burden it will impose on the available capacity of existing capital facilities, the need it will create for new or expanded capital facilities, and/or the benefit to the development from those capital facilities.

53. Swimming pool: A public facility primarily designed and/or utilized for recreational non-competitive functions generally occurring within water, including, but not limited to, swim-

ming classes, open public swimming sessions, and recreational league swimming/diving events. The facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities.

54. Useful life: The period of time in which an asset can reasonably be expected to be used under normal conditions, whether or not the asset will continue to be owned and operated by the town over the entirety of such period.

55. Vehicle: Any device, structure, or conveyance utilized for transportation in the course of providing a particular category of necessary public services at a specified level of service, excluding helicopters and other aircraft.

56. Wastewater: A category of necessary public services including but not limited to sewers, lift stations, reclamation plants, wastewater treatment plants, and all other facilities for the collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.

57. Water: A category of necessary public services including but not limited to those facilities necessary to provide for water services to development, including the acquisition, supply, transportation, treatment, purification and distribution of water, and any appurtenances to those facilities.

17-17-4 Applicability

A. Except as otherwise provided in this chapter, this chapter shall apply to all new development within any service area, except for the development of any town facility.

B. The provisions of this chapter shall apply to all of the territory within the corporate limits of the town and within the town's water and wastewater service areas.

C. The town manager or the town manager's designee is authorized to make determinations regarding the application, administration and enforcement of the provisions of this chapter.

17-17-5 Authority for development impact fees

A. Fee report and implementation. The town may assess and collect a development impact fee for costs of necessary public services, including all professional services required for the preparation or revision of an infrastructure improvements plan, fee report, development impact fee, and required reports or audits conducted pursuant to this chapter. Development impact fees shall be subject to the following requirements:

1. The town shall develop and adopt a fee report that analyzes and defines the development impact fees to be charged in each service area for each capital facility category, based on the in-

frastructure improvements plan and the plan-based cost per EDU calculated pursuant to section 17-17-8 A. 13 below.

2. Development impact fees shall be assessed against all new commercial, residential, and industrial developments, provided that the town may assess different amounts of development impact fees against specific categories of development based on the actual burdens and costs that are associated with providing necessary public services to that category of development. No development impact fee shall exceed the plan-based cost per EDU for any category of development.

3. No development impact fees shall be charged, or credits issued, for any capital facility that does not fall within one of the categories of necessary public services for which development impact fees may be assessed as identified in section 17-17-8 A. 1 below.

4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the same service area. Development impact fees may not be used to provide a higher level of service to existing development or to meet stricter safety, efficiency, environmental, or other regulatory standards to the extent that these are applied to existing capital facilities that are serving existing development.

5. Development impact fees may not be used to pay the town's administrative, maintenance, or other operating costs.

6. Projected interest charges and financing costs can only be included in development impact fees to the extent they represent principal and/or interest on the portion of any financing or debt used to finance the construction or expansion of a capital facility identified in the infrastructure improvements plan.

7. Except for any fees included on interim fee schedules, all development impact fees charged by the town must be included in a "fee schedule" prepared pursuant to this chapter and included in the fee report.

8. All development impact fees shall meet the requirements of A.R.S. § 9-463.05.

B. Costs per EDU. The fee report shall summarize the costs of capital facilities necessary to serve new development on a per EDU basis as defined and calculated in the infrastructure improvements plan, including all required offsets, and shall recommend a development impact fee structure for adoption by the town. The actual impact fees to be assessed shall be disclosed and adopted in the form of impact fee schedules.

C. Carry-over of previously-established development impact fees and grandfathered facilities. Notwithstanding the requirements of this chapter, certain development impact fees adopted by the town pri-

or to the effective date of this chapter shall continue in effect as follows:

1. The lower Santa Cruz levee fee adopted by Marana ordinance number 99.02 shall remain in effect until the full $1,875,000 indebtedness covered by the fee is paid.
2. The Marana south transportation development impact fee adopted by Marana ordinance number 2001.02 and modified by Marana ordinance number 2006.12 shall remain in effect until the full Twin Peaks/I-10 Interchange indebtedness is paid.
3. Defined terms in any previously established fee schedule shall be interpreted according to the ordinance in effect at the time of their adoption.

17-17-6 Administration of development impact fees

A. Separate accounts. Development impact fees collected pursuant to this chapter shall be placed in separate, interest-bearing accounts for each capital facility category within each service area.

B. Limitations on use of fees. Development impact fees and any interest on them collected pursuant to this chapter shall be spent to provide capital facilities associated with the same category of necessary public services in the same service area for which they were collected, including costs of financing or debt used by the town to finance those capital facilities and other costs authorized by this chapter that are included in the infrastructure improvements plan.

C. Time limit. Development impact fees collected after July 31, 2014 shall be used within ten years of the date upon which they were collected for all categories of necessary public services except for water and wastewater facilities. For water facilities or wastewater facilities collected after July 31, 2014, development impact fees shall be used within 15 years of the date upon which they were collected.

17-17-7 Land use assumptions

A. Consistency. The infrastructure improvements plan shall be consistent with the town's current land use assumptions for each service area and each category of necessary public services as adopted by the town pursuant to A.R.S. § 9-463.05.

On July 9, 2014, the town attorney corrected the statutory reference in paragraph A based on the authority granted by town code section 1-4-5

B. Reviewing the land use assumptions. Prior to the adoption or amendment of an infrastructure improvements plan, the town shall review and evaluate the land use assumptions on which the infrastructure improvements plan is to be based to ensure that the land use assumptions within each service area conform with the general plan.

C. Evaluating necessary changes. If the land use assumptions upon which an infrastructure improvements plan is based have not been updated within the last five years, the town shall evaluate the land

use assumptions to determine whether changes are necessary. If, after general evaluation, the town determines that the land use assumptions are still valid, the town shall issue the report required in section 17-17-10 below.

D. Required modifications to land use assumptions. If the town determines that changes to the land use assumptions are necessary in order to adopt or amend an infrastructure improvements plan, it shall make such changes as necessary to the land use assumptions prior to or in conjunction with the review and approval of the infrastructure improvements plan pursuant to section 17-17-10 below.

17-17-8 Infrastructure improvements plan

A. Infrastructure improvements plan contents. The infrastructure improvements plan shall be developed by qualified professionals and may be based upon or incorporated within the town's capital improvements plan. The infrastructure improvements plan shall:

1. Specify the categories of necessary public services for which the town will impose a development impact fee, which may include any or all of the following:

   a. Water

   b. Wastewater

   c. Stormwater, drainage, and flood control

   d. Street facilities

   e. Parks

   f. Police

2. Define and provide a map of one or more service areas within which the town will provide each category of necessary public services for which development impact fees will be charged. Each service area must be defined in a manner that demonstrates a substantial nexus between the capital facilities to be provided in the service area and the EDUs to be served by those capital facilities. For parks larger than 30 acres, each service area must be defined in a manner that demonstrates a direct benefit between the capital facilities and the EDUs to be served by those capital facilities. The town may cover more than one category of capital facilities in the same service area provided that there is an independent substantial nexus or direct benefit, as applicable, between each category of necessary public services and the EDUs to be served.

3. Identify and describe the land use assumptions upon which the infrastructure improvements plan is based in each service area.

