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 2020.004, adopted January 21, 2020, and effective February 21, 2020.

Navigating this PDF:

This PDF was created with automatic cross-references that allow you to navigate easily through the document. Automatic cross-references are identified by blue text. For example, all of the tables of contents automatically cross-reference to the section and subsection headings of the text. Jump to the cross-referenced location by left-clicking (on most computers) or touching (on touch-screen devices) the blue text.

MARANA TOWN CODE
TABLE OF CONTENTS

TABLE OF CONTENTS

TITLE 1. GENERAL

TITLE 2. MAYOR AND COUNCIL

TITLE 3. ADMINISTRATION

TITLE 4. POLICE DEPARTMENT

TITLE 5. MUNICIPAL COURT

TITLE 6. ANIMAL CONTROL

TITLE 7. BUILDING

TITLE 8. TRANSACTION PRIVILEGE TAX

TITLE 9. BUSINESS REGULATIONS

TITLE 10. HEALTH AND SANITATION

TITLE 11. OFFENSES

TITLE 12. TRAFFIC AND HIGHWAYS

TITLE 13. PARKS & RECREATION

TITLE 14. UTILITIES

TITLE 15. MARANA REGIONAL AIRPORT

TITLE 16. UTILITIES BOARD

TITLE 17. LAND DEVELOPMENT

APPENDIX. TABLE OF REVISIONS

Title 1
General

1

TITLE 1. GENERAL

CHAPTER 1-1. HOW CODE DESIGNATED AND CITED 1-1

CHAPTER 1-2. CONSTRUCTION OF ORDINANCES 1-1

CHAPTER 1-3. DEFINITIONS 1-1

CHAPTER 1-4. REFERENCE TO CODE; CONFLICTING PROVISIONS; SCRIVENER'S ERRORS 1-3

CHAPTER 1-5. SECTION HEADINGS 1-4

CHAPTER 1-6. EFFECT OF REPEAL 1-4

CHAPTER 1-7. SEVERABILITY OF PARTS OF THE CODE 1-5

CHAPTER 1-8. PENALTY 1-5

CHAPTER 1-9. CODE COMPLIANCE 1-5

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. For geographic areas not located within the boundaries of a fire district and for any provision or regulation that does not apply to a particular geographic area, "fire chief" means the town's chief building official or his or her designee.

The definitions of fire chief and fire department were amended by Ordinance 2016.017

6. "Fire department" means the fire district that has jurisdiction over the geographic area in question.
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 department, 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.

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

Section 1-4-5 was added by Ordinance 2008.16

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

CHAPTER 2-1. COUNCIL 2-1

CHAPTER 2-2. COUNCIL ELECTION 2-2

CHAPTER 2-3. MAYOR AND VICE MAYOR 2-5

CHAPTER 2-4. COUNCIL PROCEDURE 2-7

CHAPTER 2-5. ORDINANCES, RESOLUTIONS AND CONTRACTS 2-15

CHAPTER 2-6. SPECIAL AND STANDING BOARDS, COMMISSIONS AND COMMITTEES 2-17

CHAPTER 2-7. [RESERVED] 2-19

CHAPTER 2-8. [RESERVED] 2-19

CHAPTER 2-9. [RESERVED] 2-19

CHAPTER 2-10. INDEMNIFICATION OF OFFICERS AND EMPLOYEES 2-19

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 2020.004 amended subparagraph A to conform to 2019 revisions to A.R.S. §§ 16-201, 16-204, and 16-206. 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 first Tuesday in August 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

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

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.

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 the basis upon which the number of qualified electors of the town required to file an initiative petition shall be computed.

Ordinance 2020.004 amended paragraph B

2. The basis upon which the number of qualified electors of the town required to file a referendum petition is calculated 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 opposing propositions appearing on the ballot shall meet the following requirements:

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

   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

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.

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"

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. Af-

ter 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

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

shall not be deprived of any of the rights and privileges of a council member.

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 un-numbered 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

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.

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.

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 meeting 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.

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

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 motion 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

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

shall call roll, and each council member shall state his or her vote aloud.

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 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.

Ordinance 2005.22 rewrote paragraph B

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 in-

volved, 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 preservation 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.

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

CHAPTER 2-7. [RESERVED]

CHAPTER 2-8. [RESERVED]

CHAPTER 2-9. [RESERVED]

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 protect 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

CHAPTER 3-1. OFFICERS AND EMPLOYEES 3-1

CHAPTER 3-2. ESTABLISHMENT, COMPENSATION, AND POWERS AND DUTIES OF TOWN OFFICERS 3-4

CHAPTER 3-3. PERSONNEL POLICIES 3-13

CHAPTER 3-4. PROCUREMENT 3-14

CHAPTER 3-5. CLAIMS AND SETTLEMENT 3-33

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;

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, setting 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, setting 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. PROCUREMENT

I. GENERAL PROVISIONS

Chapter 3-4 (Procurement) was adopted by Ordinance 2017.022. For prior history of former chapter 3-4 (Purchasing), see Ordinances 96.14, 96.31, 98.18, 98.22, 2000.07, 2000.18, 2002.21, 2002.22, and 2005.22.

3-4-1 Short title

This chapter may be cited as the town of Marana procurement code.

3-4-2 Purpose

It is the purpose and intent of this chapter to:

A. Simplify, clarify, and modernize the laws governing town procurement.

B. Permit the continued development of procurement policies and practices.

C. Foster and maintain public confidence in the procurement process.

D. Ensure the fair and equitable treatment of all persons involved in the town's public procurement process.

E. Maximize the purchasing value of public funds through competitive procurement practices.

F. Provide a procurement system of quality, integrity, and transparency.

G. Obtain in a cost-effective and responsive manner the materials, services, and construction required by the town to better serve the town's businesses and residents.

H. Ensure the proper disposal of property, equipment and materials that are no longer of value to the town.

3-4-3 Supplementary general principles of law applicable

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

3-4-4 Requirement of good faith

All parties involved in the negotiation, performance, or administration of town contracts are required to act in good faith.

3-4-5 Definitions

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

A. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

B. "Change order" means a written document authorized by the purchasing director which directs the contractor to make changes with or without the consent of the contractor.