4. Analyze and identify the existing level of service provided by the town to existing EDUs for each category of necessary public services in each service area.

5. Identify the level of service to be provided by the town for each category of necessary public services in each service area based on the relevant land use assumptions and any established town standards or policies related to required levels of service. If the town provides the same category of necessary public services in more than one service area, the infrastructure improvements plan shall include a comparison of the levels of service to be provided in each service area.

6. For each category of necessary public services, analyze and identify the existing capacity of the capital facilities in each service area, the utilization of those capital facilities by existing EDUs, and the available excess capacity of those capital facilities to serve new EDUs including any existing or planned commitments or agreements for the usage of such capacity. The infrastructure improvements plan shall additionally identify any changes or upgrades to existing capital facilities that will be needed to achieve or maintain the planned level of service to existing EDUs, or to meet new safety, efficiency, environmental, or other regulatory requirements for services provided to existing EDUs.

7. Estimate the total number of existing and future EDUs within each service area based on the town's land use assumptions and projected new EDUs in each service area.

8. Based on the analysis in subparagraphs 17-17-8 A. 3 through 6 above, provide a summary table or tables describing the level of service for each category of necessary public services by relating the required capital facilities to EDUs in each service area, and identifying the applicable EDU factor associated with each category of development.

9. For each category of necessary public services, analyze and identify the projected utilization of any available excess capacity in existing capital facilities, and all new or expanded capital facilities that will be required to provide and maintain the planned level of service in each service area as a result of the new projected EDUs in that service area, for a period not to exceed ten years. Nothing in this subsection shall prohibit the town from additionally including in its infrastructure improvements plan projected utilization of, or needs for, capital facilities for a period longer than ten years, provided that the costs of such capital facilities are excluded from the calculation of the plan-based cost per EDU.

10. For each category of necessary public services, estimate the total cost of any available excess capacity and/or new or expanded capital facilities that will be required to serve new EDUs, including costs of land acquisition, improvements, engineering and architectural services, studies leading to design, design, construction, financing, and administrative costs, as well as projected costs of inflation. Such total costs shall not include

costs for ongoing operation and maintenance of capital facilities, nor for replacement of capital facilities to the extent that such replacement is necessary to serve existing EDUs. If the infrastructure improvements plan includes changes or upgrades to existing capital facilities that will be needed to achieve or maintain the planned level of service to existing EDUs, or to meet new regulatory requirements for services provided to existing EDUs, such costs shall be identified and distinguished in the infrastructure improvements plan.

11. Forecast the revenues from taxes, fees, assessments or other sources that will be available to fund the new or expanded capital facilities identified in the infrastructure improvements plan, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions. The infrastructure improvements plan shall additionally estimate the time required to finance, construct and implement the new or expanded capital facilities.

12. Calculate required offsets as follows:

    a. From the forecasted revenues in subparagraph 17-17-8 A. 11, identify those sources of revenue that: (i) are attributable to new development, and (ii) will contribute to paying for the capital costs of necessary public services.

    b. For each source and amount of revenue identified pursuant to subparagraph 17-17-8 A. 12. a, calculate the relative contribution of each category of development to paying for the capital costs of necessary public services in each service area.

    c. Based on the relative contributions identified pursuant to subparagraph 17-17-8 A. 12. b, for each category of necessary public services, calculate the total offset to be provided to each category of development in each service area.

    d. For each category of necessary public services, convert the total offset to be provided to each category of development in each service area into an offset amount per EDU by dividing the total offset for each category of development by the number of EDUs associated with that category of development.

    e. Beginning August 1, 2014, for purposes of calculating the required offset, if the town imposes a construction, contracting, or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate that is imposed on the majority of other transaction privilege tax classifications in the town, the entire excess portion of the construction, contracting, or similar excise tax shall be

treated as a contribution to the capital costs of necessary public services provided to new development unless the excess portion is already utilized for such purpose pursuant to this section.

f. In determining the amount of required offset for land included in a community facilities district established under A.R.S. title 48, chapter 4, article 6, the town shall take into account any capital facilities provided by the district that are included in the infrastructure improvements plan and the capital costs paid by the district for such capital facilities, and shall offset impact fees assessed within the community facilities district proportionally.

13. Calculate the plan-based cost per EDU by:

a. Dividing the total projected costs to provide capital facilities to new EDUs for each category of necessary public services in each service area as determined pursuant to subsection 17-17-8 A. 8 above into the number of new EDUs projected for that service area over a period not to exceed ten years, considering the specific EDU factors associated with those EDUs for each category of necessary public services.

b. Subtracting the required offset per EDU calculated pursuant to subsection 17-17-8 A. 12 above.

B. Multiple plans. An infrastructure improvements plan adopted pursuant to this section may address one or more of the town's categories of necessary public services in any or all of the town's service areas. Each capital facility shall be subject to no more than one infrastructure improvements plan at any given time.

C. Reserved capacity. The town may reserve capacity in an infrastructure improvements plan to serve one or more planned future developments, including capacity reserved through a development agreement pursuant to section 17-17-13 below. All reservations of existing capacity must be disclosed in the infrastructure improvements plan at the time it is adopted.

17-17-9 Adoption and modification procedures

A. Adopting or amending the infrastructure improvements plan. The infrastructure improvements plan shall be adopted or amended subject to the following procedures:

1. Major amendments to the infrastructure improvements plan. Except as provided in subparagraph 17-17-9 A. 2 below, the adoption or amendment of an infrastructure improvement plan shall occur at one or more public hearings according to the following schedule, and may occur concurrently with the adoption of an update of the town's land use assumptions as provided in section 17-17-7 above:

a. Sixty days before the first public hearing regarding a new or updated infrastructure improvements plan, the town shall provide public notice of the hearing and post the infrastructure improvements plan and the underlying land use assumptions on its website; the town shall additionally make available to the public the documents used to prepare the infrastructure improvements plan and underlying land use assumptions and the amount of any proposed changes to the plan-based cost per EDU.

b. The town shall conduct a public hearing on the infrastructure improvements plan and underlying land use assumptions at least 30 days, but no more than 60 days, before approving or disapproving the infrastructure improvements plan.

2. Minor amendments to the infrastructure improvements plan. Notwithstanding the other requirements of this section, the town may update the infrastructure improvements plan and/or its underlying land use assumptions without a public hearing if all of the following apply:

On July 9, 2014, the town attorney corrected the capitalization paragraph 2 based on the authority granted by town code section 1-4-5

a. The changes in the infrastructure improvements plan and/or the underlying land use assumptions will not add any new category of necessary public services to any service area.

b. The changes in the infrastructure improvements plan and/or the underlying land use assumptions will not increase the level of service to be provided in any service area.

c. Based on an analysis of the fee report and the town's adopted development impact fee schedules, the changes in the infrastructure improvements plan and/or the underlying land use assumptions would not, individually or cumulatively with other amendments undertaken pursuant to this subsection, have caused a development impact fee in any service area to have been increased by more than 5% above the development impact fee that is provided in the current development impact fee schedule.

d. At least 30 days prior to the date that the amendment pursuant to this section is adopted, the town shall post the proposed amendments on the town website.

B. Amendments to the fee report. Any adoption or amendment of a fee report and fee schedule shall occur at one or more public hearings according to the following schedule:

1. The first public hearing on the fee report must be held at least 30 days after the adoption or approval of and infrastructure improvements plan as provided in subsection 17-17-9 A above. The town must give at least 30 days' notice prior to the hearing,

provided that this notice may be given on the same day as the approval or disapproval of the infrastructure improvements plan.

2. The town shall make the infrastructure improvements plan and underlying land use assumptions available to the public on the town's website 30 days prior to the public hearing described in subparagraph 17-17-9 B. 1 above.

3. The fee report may be adopted by the town no sooner than 30 days, and no later than 60 days, after the hearing described in subparagraph 17-17-9 B. 1 above.

4. The development fee schedules in the fee report adopted pursuant to this subsection shall become effective 75 days after adoption of the fee report by the town.

17-17-10 Timing for the renewal and updating of the infrastructure improvements plan and the land use assumptions

A. Renewing the infrastructure improvements plan. Except as provided in subparagraph 17-17-10 B below, not later than every five years the town shall update the applicable infrastructure improvements plan and fee report related to each category of necessary public services pursuant to section 17-17-9 above. Such five-year period shall be calculated from the date of the adoption of the infrastructure improvements plan or the date of the adoption of the fee report, whichever occurs later.

B. Determination of no changes. Notwithstanding subparagraph 17-17-10 A above, if the town determines that no changes to an infrastructure improvements plan, underlying land use assumptions, or fee report are needed, the town may elect to continue the existing infrastructure improvements plan and fee report without amendment by providing notice as follows:

1. Notice of the determination shall be published at least 180 days prior to the end of the five-year period described in subparagraph 17-17-10 A above.

2. The notice shall identify the infrastructure improvements plan and fee report that shall continue in force without amendment.

3. The notice shall provide a map and description of the service area covered by the infrastructure improvements plan and fee report.

4. The notice shall identify an address to which any resident of the town may submit, within 60 days, a written request that the town update the infrastructure improvements plan, underlying land use assumptions, and/or fee report and the reasons and basis for the request.

C. Response to comments. The town shall consider and respond within 30 days to any timely requests submitted pursuant to subparagraph 17-17-10 B. 4 above.

17-17-11 Collection of development impact fees

A. Collection. Development impact fees shall be calculated and collected prior to issuance of permission to commence development; specifically:

1. Unless otherwise specified pursuant to a development agreement adopted pursuant to section 17-17-13 below, development impact fees shall be paid prior to issuance of a building permit according to the current development impact fee schedule for the applicable service area as adopted pursuant to this chapter, or according to any other development impact fee schedule as authorized in this chapter.

2. If a building permit is not required for the development, but water or wastewater connections are required, any and all development impact fees due shall be paid at the time the water service connection is purchased. If only a wastewater connection is required, the development impact fees shall be paid prior to approval of a connection to the sewer system. Wastewater development impact fees shall be assessed if a development connects to the public sewer, or as determined by the town water director, is capable of discharging sewage to a town public sewer.

Ordinance 2015.015 modified paragraph 2 by changing "utilities director" to "water director"

3. If the development is located in a service area with a stormwater, drainage, and flood control development impact fee, and neither a building permit, water, or sewer service connection is required, the storm drainage development impact fee due shall be paid at the time a civil or site permit is issued for the development.

4. No building permit, water or sewer connection, or certificate of occupancy shall be issued if a development impact fee is not paid as directed in the previous paragraphs.

5. If the building permit is for a change in the type of building use, an increase in square footage, a change to land use, or an addition to a residential or non-residential point of demand to the water or wastewater system, the development impact fee shall be assessed on the additional service units resulting from the expansion or change, and following the development impact fee schedule applicable to any new use type.

6. For issued permits that expire or are voided, and the development impact fees paid for such development have not been refunded, the permittee shall pay the difference between any development impact fees paid at the time the permit was issued and those in the fee schedule at the time the permit is reissued or renewed.

B. Exceptions. Development impact fees shall not be owed under either of the following conditions:

1. Development impact fees have been paid for the development and the permit that triggered the collection of the development impact fees has not expired or been voided.

2. The approval that triggers the collection of development impact fees involves modifications to existing residential or nonresidential development that do not: (a) add new EDUs, (b) increase the impact of existing EDUs on existing or future capital facilities, or (c) change the land-use type of the existing development to a different category of development for which a higher development impact fee would have been due. To the extent that any modification does not meet the requirements of this paragraph, the development impact fee due shall be the difference between the development impact fee that was or would have been due on the existing development and the development impact fee that is due on the development as modified.

C. Temporary exemptions from development impact fee schedules. New developments in the town shall be temporarily exempt from increases in development impact fees that result from the adoption of new or modified development impact fee schedules as follows:

1. Residential uses (other than multifamily). On or after the day that the first building permit is issued for a residential development (other than multifamily), the town shall, at the permittee's request, provide the permittee with an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that the first building permit is issued, and which shall expire at the end of the first business day of the 25th month after the first building permit is issued. During the effective period of the applicable development impact fee schedule, any building permit issued for the same residential development shall not be subject to any new or modified development impact fee schedule.

2. All other uses. On or after the town's approval of a development plan or subdivision plat for a retail, high traffic retail, industrial, general office, medical facilities, institutional, recreational, or multifamily development, the town shall provide an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day the development plan or subdivision plat was approved, and which shall expire at the end of the first business day of the 25th month after the development plan or subdivision plat was approved. During the effective period of the applicable development impact fee schedule, any building permit issued for the same development shall not be subject to any new or modified development impact fee schedule.

3. Changes to development plans and subdivision plats. During the 24-month period referred to in subsection 17-17-11 C. 1 or 2 above, if changes are made to a development's final develop-

ment plan or subdivision plat that will increase the number of service units, the town may assess any new or modified development impact fees against the additional service units. If the town reduces the amount of an applicable development impact fee during the 24-month period referred to in subsection 17-17-11 C. 1 or 2 above, the town shall assess the lower development impact fee.

D. Option to pursue special fee determination. Where a development is of a type that does not closely fit within a particular category of development appearing on an adopted development impact fee schedule, or where a development has unique characteristics such that the actual burdens and costs associated with providing necessary public services to that development will differ substantially from that associated with other developments in a specified category of development, the town may require the applicant to provide the town engineer with an alternative development impact fee analysis. Based on a projection of the actual burdens and costs that will be associated with the development, the alternative development impact fee analysis may propose a unique fee for the development based on the application of an appropriate EDU factor to the applicable plan-based cost per EDU, or may propose that the development be covered under the development impact fee schedule governing a different and more analogous category of development. The town engineer shall review the alternative impact fee analysis and shall make a determination as to the development impact fee to be charged. The decision shall be appealable pursuant to section 17-17-14 below. The town engineer may require the applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.

17-17-12 Development impact fee credits and credit agreements

A. Eligibility of capital facility. All development impact fee credits must meet the following requirements:

1. One of the following is true:

a. The capital facility, or the financial contribution toward a capital facility that will be provided by the developer and for which a credit will be issued, must be identified in an adopted Infrastructure improvements plan and fee report as a capital facility for which a development impact fee was assessed; or

b. The applicant must demonstrate to the satisfaction of the town that, given the class and type of improvement, the subject capital facility should have been included in the infrastructure improvements plan in lieu of a different capital facility that was included in the infrastructure improvements plan and for which a development impact fee was assessed. If the subject capital facility is determined to be eligible for a credit in this manner, the town shall amend the

infrastructure improvements plan to (i) include the subject replacement facility and (ii) delete the capital facility that will be replaced.