C. "Confidential information" means any information which is available to any employee only because of the employee's status as an employee of the town and is not a matter of public knowledge or available to the public on request.

D. "Construction" means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

E. "Contract" means all types of agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

F. "Contract modification" or "bilateral change" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

G. "Contractor" means any person having a contract with the town.

H. "Cooperative purchasing" means procurement conducted by, or on behalf of, one or more public procurement units, including the state of Arizona, any other state, an agency of the United States, any political subdivision of the state of Arizona or another state, any agency, board, department or other instrumentality of such political subdivision, and any nonprofit corporation created solely for the purpose of administering a cooperative purchase.

I. "Design services" means architect services, engineer services or landscape architect services.

J. "Disadvantaged business" means a small business owned or controlled by a majority of persons including but not limited to members of minority groups who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

K. "Employee" means an individual drawing a salary or wages from the town, whether elected or not; any non-compensated individual performing personal services for the town or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the town; and any non-compensated individual serving as an elected official of the town.

L. "Gratuity" means a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

M. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

N. "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

O. "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services. Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

P. "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available, including publication in newspapers of general circulation, electronic or paper mailing lists, and web sites designated by the town and maintained for that purpose.

Q. "Purchasing director" means the town's finance director or the finance director's designee.

R. "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

S. "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

T. "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

U. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance. This term shall not include employment agreements or collective bargaining agreements.

V. "Small business" means an independently owned business not dominant in its field of operation and not affiliated with or subsidiary to a business dominant in its field of operation.

W. "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

X. "Supplies" means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Y. "Surplus supplies" means any supplies no longer having any use to the town, including obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

Z. "Technical registrant" means a person who provides any of the professional services listed in Arizona revised statutes, title 32, chapter 1, as amended, and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects.

3-4-6 Application; exclusions

A. This chapter shall apply to:

1. Every expenditure of public funds for the procurement of supplies, services, and construction entered into by the town irrespective of the source of the funds, unless otherwise specified in this code. Nothing in this chapter shall prevent the town or any department from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
2. The inventory and disposal of town materials and supplies, unless otherwise provided by law.

B. This chapter shall not apply to:

1. Contracts between the town and the federal government, the state of Arizona and political subdivisions of the state of Arizona, except as provided in this procurement code.
2. Contracts for expert services, if the purpose of such services is to provide for professional services relating to an existing or probable lawsuit in which the town is or may become a party or to contracts for special investigative services for law enforcement or administrative investigation purposes.
3. Agreements negotiated by legal counsel representing the town in settlement of pending litigation or threatened litigation.
4. Development agreements, as defined in Arizona revised statutes section 9-500.05, as amended.
5. Contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated in connection with a contract for purchase or sale of real property.

II. PROCUREMENT ORGANIZATION

3-4-7 Town council approval

A. The town council approves purchases by or on behalf of the town through inclusion of the purchase in the town's legally adopted annual budget.

B. Notwithstanding other provisions of this chapter, separate town council approval of purchases is required in the following instances:

1. Where prior approval is required by state law or town code.
2. Where the purchase exceeds $50,000 and funds for the purchase are not provided in the budget as adopted.
3. Where the purchase is authorized in the adopted budget but the funds exceed the budgeted amount by more than $50,000.
4. For change orders that individually or cumulatively exceed $50,000.

C. A town council resolution or action approving a purchase or contract may include change order authorization exceeding the amounts otherwise set forth in this chapter.

3-4-8 Town manager approval

A. The town manager or designee is authorized to approve all of the following unless prior town council approval is required by state law or town code:

1. Any purchase up to $50,000.
2. Any purchase authorized in the adopted budget and not more than $50,000 higher than the budgeted amount.
3. Change orders that individually or cumulatively total $50,000 or less.

B. The town manager or designee may approve change orders to public improvements contracts that exceed the authority otherwise granted by this section if the town manager reasonably determines that doing so will avoid unnecessary contractor delay claims or costs or public health or safety hazards that would otherwise occur while awaiting town council approval, provided that town council ratification occurs as soon as practicable thereafter.

3-4-9 Authority of purchasing director

The purchasing director shall have general supervision, responsibility and authority to:

A. Procure, contract for and execute agreements for supplies and services, including rentals, service agreements, and leases needed by any town department, in accordance with this procurement code.

B. Approve and sign change orders to contracts in accordance with this procurement code.

C. Establish and amend all regulations, forms, procedures and rules necessary and proper to implement the provisions of this procurement code.

D. Suspend or debar vendors consistent with the provisions of this procurement code.

E. Centralize procurement, consistent with this procurement code, by which materials, supplies, equipment and contractual services for all town departments are purchased.

F. Inform town employees and contractors of the ethical standards for public contracting.

G. Sell, trade, or otherwise dispose of surplus supplies belonging to the town, as deemed advantageous.

H. Designate another town representative to have the authority to perform any or all of the above tasks.

3-4-10 Determinations

Written determinations required by this chapter shall be retained in the official bid file of the purchasing director.

3-4-11 Public access to procurement information

Procurement information shall be a public record and available to the public to the extent provided in Arizona's public records law.

3-4-12 Authorization for the use of electronic transmissions

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with applicable statutory, regulatory, or other authorization and guidance for use of electronic media, and provided that the electronic media (i) has appropriate security to prevent unauthorized access to the bidding, approval, and award processes and (ii) can be accurately retrieved or converted into a medium capable of being inspected and copied.

III. ETHICS

3-4-13 Ethical standards

A. It is a violation of this procurement code:

1. For any person to attempt to or influence any town employee to violate the provisions of ethical conduct set forth in this procurement code.

2. For any person preparing specifications or plans pursuant to this procurement code or any policy or procedure of the town to receive any direct pecuniary benefit from the use of such plans or specifications.

3. For any employee or agent acting on behalf of the town to directly or indirectly participate in or benefit or receive any pecuniary benefit from a procurement in violation of state or federal law.

4. For any person to offer, give, or agree to give to any town employee, or for any town employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content

of any specifications or procurement standard, or advice, investigation, auditing, or any other advisory communication or service, in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation, bid, or proposal therefor.

5. For any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a contract with the town and debarment of the vendor from doing any further business with the town.

6. For a person to be retained, or to retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide established selling agencies for the purpose of securing business.