2. Credits shall not be available for any infrastructure provided by a developer if the cost of the infrastructure will be repaid to the developer by the town through another agreement or mechanism. To the extent that the developer will be paid or reimbursed by the town for any contribution, payment, construction, or dedication from any town funding source including an agreement to reimburse the developer with future collected development impact fees pursuant to section 17-17-13 below, any credits claimed by the developer shall be (a) deducted from any amounts to be paid or reimbursed by the town or (b) reduced by the amount of the payment or reimbursement.

B. Eligibility of subject development. To be eligible for a credit, the subject development must be located within the service area of the eligible capital facility.

C. Calculation of credits. Credits will be based on that portion of the costs for an eligible capital facility identified in the adopted infrastructure improvements plan for which a development fee was assessed pursuant to the fee report. If the gross impact fee for a particular category of necessary public service is adopted at an amount lower than the plan-based cost per EDU, the amount of any credit shall be reduced in proportion to the difference between the plan-based cost per EDU and the gross impact fee adopted. A credit shall not exceed the actual costs the applicant incurred in providing the eligible capital facility.

D. Allocation of credits. Before credits can be issued to a subject development (or portion of it), credits must be allocated to that development as follows:

1. The developer and the town must execute a credit agreement including all of the following:

   a. The total amount of the credits resulting from provision of an eligible capital facility.

   b. The estimated number of EDUs to be served within the subject development.

   c. The method by which the credit values will be distributed within the subject development.

2. It is the responsibility of the developer to request allocation of development impact fee credits through an application for a credit agreement (which may be part of a development agreement entered into pursuant to section 17-17-13 below).

3. If a building permit is issued or a water/sewer connection is purchased, and a development impact fee is paid prior to execution of a credit agreement for the subject development, no credits may be allocated retroactively to that permit or connec-

tion. Credits may be allocated to any remaining permits for the subject development in accordance with this chapter.

4. If the entity that provides an eligible capital facility sells or relinquishes a development (or portion of it) that it owns or controls prior to execution of a credit agreement or development agreement, credits resulting from the eligible capital facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor in interest for the subject development.

5. If multiple entities jointly provide an eligible capital facility, both entities must enter into a single credit agreement with the town, and any request for the allocation of credit within the subject development must be made jointly by the entities that provided the eligible capital facility.

6. Credits may only be reallocated from or within a subject development with the town's approval of an amendment to an executed credit agreement, subject to the following conditions:

   a. The entity that executed the original agreement with the town, or its legal successor in interest and the entity that currently controls the subject development are parties to the request for reallocation.

   b. The reallocation proposal does not change the value of any credits already issued for the subject development.

7. A credit agreement may authorize the allocation of credits to a non-contiguous parcel only if all of the following conditions are met:

   a. The entity that executed the original agreement with the town or its legal successor in interest, the entity that currently controls the subject development, and the entity that controls the non-contiguous parcel are parties to the request for reallocation.

   b. The reallocation proposal does not change the value of any credits already issued for the subject development.

   c. The non-contiguous parcel is in the same service area as that served by the eligible capital facility.

   d. The non-contiguous parcel receives a necessary public service from the eligible capital facility.

   e. The credit agreement specifically states the value of the credits to be allocated to each parcel and/or EDU, or establishes a mechanism for future determination of the value of the credits.

   f. The credit agreement does not involve the transfer of credits to or from any property subject to a development agreement.

E. Credit agreement. Credits shall only be issued pursuant to a credit agreement that conforms to the requirements set forth in paragraph 17-17-12 D above. The town manager or authorized designee is authorized by this chapter to enter into a credit agreement with the controlling entity of a subject development, subject to the following:

1. The developer requesting the credit agreement shall provide all information requested by the town to allow it to determine the value of the credit to be applied.

2. An application for a credit agreement shall be submitted to the town by the developer within one year of the date on which ownership or control of the capital facility passes to the town.

3. The developer shall submit a draft credit agreement to the town manager or authorized designee for review in the form provided to the applicant by the town. The draft credit agreement shall include, at a minimum, all of the following information and supporting documentation:

   a. A legal description and map depicting the location of the subject development for which the credits are being applied. The map shall depict the location of the capital facilities that have been or will be provided.

   b. An estimate of the total EDUs that will be developed within the subject development depicted on the map and described in the legal description.

   c. A list of the capital facilities, associated physical attributes, and the related costs as stated in the infrastructure improvements plan.

   d. Documentation showing the date of acceptance by the town, if the capital facilities have already been provided.

   e. The total amount of the credits to be applied within the subject development and the calculations leading to the total amount of the credits.

   f. The credits to be applied to each EDU within the subject development for each category of necessary public services.

4. The town's determination of the credits to be allocated is final.

5. Upon execution of the credit agreement by the town and the applicant, credits shall be deemed allocated to the subject development.

6. Any amendment to a previously approved credit agreement must be initiated within two years of the town's final acceptance of the eligible capital facility for which the amendment is requested.

7. Any credit agreement approved as part of a development agreement shall be amended in accordance with the terms of the development agreement and section 17-17-13 below.

F. Issuance of credits. Credits allocated pursuant to subparagraph 17-17-12 D above may be issued and applied toward the gross impact fees due from a development, subject to the following conditions:

1. Credits issued for an eligible capital facility may only be applied to the development impact fee due for the applicable category of necessary public services, and may not be applied to any fee due for another category of necessary public services.

2. Credits shall only be issued when the eligible capital facility from which the credits were derived has been accepted by the town or when adequate security for the completion of the eligible capital facility has been provided in accordance with all terms of an executed development agreement.

3. Where credits have been issued pursuant to subparagraph 17-17-12 F. 2 above, an impact fee due at the time a building permit is issued shall be reduced by the credits stated in or calculated from the executed credit agreement. Where credits have not yet been issued, the gross impact fee shall be paid in full, and a refund of the credits shall be due when the developer demonstrates compliance with subparagraph 17-17-12 F. 2 above in a written request to the town.

4. Credits, once issued, may not be rescinded or reallocated to another permit or parcel, except that credits may be released for reuse on the same subject development if a building permit for which the credits were issued has expired or been voided and is otherwise eligible for a refund under subparagraph 17-17-15 A. 2. a.

5. Notwithstanding the other provisions of this section 17-17-12, credits issued prior to January 1, 2012 may only be used for the subject development for which they were issued. The credits may be transferred to a new owner of all or part of the subject development in proportion to the percentage of ownership in the subject development to be held by the new owner.

17-17-13 Development agreements

A. General. Development agreements containing provisions regarding development impact fees, development impact fee credits, and/or disbursement of revenues from development impact fee accounts shall comply with the requirements of this section.

B. Development agreement required. A development agreement is required to authorize any of the following:

1. To issue credits prior to the town's acceptance of an eligible capital facility.

2. To allocate credits to a parcel that is not contiguous with the subject development and that does not meet the requirements of subparagraph 17-17-12 D. 7 above.

3. To reimburse the developer of an eligible capital facility using funds from development impact fee accounts.

4. To allocate different credit amounts per EDU to different parcels within a subject development.

5. For a single family residential dwelling unit, to allow development impact fees to be paid at a later time than the issuance of a building permit as provided in subparagraph 17-17-13 H below.

C. General requirements. All development agreements shall be prepared and executed in accordance with A.R.S. § 9-500.05 and any applicable requirements of the town code. Except where specifically modified by this section, all provisions of section 17-17-12 shall apply to any credit agreement that is authorized as part of a development agreement.

D. Early issuance of credits. A development agreement may authorize the issuance of credits prior to acceptance of an eligible capital facility by the town when the development agreement specifically states the form and value of the security (i.e. bond, letter of credit, etc.) to be provided to the town prior to issuance of any credits. The town shall determine the acceptable form and value of the security to be provided.

E. Non-contiguous allocation of credits. A development agreement may authorize the allocation of credits to a non-contiguous parcel only if all of the following conditions are met:

1. The non-contiguous parcel is in the same service area as that served by the eligible capital facility.

2. The non-contiguous parcel receives a necessary public service from the eligible capital facility.

3. The development agreement specifically states the value of the credits to be allocated to each parcel and/or EDU, or establishes a mechanism for future determination of the credits.

F. Uneven allocation of credits. The development agreement must specify how credits will be allocated amongst different parcels on a per-EDU basis, if the credits are not to be allocated evenly. If the development agreement is silent on this topic, all credits will be allocated evenly amongst all parcels on a per-EDU basis.

G. Use of reimbursements. Funds reimbursed to developers from impact fee accounts for construction of an eligible capital facility must be utilized in accordance with applicable law for the use of town funds in construction or acquisition of capital facilities, including A.R.S. § 34-201, et seq.

H. Deferral of fees. A development agreement may provide for the deferral of payment of development impact fees for a residential development beyond the issuance of a building permit; provided that a development impact fee may not be paid later than 15 days after the issuance of the certificate of occupancy for that dwelling unit. The development agreement shall provide for the value of any deferred development impact fees to be supported by appropriate security, including a surety bond, letter of credit, or cash bond.

I. Waiver of fees. If the town agrees to waive any development impact fees assessed on development in a development agreement, the town shall reimburse the appropriate development impact fee account for the amount that was waived.

J. No obligation. Nothing in this section obligates the town to enter into any development agreement or to authorize any type of credit agreement permitted by this section.

17-17-14 Appeals

A. General. A development impact fee determination by town staff may be appealed in accordance with the procedures set forth in this section.

B. Limited scope. An appeal shall be limited to disputes regarding the calculation of the development impact fees for a specific development and/or permit and calculation of EDUs for the development.

On July 9, 2014, the town attorney corrected a grammatical error in paragraph B based on the authority granted by town code section 1-4-5

C. Form of appeal. An appeal shall be initiated in a format prescribed by the town, and shall be submitted to the town engineer.

D. Department action. The town engineer shall act upon the appeal within 30 calendar days of the filing of the appeal, and the applicant shall be notified of the town engineer's decision in writing.

E. Appeal to council. The applicant may appeal the decision of the town engineer to the council by submitting an appeal to the town clerk within 14 calendar days of the town engineer's written decision.

F. Action by council. The council shall hear and act upon the appeal within 45 calendar days of receipt of the appeal, and the applicant shall be notified of the council's decision in writing.

G. Final decision. The council's decision regarding the appeal is final.

H. Fees during pendency. Building permits may be issued during the pendency of an appeal if the applicant (1) pays the full impact fee calculated by the town at the time the appeal is filed or (2) provides the town with financial assurances in the form acceptable to the town manager or authorized designee equal to the full amount of the impact fee. Upon final disposition of an appeal, the fee shall be adjusted in accordance with the decision rendered, and a refund paid if warranted. If the appeal is denied by the council, and the applicant has provided the town with financial as-

surances as set forth in clause (2) above, the applicant shall deliver the full amount of the impact fee to the town within ten days of the council's final decision on the appeal. If the applicant fails to deliver the full amount of the impact fees when required by this subsection, the town may draw upon such financial assurance instruments as necessary to recover the full amount of the impact fees due from the applicant.

17-17-15 Refunds of development impact fees

A. Refunds. A refund (or partial refund) will be paid to any current owner of property within the town who submits a written request to the town and demonstrates that:

1. The permit that triggered the collection of the development impact fee has expired or been voided prior to the commencement of the development for which the permit was issued and the development impact fees collected have not been expended, encumbered, or pledged for the repayment of financing or debt; or

2. The owner of the subject real property or its predecessor in interest paid a development impact fee for the applicable capital facility on or after August 1, 2014, and one of the following conditions exists:

   a. The capital facility designed to serve the subject real property has been constructed, has the capacity to serve the subject real property and any development for which there is reserved capacity, and the service which was to be provided by that capital facility has not been provided to the subject real property from that capital facility or from any other infrastructure.

   b. After collecting the fee to construct a capital facility the town fails to complete construction of the capital facility within the time period identified in the infrastructure improvements plan, as it may be amended, and the corresponding service is otherwise unavailable to the subject real property from that capital facility or any other infrastructure.

   c. For a category of necessary public services other than water or wastewater facilities, any part of a development impact fee is not spent within ten years of the town's receipt of the development impact fee.

   d. Any part of a development impact fee for water or wastewater facilities is not spent within 15 years of the town's receipt of the development impact fee.

   e. The development impact fee was calculated and collected for the construction cost to provide all or a portion of a specific capital facility serving the subject real property and the actual construction costs for the capital facility are less than

the construction costs projected in the infrastructure improvements plan by a factor of 10% or more. In such event, the current owner of the subject real property shall, upon request as set forth in this section, be entitled to a refund for the difference between the amounts of the development impact fee charged for and attributable to such construction cost and the amount the development impact fee would have been calculated to be if the actual construction cost had been included in the fee report. The refund contemplated by this subsection shall relate only to the costs specific to the construction of the applicable capital facility and shall not include any related design, administrative, or other costs not directly incurred for construction of the capital facility that are included in the development impact fee as permitted by A.R.S. § 9-463.05.

B. Earned interest. A refund of a development impact fee shall include any interest actually earned on the refunded portion of the development impact fee by the town from the date of collection to the date of refund. All refunds shall be made to the record owner of the property at the time the refund is paid.

C. Refund to government. If a development impact fee was paid by a governmental entity, any refund shall be paid to that governmental entity.

17-17-16 Oversight of development impact fee program

A. Annual report. Within 90 days of the end of each fiscal year, the town shall file with the town clerk an unaudited annual report accounting for the collection and use of the fees for each service area and shall post the report on its website in accordance with A.R.S. § 9-463.05 (N) and (O), as amended.

B. Biennial audit. In addition to the annual report described in paragraph A of this section, the town shall provide for a biennial, certified audit of the town's land use assumptions, infrastructure improvements plan and development impact fees.

1. An audit pursuant to this subsection shall be conducted by one or more qualified professionals who are not employees or officials of the town and who did not prepare the infrastructure improvements plan.