7. For any employee who is participating directly or indirectly in a procurement process to become the employee of any person under contract with the town concerning any matters that the employee participated in during the same procurement process for a period of 12 months following his or her employment with the town.

8. For any employee or former employee of the town to disclose or use confidential information acquired by the employee in the performance of the employee's official duties for anticipated pecuniary benefit, or for the actual or anticipated pecuniary benefit of any person.

B. It is no defense to a violation of this section that the employee to whom a benefit or offer of employment was made was not qualified to act in the desired manner.

C. An employee or person may violate this section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation.

3-4-14 Recovery of value transferred or received in breach of ethical standards

A. The value of anything transferred or received in breach of the ethical standards of this chapter by a town employee or a nonemployee may be recovered from both the town employee and the nonemployee.

B. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the town and will be

recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making the kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

IV. Source selection and contract formation

3-4-15 Public improvements

A. Procurement of public improvements contracts. The town shall procure all contracts for construction for public improvement projects in the manner prescribed by title 34 of the Arizona revised statutes, as amended. If public competitive bidding is not required pursuant to state law, then the requirements of this chapter shall apply. If there is a conflict between this chapter and Arizona revised statutes, title 34, as amended, the provisions of title 34 shall govern.

B. Procurement of construction services. Contracts for construction services shall be solicited through a design-build, construction-manager-at-risk or job-order-contracting selection process utilizing a request for qualifications except as otherwise provided for in this chapter. The procurement agent shall award and administer contracts for construction services in accordance with the requirements of A.R.S. title 34 and this chapter.

C. Construction by town employees. Any building, structure, addition or alteration may be constructed either with or without the use of the town's regularly employed personnel without advertising for bids; provided, that the total cost of the work, excluding materials and equipment previously acquired by bid, does not exceed limits established in A.R.S. § 34-201.

3-4-16 Competitive sealed bidding

A. Conditions for use. Contracts shall be awarded by the use of competitive sealed bidding except as otherwise provided in this procurement code.

B. Invitation for bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

C. Public notice. Public notice of an invitation for bids shall be in a manner that is reasonable in the judgment of the purchasing director, given the commercial context of the proposed purchase.

1. The public notice shall state the date, time, and place of bid opening.
2. Notice may be given in any publication of general circulation that is reasonably available to prospective bidders in the judgment of the purchasing director.
3. For purposes of this paragraph, reasonable notice shall be defined as not less than ten calendar days.

D. Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

1. The amount of each bid, and such other relevant information as the purchasing director deems appropriate, together with the name of each bidder, shall be recorded.

2. The record of bids shall be open to public inspection immediately, but individual bids shall be open to public inspection only after the contract is awarded.

E. Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter.

1. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

2. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

3. The invitation for bids shall set forth the evaluation criteria to be used.

4. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

F. Correction or withdrawal of bids; cancellation of awards. Corrections or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate in the purchasing director's sole discretion. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing director.

1. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening.

2. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended.

3. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the town or fair competition shall be permitted.

4. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

a. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

b. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

G. Award.

1. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

2. If the low responsive and responsible bid for a construction project exceeds available funds as determined by the purchasing director, the purchasing director is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

H. Multi-step sealed bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3-4-17 Competitive sealed proposals

A. Conditions for use. When the purchasing director or authorized designee determines that the use of competitive sealed bidding is either not practicable or not advantageous to the town, a contract may be entered into by use of the competitive sealed proposals or other approved methods.

B. Requests for proposals. Proposals shall be solicited through a request for proposals.

C. Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in section 3-4-16 C.

D. Receipt of proposals. Proposals shall be submitted at the time and place designated in the public notice.

1. Proposals shall be opened so as to avoid disclosure of the contents of any proposal to competing offerors during the process of negotiation.

2. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered.

3. The register of proposals shall be open for public inspection only after contract award.

E. Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors; specific numerical weighting is not required.

F. Discussion with responsible offerors and revisions to proposals. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements.

1. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

2. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

3. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

G. Award. The award shall be made to the responsible and responsive offeror whose proposal is determined, in writing, to be the most advantageous to the town and to best meet the overall needs of the town taking into consideration the evaluation factors set forth in the request for proposals.

1. No other factors or criteria may be used in the evaluation other than as set forth in the request for proposals.

2. The contract file shall contain the basis upon which the award is made.

H. Debriefings. The purchasing director is authorized to provide debriefings that furnish the basis for the source selection decision and contract award.

3-4-18 Professional services contracts; statements of qualifications

A. Technical registrants. The town shall procure professional services from technical registrants in the manner prescribed by title 34, chapter 6 of the Arizona revised statutes, as amended, if either of the following applies:

1. The contract is with a technical registrant other than an architect and is for an amount of more than $500,000.

2. The contract is with an architect and is for an amount of more than $250,000.

B. Professional legal services. The town attorney is authorized to directly select legal counsel for any legal matters involving the town.

C. Other professional services. Except as provided in paragraphs A and B of this section, the town may procure professional services by soliciting statements of qualifications for providing such services; provided, however, that the town may procure professional services by direct selection pursuant to administrative regulations promulgated by the purchasing director. The procurement of professional

services through the use of statements of qualifications shall be as follows:

1. The purchasing director or authorized designee shall give adequate notice of the need for such services through a request for qualifications or request for proposals. The request shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

2. Persons engaged in providing the designated types of professional services may submit statements of qualifications in providing such professional services. The town shall supply a uniform format for statements of qualifications based upon department needs.

3. The purchasing director or authorized designee shall appoint a committee to review qualifications. The committee shall consist of the purchasing director or authorized designee and one or more professionals licensed, registered or admitted to the profession which is the subject of the procurement. Discussions with offerors who submit proposals may be conducted to determine qualifications for further consideration. Award shall be made to the offeror determined in writing to be the best qualified. Compensation shall be negotiated after an award is made.

4. The purchasing director or authorized designee shall conduct negotiations with the offeror determined to be the most qualified to establish fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

5. The contract award shall be made to the offeror determined in writing by the purchasing director or authorized designee to be best qualified based upon:

   a. The evaluation factors set forth in the request for qualifications or request for proposals; and

   b. Agreement between the town and the offeror as to fair and reasonable compensation.