2. The audit shall review the collection and expenditures of development fees for each project in the plan and provide written comments describing the amount of development impact fees assessed, collected, and spent on capital facilities.

3. The audit shall describe the level of service in each service area, and evaluate any inequities in implementing the infrastructure improvements plan or imposing the development impact fee.

4. The town shall post the findings of the audit on the town's website and shall conduct a public hearing on the audit within 60 days of the release of the audit to the public.

5. For purposes of this section a certified audit shall mean any audit authenticated by one or more of the qualified professionals conducting the audit pursuant to subparagraph 17-17-16 B. 1 above.

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APPENDIX. TABLE OF REVISIONS

This appendix was added for administrative tracking purposes on February 17, 2006

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2006.01	2-17-2006	2-17-2006	Added chapter 9-11 (methamphetamine ordinance)
N/A	N/A	2-17-2006	February 17, 2006 scrivener's correction renumbered sections 15-1-8 and 15-1-9 under the authority of Ordinance 2005.22, confirmed by Ordinance 2008.16
2006.04	3-7-2006	4-7-2006	Added chapter 10-6 (smoking ordinance); moved former chapter 10-6 to chapter 10-7
2006.08	4-4-2006	4-4-2006	Revised section 5-6-1 (municipal court fees)
2006.14	6-6-2006	6-6-2006	Revised chapters 3-1 and 3-2 (adding and revising various town officer positions)
2006.15	6-6-2006	7-7-2006	Revised section 5-2-3 (hearing officers) and added chapter 5-7 (civil town code violation enforcement)
2006.16	6-6-2006	7-7-2006	Building codes update ordinance (various title 7 revisions)
2006.21	7-11-2006	7-11-2006	Amended the animal code by revising sections 6-1-2 and 6-8-2 and replacing chapters 6-2 and 6-3
2006.25	9-5-2006	9-5-2006	Amended chapter 2-6 (special and standing boards, commissions and committees) by revising section 2-6-1 and replacing section 2-6-2 with new sections 2-6-2 through 2-6-5 and deleted chapter 2-7 (special committees), chapter 2-8 (planning and zoning commission) and chapter 2-9 (board of adjustment)
2006.31	11-7-2006	12-7-2006	Amended title 12 (traffic) by revising section 12-2-11 (speed limits) to remove specific roadway segments from the town code and replace them with a separate speed limit map and table, rewriting chapter 12-3 (parking) to prohibit parking within right-of-way to display vehicles or goods for sale and to align town and state parking regulations, and revising and moving the various penalty provisions so that they appear within the chapter to which they apply
2006.33	12-5-2006	1-5-2007	Amended section 7-1-2 to adopt by reference new (in most cases the 2006) versions of various national codes, with local amendments
2007.04	3-6-2007	5-1-2007	Deleted chapter 10-6 and section 10-7-5 (smoking ordinance)
2007.05	3-20-2007	3-20-2007	Added section 4-1-8 (public safety employee organization meet and confer)
2007.11	5-1-2007	7-1-2007	Added chapter 5-8 (home detention ordinance)
2007.12	5-1-2007	7-1-2007	Added section 5-6-2 (probation monitoring fees)
2007.13	5-1-2007	6-1-2007	Amended various animal code fees and penalties in sections 6-2-8, 6-2-9, 6-2-12 and 6-5-2
2007.14	6-5-2007	6-5-2007	Added dog waste removal time limit in section 6-3-5(B)
2007.15	6-5-2007	6-5-2007	Revised park firearm regulations in section 13-1-3 and penalties in section 13-1-4
2007.18	8-7-2007	9-7-2007	Added chapter 10-6 (special events permit)
2007.21	9-4-2007	9-4-2007	Revised municipal court prosecution and court improvement fees (section 5-6-1(B)(2) and (4))

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2007.22	9-18-2007	9-18-2007	Revised section 7-1-2(A)(8) to adopt the 2006 international fire code, with local amendments, and changed all title 7 occurrences of "building department" to "building safety department"
N/A	N/A	9-18-2007	September 18, 2007 scrivener's correction changed "building department" to "building safety department" in sections 9-6-5(B), 9-6-6(E)(6) and 9-6-8(A) to conform to Ordinance 2007.22, under the authority of Ordinance 2005.22, confirmed by Ordinance 2008.16
2007.31	12-18-2007	12-18-2007	Revised various water service fees in sections 14-6-2, 14-7-2, 14-7-3 and 14-9-15
2007.32	12-18-2007	12-18-2007	Revised chapters 5-2 and 5-3 to place administrative control of the municipal court under the town magistrate, added "class 1" before "misdemeanor" in sections 5-7-4(B) and 5-7-11, and conformed all inconsistent references to the court throughout the town code to "municipal court"
2008.04	1-22-2008	1-22-2008	Changed the name of title 12 from "traffic" to "traffic and highways" and added chapter 12-7 (construction in town rights-of-way)
2008.08	3-4-2008	3-4-2008	Added section 12-2-12 (speed limits in areas undergoing roadway construction) and revised section 12-2-15 (penalties)
2008.11	5-20-2008	6-20-2008	Added chapter 12-8 (solicitation of employment, business or contributions from occupants of vehicles traveling on town streets or highways)
2008.15	7-1-2008	7-1-2008	Revised boards and commissions requirements in section 2-6-2 (application, recommendation, appointment and removal) and section 2-6-3 (terms of office)
2008.16	8-5-2008	9-4-2008	Amended the title of chapter 1-4 and added section 1-4-5, authorizing the town attorney and town clerk to correct scrivener's errors
2008.17	8-5-2008	9-5-2008	Increased certain dog license fees in sections 6-2-8, 6-2-9, and 6-2-12
2008.18	8-12-2008	8-12-2008	Adopted the 2008 Marana outdoor lighting code, referenced in section 7-1-2 (building codes adopted)
2008.19	8-12-2008	8-12-2008	Revised title 3 by amending and adding certain employee positions, amending section 3-1-2, 3-1-3, and 3-1-4, and adding sections 3-2-11, 3-2-12, and 3-2-13
N/A	N/A	9-4-2008	September 4, 2008 scrivener's error correction revised the cross-reference in section 12-2-15 (penalties), which had been renumbered by Ordinance 2008.08, under the authority of town code section 1-4-5
N/A	N/A	9-19-2008	September 19, 2008 scrivener's error correction to section 10-2-4, deleting a wayward reference to section 10-4-2, under the authority of town code section 1-4-5
2009.03	2-24-2009	3-27-2009	Amended section 14-7-1 to revise water base fees and consumption rates

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2009.04	3-3-2009	3-3-2009	Adopted chapter 11-8 (leaving a child under the age of eight years unattended in a motor vehicle) and renumbered existing chapters 11-8 and 11-9
N/A	N/A	4-30-2009	April 30, 2009 scrivener's error correction to section 11-5-2, deleting a wayward reference to section 11-8-2 and correcting it to refer to section 11-9-2, under the authority of town code section 1-4-5
2009.10	6-2-2009	6-2-2009	Amended section 2-3-1 (vice mayor) to expand the time for selection from 20 days to June 30 following the date of the general election
2009.11	6-9-2009	7-10-2009	Replaced specifically-stated fees throughout the town code with references to the separately-adopted comprehensive fee schedule, modifying sections 5-6-1, 6-2-8, 6-2-9, 6-2-12, 9-1-3, 9-2-8, 9-6-7, 9-7-2, 10-5-3, 12-5-3, 14-5-2, 14-6-2, 14-6-6, 14-6-11, 14-6-12, 14-7-1, 14-7-2, 14-7-3, 14-8-8, 14-9-14, and 14-9-15
2009.13	6-23-2009	7-10-2009	Corrected the last sentence of section 14-7-3 (C)
2009.14	6-23-2009	6-23-2009	Transferred licensing duties from the town clerk to the license inspector by deleting the word "clerk" from sections 9-1-1 (A), 9-1-2 (B), 9-1-5 (B), 9-1-10 (A), 9-2-6 (B), 9-2-8 (B), 9-6-2 (L), and 9-6-5 (E)(10); replacing "town clerk" with "license inspector" in sections 9-1-1 (C)(3), 9-1-2 (A), 9-1-3 (D), 9-1-3 (G), 9-1-10 (D), 9-1-12, 9-2-2 (A), 9-2-4, 9-2-6 (A), 9-2-8 (C), 9-2-8 (F), 9-2-9, 9-2-11, 9-2-12 (A), 9-2-12 (C), 9-6-5 (A), 9-6-5 (F), 9-6-6, 9-6-10, 9-6-12, 9-6-14, 9-6-15, 9-6-16, and 9-6-21; and amending sections 9-1-6 and 9-1-10 (C).
2009.15	7-21-2009	8-21-2009	Prohibited smoking in certain town park areas by adding sub-paragraph 18 to section 13-1-3.
2009.18	8-4-2009	8-4-2009	Revised the provisions relating to board, commission and committee appointments and terms of office by amending sections 2-6-2 and 2-6-3.
2009.24	12-1-2009	12-1-2009	Amended section 4-1-4 ("Departmental rules and regulations) by deleting the requirement for town council approval and by adding the last two sentences, relating to compliance with federal, state, and town ordinances and regulations.
N/A	N/A	1-5-2010	January 5, 2010 scrivener's error correction to section 11-5-4 (I), correcting a wayward cross-reference, under the authority of town code section 1-4-5
2009.25	12-15-2009	12-15-2009	Corrected the licensing duties revisions made by Ordinance 2009.14 in sections 9-1-5, 9-6-11, and 9-6-12
2010.01	1-5-2010	2-5-2010	Added chapter 1-9 ("Code compliance")
2010.02	1-5-2010	2-5-2010	Revised chapter 5-7 relating to the municipal court procedures and sanctions for civil violations of the town code
N/A	N/A	3-31-2010	March 31, 2010 scrivener's error correction to the numbering of sections5-7-7 through 5-7-11 as inadvertently renumbered by Ordinance 2010.02, under the authority of town code section 1-4-5

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2010.06	5-4-2010	6-4-2010	Revised section 2-5-5 ("Effective date of ordinances, resolutions and franchises") by amending the title and adding "which is subject to voter referendum" in the first sentence of paragraph A
N/A	N/A	5-17-2010	May 17, 2010 scrivener's error correction to the cross-referencing in sections 11-10-4 (A) and (A) (1) and 11-10-5 (A), under the authority of town code section 1-4-5
N/A	N/A	7-12-2010	July 12, 2010 scrivener's revisions to entire code to use automatic numbering for sections and automatic cross-referencing. The word "Section" was deleted from the title of each section, and subsection cross-reference formats were standardized. Standardizations by authority of town code section 1-4-5
2010.09	7-20-2010	7-20-2010	Revised section 13-1-3 (use and occupancy rules and regulations) by deleting the prohibition against carrying firearms in parks and making other revisions to conform to Laws 2010 chapter 19
2010.10	7-20-2010	8-20-2010	Added chapter 13-2 (fingerprinting and criminal history records checks of parks and recreation personnel and volunteers)
2010.13	8-3-2010	9-2-2010	Revised paragraph B of section 9-1-3 (fees; payment; term of licenses; annual renewal required) to clarify that fees must be paid to the town for all applications to the Arizona department of liquor licenses and control
2010.14	8-17-2010	8-17-2010	Revised section 5-2-1 (town magistrate) to provide for the appointment of the magistrate for a two year term beginning on the date of appointment
2011.01	2-15-2011	3-18-2011	Added chapter 9-4 (massage establishments)
2011.03	2-15-2011	2-15-2011	Amended various sections in chapters 3-1 and 3-2, revising positions appointed by, removed by and reporting to the town manager, deputy town manager, assistant town manager, and general manager; updating responsibilities; renaming special projects administrator to manager; and adding the position of director of strategic initiatives
2011.08	3-1-2011	3-1-2011	Amended section 2-4-1 (regular and special council meetings) to include procedures to cancel and add council meetings as necessary
2011.09	3-15-2011	4-15-2011	Amended chapter 10-5 (fireworks) to add definitions and describe prohibited and permitted activities to conform to state law
N/A	N/A	3-24-2011	March 24, 2011 scrivener's revisions to the numbering within sections 9-4-2 and 9-4-20 by authority of town code section 1-4-5
N/A	N/A	3-24-2011	March 24, 2011 scrivener's revisions to the capitalization in the portions of section 2-4-1 paragraph A added by Ordinance 2011.08 to conform to the stylistic conventions adopted by Ordinance 2005.22, by authority of town code section 1-4-5
2011.14	6-21-2011	6-21-2011	Deleted police commander from the unclassified service list in section 3-1-3, deleted section 3-2-13 (police commander), and renumbered the following section to conform