3-4-19 Small purchases

A. Any procurement not exceeding $25,000 may be made in accordance with the small purchase procedure authorized in this section.

B. For small purchases in excess of $2,500 no fewer than three businesses shall be solicited to submit quotations.

1. In awarding contracts for services, in addition to quoted fees, the purchasing director may consider the relative qualifications of businesses submitting quotes.
2. Award shall be made to the business offering the lowest acceptable quotation.
3. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

C. The purchasing director shall adopt operational procedures for small purchases of $2,500 or less.

1. The operational procedures shall provide for obtaining adequate and reasonable competition for the supply or service being purchased.
2. The operational procedures shall require the preparation and maintenance of records adequate to document the competition obtained, to properly account for the funds expended, and to facilitate an audit of the small purchase made.

D. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

3-4-20 Sole source procurement

A. A contract may be awarded without competition when the purchasing director determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item, or no reasonable alternative sources exist.

B. The purchasing director shall conduct negotiations, as appropriate, as to price, delivery, and terms.

C. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, and a listing of the item(s) procured under each contract

3-4-21 Emergency procurements

A. Notwithstanding any other provisions of this chapter, the purchasing director may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety.

B. Emergency procurements shall be made with such competition as is practicable under the circumstances.

C. A record of each emergency procurement shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under the contract, and a written determination of the basis for the emergency and for the selection of the particular contractor.

3-4-22 Used items

Upon compliance with this section and after determining in writing that it is in the town's best interests, the purchasing director may make or authorize others to make procurements of used items.

A. The purchasing director may waive or modify any or all bid procedures with respect to the used items.

B. The purchasing director's written determination shall not be made without the approval of the town manager.

C. This section does not apply to any procurement the town attorney determines in writing to be contrary to applicable law.

3-4-23 Cooperative purchasing

A. The purchasing director is authorized to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more eligible procurement units, including a state, another political subdivision of a state, state cooperatives, and the federal government in accordance with an agreement entered into between the participants.

B. All cooperative purchasing conducted under this section shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in this code.

C. The town shall not enter into a cooperative purchasing agreement for the purpose of circumventing this chapter.

3-4-24 Cancellation of invitations for bids or requests for proposals

A. An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when the purchasing director determines it is in the best interests of the town to do so.

B. The reasons for the cancellation or rejection shall be made part of the contract file.

3-4-25 Determination of nonresponsibility; right of nondisclosure

A. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the purchasing director. A copy of the written determination shall be sent to the nonresponsible bidder or offeror and shall be made part of the contract file.

B. The unreasonable failure of a bidder or offeror to promptly supply information regarding an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility.

C. Confidential information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the office of the purchasing director without prior written consent by the bidder or offeror.

3-4-26 Bid and contract security

A. The purchasing director or authorized designee may require the submission of security to guarantee faithful bid and contract performance.

B. In determining the amount and type of security required for each bid or contract, the purchasing director shall consider the nature of the performance and the need for future protection to the town.

C. The requirement for security must be included in the invitation for bids or request for proposals.

D. Bid, performance, and payment bonds shall not be used as a substitute for a determination of bidder responsibility.

E. The purchasing director or authorized designee may waive the security requirement if he or she finds by clear and convincing evidence that waiver is in the best interest of the town.

3-4-27 Types of contracts

Subject to the limitations of this section, any type of contract that will promote the best interests of this town may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

3-4-28 Multi-year contracts

A. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the town, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A multi-year contract is authorized when:

1. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

2. Such a contract will serve the best interests of the town by encouraging effective competition or otherwise promoting economies in town procurement.

C. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered

under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

3-4-29 Reporting of anticompetitive practices

When for any reason collusion or other anticompetitive practices are suspected among any bidders of offerors, a notice of the relevant facts shall be transmitted to the state attorney general's office.

3-4-30 Retention of procurement records

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state of Arizona.

3-4-31 Supply management

A. The purchasing director shall be responsible for the management of town supplies during their entire life cycle.

B. The purchasing director may sell, lease, transfer, or dispose of surplus supplies in accordance with state law, in the best interests of the town, and in as competitive a manner as the purchasing director determines to be practicable.

C. No town employee shall be entitled or permitted to purchase any surplus supplies from the town.

D. Unless otherwise provided by law, all proceeds from the sale of surplus property will be deposited into the town's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less pro-rated selling expenses, to the appropriate fund, after completion of each sale.

3-4-32 Specifications

A. Preparation. Each solicitation shall include specifications for the supplies, services, or construction to be provided.

B. Multiple or conflicting provisions.

1. If specifications for a solicitation address the same subject matter as a provision of this chapter, they shall be harmonized and read together, to the extent possible.

2. To the extent a specification directly conflicts with a provision of this chapter, the provision of this chapter shall control unless the purchasing director is notified of and approves in writing the conflicting specification before the contract is awarded.

C. Purchasing director's duties.

1. The purchasing director shall determine and ensure the adequacy of specifications in solicitations issued under this chapter.

2. The purchasing director shall obtain expert advice and assistance from the department or departments for whose benefit the solicitation is occurring in the development of specifications.

3. The purchasing director may delegate in writing to a department head the authority to prepare and utilize its own specifications.

D. Maximum practicable competition. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the town's needs, and shall not be unduly restrictive.

E. Specifications prepared by other than town personnel. The requirements of this article regarding the maximum practicable competition of specifications shall apply to all specifications prepared other than by town personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

F. Brand name or equal specification. A brand name or equal specification may be used to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer. Use of a brand name or equal is not intended to limit or restrict competition.

G. Brand name specification. A brand name specification may be used to identify the sole acceptable item that meets the town's needs.

1. The using agency requesting a brand name specification shall provide written evidence to support a brand name determination.

2. A written determination by the procurement agent of the basis for the brand name shall be maintained as public record.

3. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification.

3-4-33 Assistance to small and disadvantaged businesses

A. Policy. The town hereby adopts and implements a policy to assist small and disadvantaged businesses in learning how to do business with the town.

B. Implementation. Implementing the town's policy to assist small and disadvantaged businesses, the purchasing director shall do all of the following:

1. Where feasible, provide appropriate staff to assist small and disadvantaged businesses in learning how to do business with the town.

2. Give special publicity to procurement procedures and issue special publications designed to assist small and disadvantaged businesses in learning how to do business with the town.

3. Compile, maintain, and make available source lists of small and disadvantaged businesses for the purpose of encouraging procurement from small and disadvantaged businesses.

4. Include small and disadvantaged businesses on solicitation mailing lists, where appropriate.

C. Compliance with federal and contract requirements. Where a procurement involves the expenditure of federal assistance or contract funds, the purchasing director shall comply with the requirements associated with the federal assistance or contract funds, even if they mandate actions not reflected in this chapter.

V. Legal and contractual remedies

3-4-34 Bid protests

A. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing director. The protest shall be submitted in writing within ten calendar days after the town's issuance of the notice of intent to award contract.

B. The purchasing director is authorized, prior to the commencement of an action in court concerning the protest, to take any necessary and appropriate action to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

C. If the protest is not resolved by mutual agreement, the purchasing director shall promptly issue a decision in writing. The decision shall:

1. Sustain or deny the protest;

2. State the reasons for the action taken; and

3. Inform the aggrieved party of its right to judicial review of the matter, if appropriate.

D. A copy of the decision shall be mailed or otherwise furnished immediately to the aggrieved party and any other party intervening.

E. The purchasing director's decision regarding a bid protest shall constitute final administrative action. The aggrieved party may seek judicial review of the administrative action in any court of competent jurisdiction.

3-4-35 Debarment or suspension

A. The purchasing director, after consulting with the town attorney, is authorized to debar or suspend a person for cause from consideration for award of contracts.

B. A debarment shall be for a period of not more than three years. A suspension shall be for a period not to exceed three months.

C. The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a town contractor;

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing director to be so serious as to justify debarment action:

   a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

   b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

5. Any other cause the purchasing director determines to be so serious and compelling as to affect responsibility as a town contractor, including debarment by another governmental entity for any cause listed in this section; and

6. For violation of the ethical standards set forth in this chapter.

D. The purchasing director shall issue a written notice of intent to debar or suspend to the person involved. The notice shall include justification for the debarment or suspension with references to the statutes, ordinances, codes or substantive policy statements on which the debarment or suspension is based. The notice shall be mailed or otherwise furnished immediately to the person.

E. The person receiving the notice of intent may object to the debarment or suspension by responding in writing to the purchasing director within 14 calendar days of receipt of the notice. If the person does not object within the allotted time, the purchasing director shall finalize the debarment or suspension in the manner set forth in this section.

F. The purchasing director is authorized to take any necessary and appropriate action regarding the proposed debarment or suspension, including but not limited to, meeting with the person involved, requesting more information from the person, or conducting further investigation regarding the reasons for debarment or suspension.

G. After taking any necessary and appropriate action, the purchasing director shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person of its rights concerning judicial review.

H. A copy of the written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

I. The purchasing director's decision regarding a debarment or suspension shall constitute final administrative action. The aggrieved party may seek judicial review of the administrative action in any court of competent jurisdiction.

3-4-36 Contract claims

A. Any contractor may submit a contract claim in writing to the purchasing director. The contractor may request a conference with the purchasing director on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

B. The purchasing director is authorized, prior to the commencement of an action in court concerning the claim, to take any necessary and appropriate action to settle and resolve the claim.

C. If the claim is not resolved by mutual agreement, the purchasing director shall promptly issue a decision in writing. The decision shall:

1. Sustain or deny the claim
2. State the reasons for the action taken
3. Inform the contractor of its right to judicial review of the matter, if appropriate.

D. A copy of the decision shall be mailed or otherwise furnished immediately to the contractor.

E. The purchasing director's decision regarding a contract claim shall constitute final administrative action. The aggrieved party may seek judicial review of the administrative action in any court of competent jurisdiction.

F. If the purchasing director does not issue a written decision regarding any contract claim within seven days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the contractor may proceed as if an adverse decision had been received.

CHAPTER 3-5. CLAIMS AND SETTLEMENT

Chapter 3-5 was added by Ordinance 2014.022

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 2014.019 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 2014.019 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 is

Paragraph E was rewritten by Ordinance 2005.22

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

The powers and duties of the court administrator shall include:

Paragraph A was rewritten by Ordinance 2005.22

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 incar-

ceration 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

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

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.

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

CHAPTER 6-1. DEFINITIONS 6-1

CHAPTER 6-2. ENFORCEMENT 6-2

CHAPTER 6-3. VACCINATION AND LICENSING OF DOGS 6-4

CHAPTER 6-4. DOGS AT LARGE; DOGS ON SCHOOL GROUNDS 6-7

CHAPTER 6-5. ANIMAL WASTE REMOVAL 6-8

CHAPTER 6-6. CRUELTY AND NEGLECT OF ANIMALS 6-9

CHAPTER 6-7. VICIOUS AND DESTRUCTIVE ANIMALS 6-12

CHAPTER 6-8. REMOVAL, IMPOUNDMENT, FORFEITURE AND DISPOSITION OF ANIMALS 6-15

CHAPTER 6-9. EXCESSIVE NOISE CAUSED BY ANIMALS OR BIRDS 6-22

TITLE 6. ANIMAL CONTROL

Title 6 was adopted by Ordinance 2017.011. See Ordinances 90.02, 91.20, 94.01, 96.01, and 2005.22 for prior history. Land use regulations relating to animals may be found in the Land Development Code.

CHAPTER 6-1. DEFINITIONS

6-1-1 Definitions

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

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

B. "Animal" means every non-human mammalian species of animal, both domestic and wild.

C. "At large" means being neither confined by an enclosure nor physically restrained by a leash.

D. "Bite" means any penetration of the skin by the teeth of any animal.

E. "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.

F. "Community cat program" means a program in which healthy, free-roaming cats are humanely trapped or otherwise humanely captured, sterilized, vaccinated against rabies, ear-tipped, and returned to the location where they were found.

G. "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, or that has been so declared after a hearing before the town magistrate, or that has been so declared by another jurisdiction after the owner has been provided notice and an opportunity to be heard.