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2011.17	7-19-2011	8-19-2011	Amended town code title 8, the Marana tax code, to add the 2010-2011 amendments
2011.22	9-6-2011	9-6-2011	Adopted massage establishments revisions; amended sections 9-4-2, 9-4-3, 9-4-6, 9-4-7, 9-4-8, 9-4-9, 9-4-12, 9-4-13, and 9-4-14; added section 9-4-15; and amended and renumbered sections 9-4-16 and 19; and renumbered sections 9-4-17, 9-4-18, 9-4-20, 9-4-21, 9-4-22, 9-4-23, and 9-4-24 to conform
2011.24	9-6-2011	10-7-2011	Comprehensively revised title 14 to include water and wastewater utilities, and renamed it from water to utilities
2011.25	9-20-2011	10-21-2011	Revised section 2-2-6 D. 3 to change the deadline for submission of ballot arguments to conform to A.R.S. § 19-141 (C)
2011.26	11-1-2011	12-1-2011	Amended sections 6-1-2, 6-2-8, 6-2-10, 6-3-1, 6-3-2, 6-4-1, 6-4-2, and 6-4-4, and added section 6-4-3, relating to animal control
2011.28	11-15-2011	11-15-2011	Amended section 2-6-3, relating to terms of office of standing and special boards, commissions, and committees
2011.29	11-15-2011	11-15-2011	Amended section 9-4-19 by changing massage establishment lighting requirements
2011.33	12-6-2011	1-6-2012	Amended section 16-1-2 by changing the membership of the utilities board
N/A	N/A	12-13-2011	December 13, 2011 scrivener's revision to the cross-references in section 9-4-2 K by authority of town code section 1-4-5
2012.06	7-17-2012	8-17-2012	Rewrote chapter 11-7 (storage of inoperable or junked vehicles) and section 11-9-1 (violations)
2012.07	7-17-2012	7-17-2012	Amended section 10-1-1 (definitions); added new section 10-1-3 (spilled garbage or aggregate materials); replaced old section 10-1-3 (illegal dumping) with new section 10-1-4 (illegal dumping); rewrote chapter 10-2 (formerly removal of litter, now maintenance of property); and deleted chapter 10-7 (penalties) and inserted penalties into the individually-applicable sections
2012.09	8-7-2012	8-7-2012	Amended sections 2-4-1 (regular and special council meetings), 2-4-2 (agenda preparation and distribution), and 2-4-4 (procedures for meetings)
2012.12	11-20-2012	12-21-2012	Comprehensively rewrote section 14-9-3 (escaping water)
2012.13	12-4-2012	12-4-2012	Revised the regulations relating to massage establishments found in sections 9-4-2, 9-4-8, 9-4-9, 9-4-12, 9-4-13, 9-4-14, 9-4-15, 9-4-16, 9-4-18, 9-4-19, 9-4-20, 9-4-21, and 9-4-22
N/A	N/A	12-13-2012	December 13, 2012 scrivener's revision to the cross-reference in subparagraph 9-4-14 A 22 by authority of town code section 1-4-5
N/A	N/A	1-7-2013	January 7, 2013 scrivener's error correction of the spelling of "licensee" in the third sentence by authority of town code section 1-4-5 B
2013.005	4-2-2013	4-2-2013	Added subparagraph C 7 and paragraph D to section 3-2-7 (town attorney), confirming the town attorney's role as prosecutor and the authority of deputy and assistant town attorneys

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2013.007	4-16-2013	7-1-2013	Revised section 7-1-2 (building codes adopted) to reference newer versions of the national codes and to add the 2012 international fuel gas code
2013.010	6-18-2013	7-19-2013	Revised paragraph G of section 6-2-8 ([dog] license fees…) to change "pay a license fee" to "timely renew a license"
2013.011	6-18-2013	7-22-2013	Made various minor revisions to chapter 12-7 (construction in town rights-of-way); specifically, in sections 12-7-5 (permit process), 12-7-8 (construction requirements), 12-7-9 (newly constructed asphalt pavements), 12-7-12 (fees; late fees), and 12-7-13 (classification; penalties)
2013.013	7-2-2013	8-3-2013	Revised sections 9-1-6 and 9-1-7 to include code compliance officers
2013.014	8-6-2013	9-6-2013	Revised section 9-1-12 regarding verification of principal business purpose for regulation of sexually oriented businesses
2013.015	8-6-2013	9-6-2013	Revised sections 3-1-3 and 3-2-12 to change the office of assistant chief of police to deputy chief of police
2013.016	8-6-2013	9-6-2013	Revised section 2-1-6 (bond) to clarify elected officials' coverage with a blanket bond
2013.017	8-6-2013	9-6-2013	Revised chapter 10-2 (maintenance of property) to address dilapidated buildings
2013.019	8-20-2013	9-20-2013	Revised sections 2-2-1, 2-2-3, 2-2-5, and 2-3-1 to conform to the 2012 revisions to A.R.S. § 16-204 concerning consolidated elections
N/A	N/A	9-24-2013	Town attorney's scrivener's error correction of the section heading of section 9-1-1, changing "licensed" to "license," under the authority of section 1-4-5
2013.026	11-19-2013	12-20-2013	Deleted section 4-1-8 (public safety employee-employer relations; meet and confer)
2013.028	12-17-2013	1-17-2014	Changed "5%" to "the actual costs" in section 10-2-7 (removal by town [of rubbish, trash, weeds and dilapidated buildings from property]; costs assessed appeal; recording of assessment)
2013.029	12-17-2013	1-17-2014	Revised sections 5-7-2 (commencement of [civil code violation] action; jurisdiction of Marana municipal court) and 5-7-4 (authority to detain persons to serve civil code complaint; failure to provide evidence of identity; penalty) to allow use of the Arizona traffic ticket and complaint form and making other clarifying revisions
N/A	N/A	1-17-2014	Town attorney's scrivener's error correction of capitalization in section 5-7-2 and 5-7-4 as revised by Ordinance 2013.029, under the authority of section 1-4-5
2014.008	3-4-2014	4-4-2014	Revised the title and text of chapter 10-6 (formerly special event permits, now special events)
2014.009	3-4-2014	4-4-2014	Revised subparagraph E.1 of section 11-5-3 (noise standards in the resort and recreation zone) to refer to "special event permit" and the process in chapter 10-6

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2014.011	5-6-2014	8-1-2014	Added title 17 as a placeholder for the future recodification of the land development code, and added new chapter 17-17 (development impact fee ordinance)
2014.014	5-20-2014	6-20-2014	Changed references to A.R.S. § 4-101(29) throughout chapter 9-5 to A.R.S. § 4-101; added section 9-5-8; and deleted and replaced chapter 9-9 (penalty)
2014.018	7-1-2014	7-1-2014	Amended chapters 3-1, 3-2, and 3-3 by revising several sections in dealing with the classification of officers and employees, and deleting sections addressing special projects manager, assistants to the town manager, deputy chief of police, director of strategic initiatives, and rules and regulations
2014.019	7-1-2014	8-1-2014	Amended sections 4-1-2 (appointment of officers) and 4-1-3 (compensation of officers)
N/A	N/A	7-9-2014	Town attorney's scrivener's error corrections of capitalization, use of numerals, cross-referencing, and grammar in section 9-5-8, paragraphs 32 and 39 of section 17-17-3, paragraph A of section 17-17-7, subparagraph A. 2 of section 17-17-9, and paragraph B of section 17-17-14, under the authority of section 1-4-5
2014.020	8-5-2014	8-5-2014	Amended section 3-2-4 (town clerk) paragraph B to provide for a person designated by the town manager (instead of the town council) to act in the town clerk's absence
2014.021	9-2-2014	10-3-2014	Deleted former paragraph B of section 9-1-3 (fees; payment; term of licenses; annual renewal required); and deleted and replaced chapter 9-7 (formerly "liquor license tax"; now "liquor licenses") in its entirety
2014.022	9-2-2014	10-3-2014	Added new chapter 3-5 (claims and settlement)
2014.029	12-2-2014	12-2-2014	Revised section 13-2-3 (fingerprinting of current and prospective parks and recreation personnel and volunteers; criminal history record information) and added section 13-2-4 (alternative background investigations)
2015.004	1-20-2015	2-20-2015	Added new chapter 14-10 (industrial wastewater ordinance)
2015.006	2-3-2015	3-6-2015	Rewrote section 13-1-2 (spirituous liquor prohibited; permits; exception; definitions); revised section 13-1-3 (use and occupancy rules and regulations) to create an exception for the prohibition on glass containers (paragraph A. 15); and simplified and renamed section 13-1-4 (violations; classification)
2015.015	6-30-2015	6-30-2015	Globally replaced "utilities department" with "water department" and "utilities director" with "water director" throughout the town code, and revised the definitions at section 14-10-5 paragraphs 11 and 12