Ordinance 2018.004 expanded the definition of "destructive animal"

H. "Dog" means any member of the canine species.

I. "Domestic animal" means any of various animals that have been tamed and made fit for a human environment.

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

K. "Impound" means the act of taking or receiving an animal into custody for the purpose of confinement at a shelter or pound approved by the town enforcement agent.

L. "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.

M. "Licensed dog" means any dog having a current license.

N. "Livestock" means neat animals, horses, sheep, goats, swine, mules and asses.

O. "Owner" means any person owning, keeping, possessing, harboring, maintaining or having custody or otherwise having control of an animal within the town limits.

P. "Police dog" means any dog belonging to any law enforcement agency service dog unit.

Q. "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.

R. "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.

S. "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.

T. "Tie out" means a chain, leash, wire cable or similar restraint attached to a swivel or pulley.

U. "Town enforcement agent" means that person who is designated by the town manager to be responsible for the enforcement of this title and any deputies designated by the town enforcement agent or this title.

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

W. "Vicious animal" means any animal that has a propensity to attack, to cause injury to, or to otherwise endanger the safety of human beings or domestic animals without provocation, or that has been so declared after a hearing before the town magistrate, or that has been so declared by another jurisdiction after the owner has been provided notice and an opportunity to be heard.

Ordinance 2018.004 expanded the definition of "vicious animal"

CHAPTER 6-2. ENFORCEMENT

6-2-1 Powers and duties of town enforcement agent

A. The town enforcement agent shall:

1. Enforce the provisions of this title.
2. Issue citations for the violation of the provisions of this title.

B. The town enforcement agent may designate deputies to carry out the powers and duties set forth in this section.

6-2-2 Appointment of animal control officers; authority

A. The appointment of town animal control officers is hereby authorized.

B. Animal control officers shall be designated as deputies to the town enforcement agent and may commence an action or proceeding before a court for any violation of this code or any town ordinance or state statute relating to rabies or animal control that occurs within the jurisdiction of the town.

Ordinance 2018.016 amended paragraph B

C. An animal control officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this title or any state statute relating to rabies or animal control that occurs within the jurisdiction of the town, and to serve a copy of a written notice to appear and complaint.

Ordinance 2018.004 added paragraph C

6-2-3 Peace officer authority; code compliance officer authority

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

B. Any code compliance officer, as defined in chapter 1-9 of this code, is hereby designated a deputy to the town enforcement agent and is authorized and empowered to enforce the provisions of this title that are classified as civil offenses and to issue citations for violations of those civil offenses.

6-2-4 Commencement of action

A. An animal control officer or a peace officer may commence an action for violation of this title by issuing and personally serving an Arizona traffic ticket and complaint as provided in A.R.S. § 13-3903 or other approved written notice to appear and complaint, except that an animal control officer shall not make an arrest before issuing the complaint.

Ordinance 2018.004 expanded and re-worded paragraph A

B. A code compliance officer may commence an action for a civil violation of this title by issuing a uniform civil code complaint pursuant to chapter 5-7 of this code.

C. The town attorney or designee may commence an action for violation of this title 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.

D. The issuance of citations pursuant to this section shall be subject to the provisions of A.R.S. § 13-3899.

6-2-5 Unlawful interference with town enforcement agent; classification

A. It shall be unlawful for any person to interfere with the town enforcement agent or any deputy authorized to enforce this title in the performance of his duties, or to release any animal duly impounded.

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

6-2-6 Enforcement; continuing violations

A. Civil violations of this title may be enforced pursuant to the provisions of chapter 5-7 or in any manner provided by town ordinances and state laws.

B. Criminal violations of this title shall be enforced in any manner provided by town ordinances and state laws.

C. In addition to any other sanction or penalty, upon finding that a violation of this title exists, the court may order a person to perform whatever action is reasonably necessary to correct and abate the violation.

Ordinance 2018.004 added paragraph C and renumbered paragraph D to conform

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

CHAPTER 6-3. VACCINATION AND LICENSING OF DOGS

6-3-1 Vaccination 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 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.

6-3-2 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.

6-3-3 Vaccination certificate

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.

6-3-4 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. It shall be unlawful to knowingly fail to obtain a license for a dog required to be licensed within 15 days after receiving written notification from the town enforcement agent of the requirement.

Ordinance 2018.004 added paragraph B and renumbered paragraph C to conform

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

6-3-5 Vaccination certificate prerequisite to license

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

Ordinance 2018.004 changed "signed by" to "from" in Section 6-3-5

6-3-6 Vaccination outside the state

A dog vaccinated in any other state 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.

6-3-7 License fees; rebate; penalty fees

The title and paragraph F of section 6-3-7 were amended by Ordinance 2017.025

A. No dog license shall be issued by the town 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 an affidavit or veterinarian's certificate stating 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 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 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 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. Any person who fails to renew a license within 30 days of the renewal due date established by the town shall be charged a penalty

fee in an amount established by a fee schedule adopted by the council and amended from time to time.

6-3-8 License fee exemptions; false certification; classification; sanction

A. A service animal, or an animal training to be a service animal, as defined in A.R.S. § 11-1024, shall be licensed without paying a license fee. An applicant for a license fee waiver for a service animal must sign a written certification in substantially the same language as in A.R.S. § 11-1008(F)(2) certifying that the animal is a service animal or in training to be a service animal.

B. An active working police dog belonging to a law enforcement agency, an active working fire dog belonging to a fire department, an active working military dog belonging to the United States armed forces, or an altered retired police, fire, or military dog, shall be licensed without paying a license fee. An applicant for a license fee waiver for a police, fire, or military dog shall provide adequate proof satisfactory to the town enforcement agent that the dog is an active working or altered retired police, fire, or military dog.

C. A search and rescue dog shall be licensed without paying a license fee. An applicant for a license fee waiver for a search and rescue dog shall provide adequate proof satisfactory to the town enforcement agent that the dog is a search and rescue dog.

D. A person who makes a false certification pursuant to paragraph A of this section is guilty of a petty offense and subject to a fine of not more than $50.

6-3-9 Transfer of license; classification

Ordinance 2018.004 deleted "fee" from the title of Section 6-3-9, added the ten-day provision to paragraph A, deleted former paragraphs B and C, and renumbered former paragraph D as paragraph B

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

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

6-3-10 Issuance, contents of dog license tag

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

6-3-11 Tag required; exceptions; classification

A. The dog license 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. Failure to comply with this section is a class 2 misdemeanor.

6-3-12 Duplicate tags, fee

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.

6-3-13 Counterfeiting or transferring of tags prohibited; classification

A. It shall be unlawful to counterfeit or attempt to counterfeit an official dog license tag, to remove an official dog license tag from any dog for the purpose of intentional or malicious mischief, or to remove a dog's license tag and place it on another dog.

Ordinance 2018.004 expanded paragraph A

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

CHAPTER 6-4. DOGS AT LARGE; DOGS ON SCHOOL GROUNDS

6-4-1 Dogs at large prohibited; exceptions; 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 of sufficient strength to restrain the dog, and the person handling the dog shall use the leash, chain, rope, cord, or similar device as it was designed and intended to be used to control the dog.

Ordinance 2018.016 amended paragraph A

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 within a county- or town-maintained temporary or permanent dog 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.

D. Except as otherwise provided in this section, violation of this section is a civil infraction.

E. Violation of this section is a class 2 misdemeanor if the owner of the animal has been found responsible or guilty of a violation of this section within the 12-month period prior to the date of offense.

6-4-2 Liability for dogs at large

Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted.

6-4-3 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.

C. Except as otherwise provided in this section, violation of this section is a civil infraction.

D. Violation of this section is a class 2 misdemeanor if the owner of the animal has been found responsible or guilty of a violation of this section within the 12-month period prior to the date of offense.

CHAPTER 6-5. ANIMAL WASTE REMOVAL

Ordinance 2018.004 changed "dog" to "animal" in the title of Chapter 6-5 and Section 6-5-1, and changed every mention of dog to domestic animal in paragraphs A and B of Section 6-5-1

6-5-1 Animal waste removal; exceptions; classification

A. It shall be unlawful for the owner or person having custody of any domestic animal to fail immediately to remove and dispose of in a sanitary manner any solid waste deposited by the domestic animal

on public property or on private property without the consent of the person in control of the property.

B. It shall be unlawful for the owner, proprietor, agent or occupant of any premises where domestic animals are kept to deposit, cause to be deposited, or allow to accumulate, within or about the premises, any solid wastes from domestic animals in such a manner that the waste creates an unsanitary condition or is a health hazard to humans or animals. This paragraph applies to private property, including property owned, leased or controlled by the owner of the domestic animal.

C. Paragraph A of this section 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. Violation of this section is a civil infraction.

CHAPTER 6-6. CRUELTY AND NEGLECT OF ANIMALS

6-6-1 Cruelty prohibited; classification; penalty

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.

C. Upon conviction of violation of this section, in addition to any other penalty imposed by the magistrate, 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 town enforcement agent.

6-6-2 Neglect prohibited; classification; penalty

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 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.

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

D. Upon conviction of violation of this section, in addition to any other penalty imposed by the magistrate, 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 town enforcement agent.

6-6-3 Confinement of animals in motor vehicles prohibited; exceptions; authority; classification

A. No person having charge or custody of an animal, as owner or otherwise, shall place or confine the animal or allow the animal to be placed or confined or to remain in a motor vehicle under such conditions or for such period of time as may endanger the health or well-being of the animal due to heat, lack of food or drink, or such other circumstances as may reasonably be expected to cause suffering, disability or death.

B. No person having dominion or control over a motor vehicle, as owner or otherwise, shall place or confine an animal or allow an animal to be placed or confined or to remain in a motor vehicle under such conditions or for such period of time as may endanger the health or well-being of the animal due to heat, lack of food or drink, or such other circumstances as may reasonably be expected to cause suffering, disability, or death.

C. Nothing in this section shall be deemed to prohibit the transportation of horses, cattle, sheep, poultry or other agricultural livestock in trailers or other vehicles designed and constructed for such purpose.

D. Any town enforcement agent is authorized to use whatever force is reasonable and necessary to remove any animal from a vehicle whenever it appears that the animal's life or health is endangered.

E. No town enforcement agent shall be liable for damages to property caused by the use of reasonable force to remove an animal from a vehicle under the circumstances described in this section.

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

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

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.

6-6-5 Animal hoarding prohibited; exception; definitions; penalty; classification

A. No person shall own, possess, keep, harbor, or maintain ten or more animals under circumstances injurious to the health or welfare of any animal or person. Circumstances injurious to the health or welfare of any animal or person may include, but are not limited to, the following:

1. Unsanitary, overcrowded, or other inhumane conditions; or
2. Failure to provide appropriate medical care; or
3. Failure to provide suitable water or food for the species; or
4. Abandonment.

B. Feral cats that are not domesticated, have become wild, or are free-roaming shall not be considered owned, possessed, kept, harbored, or maintained for purposes of this section.

C. For purposes of this section only, "animal" means a mammal, bird, reptile or amphibian, but excludes rodents, which may be controlled as otherwise allowed by the law of the state of Arizona. The exclu-

sion of rodents from the definition of animal shall not apply to rodents classified as fur-bearing animals as defined in A.R.S. § 17-101, or to any particular rodent known by the person alleged to have violated this section to be kept as a pet, or any rodent clearly marked and denominated as being a pet, such as rodents wearing collars or harnesses.

D. Upon conviction of violation of this section, in addition to any other penalty imposed by the magistrate, the magistrate may order one or more of the following:

1. That the person complete a court-approved mental health evaluation and any recommended treatment at the convicted person's expense.
2. That the person shall not be permitted to own, possess, keep, harbor, or maintain any animal for a period of up to three years.
3. That the person submit to periodic property inspections by any town enforcement agent.

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

CHAPTER 6-7. VICIOUS AND DESTRUCTIVE ANIMALS

6-7-1 Keeping vicious or destructive animals prohibited; exceptions; classification

A. It is unlawful for any person to keep, control, harbor or otherwise have under control any animal which is vicious or destructive.

B. This section does 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 title or an order issued by another jurisdiction.

Ordinance 2018.004 expanded paragraph B

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

6-7-2 Prohibited acts; classification; defenses; findings and orders

Ordinance 2018.004 added "findings and orders" to the title of Section 6-7-2 and added paragraph D

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

B. The owner of any animal that destroys, damages, or causes damage to the property of another person is guilty of a class 1 misdemeanor.

C. It shall be an affirmative defense to the provisions of this section 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.

D. Upon conviction of violation of this section, in addition to any other penalty or order imposed by the magistrate, the magistrate may find that the animal is vicious or destructive, or is a danger to the safety of any person or other animal, and may enter such orders as the

magistrate deems necessary to protect the public, as set forth in section 6-8-7

6-7-3 Restitution

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

6-7-4 Quarantine of biting animals; reporting; handling and destruction; exception; classification

Ordinance 2018.004 added the exception to paragraph A

A. Any unvaccinated dog or cat that bites any person shall be confined and quarantined in a shelter approved by the town enforcement agent or, upon request of and at the expense of the owner, at a veterinary hospital, for a period of not less than ten days, except that an unvaccinated cat that bites a member of the cat owner's household may be quarantined at the home of the owner, or where the cat is harbored or maintained, with the consent of and in a manner prescribed by the town enforcement agent.

B. If a dog that bites any person is properly vaccinated pursuant to chapter 6-3, the dog may be confined and quarantined for the ten-day period at the home of the dog's owner or wherever the dog is harbored and maintained with the consent of and in a manner prescribed by the town enforcement agent.

C. Any domestic animal other than a dog, a cat, or livestock that bites any person shall be confined and quarantined in a shelter approved by the town enforcement agent or, upon the request of and at the expense of the owner, at a veterinary hospital, for a period of not less than 14 days.

D. A caged or pet rodent or rabbit that bites a person may be confined and quarantined for the 14-day period at the home of the owner or where it is harbored or maintained with the consent of and in a manner prescribed by the town enforcement agent.

E. Livestock that bites any person shall be confined and quarantined in a manner regulated by the Arizona department of agriculture for a period of not less than 14 days.

F. Whenever an animal bites any person, the incident shall be reported to the town enforcement agent immediately by any person having direct knowledge.

G. The town enforcement agent may destroy any animal confined and quarantined pursuant to this section prior to the termination of the minimum confinement period for laboratory examination for rabies if:

1. The animal shows clear clinical signs of rabies; and
2. One of the following occurs:

a. The owner of the animal consents to its destruction; or

b. A court orders the animal's destruction.

H. The owner of any animal confined and quarantined pursuant to this section shall be responsible for any fees incurred by the town enforcement agent for the impounding, sheltering, and disposition of the animal.

I. Any animal quarantined pursuant to this section may be impounded and kept beyond the quarantine period pending the resolution of any criminal complaint or any hearing requested pursuant to section 6-8-6 arising out of or connected with the biting incident, provided that such complaint or request for hearing is filed within 30 days of the biting incident.

J. This section does not apply to a police dog that bites any person if the bite occurs while the dog is under proper law enforcement supervision and the care of a licensed veterinarian, except that the law enforcement agency shall notify the town enforcement agent if the dog exhibits any abnormal behavior and shall make the dog available for examination at any reasonable time.

K. Failure to comply with this section is a class 1 misdemeanor.

6-7-5 Evaluation of animals

Ordinance 2018.004 added Section 6-7-5

A. Whenever the town enforcement agent has reason to believe an animal is vicious or destructive, or may be a danger to the safety of any person or other animal, the town enforcement agent may conduct an evaluation of the animal, whether the animal is impounded or not.

B. The town enforcement agent shall develop guidelines to determine if an animal is vicious or destructive.

C. If the town enforcement agent finds that an animal is vicious or destructive after evaluation, the provisions of chapter 6-8 regarding impoundment and disposition of vicious or destructive animals shall apply.

6-7-6 Duty to report animal's status; effect

Ordinance 2018.004 added Section 6-7-6

A. Any person keeping, controlling, harboring, or otherwise having under control any animal that has been found to be vicious, destructive or dangerous by another jurisdiction, shall report the animal's status to the town enforcement agent within ten days of the animal's relocation to the town.

B. The animal shall be subject to all provisions set forth in chapters 6-7 and 6-8 governing vicious or destructive animals as though the animal had been declared vicious or destructive by the town.

CHAPTER 6-8. REMOVAL, IMPOUNDMENT, FORFEITURE AND DISPOSITION OF ANIMALS

6-8-1 Impoundment of unvaccinated and unlicensed dogs; vaccination; costs

A. Any town enforcement agent may apprehend and impound any unvaccinated or unlicensed dog.

B. The town enforcement agent is hereby authorized to have a licensed veterinarian vaccinate and issue a vaccination certificate for an impounded unvaccinated dog.

C. The owner of any dog impounded under this section may reclaim the dog at any time upon proof of ownership and payment of all costs and fees associated with the impoundment.

6-8-2 Impoundment of dogs at large; impoundment period; notice; costs

A. Any town enforcement agent may impound or cause to be impounded any dog running at large contrary to the provisions of chapter 6-4.

B. Each dog or cat that is impounded with a microchip or wearing a license or any other discernible form of owner identification shall be kept and maintained at a shelter approved by the town enforcement agent for a minimum of 120 hours, unless the animal is claimed or surrendered by its owner prior to the expiration of the impoundment period. The town enforcement agent shall promptly notify the animal's owner, in person or by written notice, of the impoundment. The owner may reclaim the animal within 120 hours from the date of the actual notice or mailing of notice, upon proof of ownership, current rabies vaccination and license, and payment of all costs and fees associated with the impoundment.

C. Except as otherwise set forth in this section, each dog or cat that is impounded without any discernable form of owner identification, shall be kept and maintained at a shelter approved by the town enforcement agent for a minimum of 72 hours, unless the animal is claimed or surrendered by its owner prior to the expiration of the impoundment period. The owner may reclaim the dog within the 72-hour impoundment period by securing a vaccination and a license for the dog, providing proof of ownership, and paying all costs and fees associated with the impoundment.

D. Any impounded cat that is eligible for a community cat program and that will be returned to the vicinity where the cat was originally captured may be exempted from the mandatory holding period required by this section. For purposes of this paragraph, "eligible" means a cat that is free-roaming, lacks discernible identification, is of sound health, and possesses its claws.

Ordinance 2018.004 added "evaluation" to the title of Section 6-8-3 and added paragraph D

6-8-3 Impoundment of animals subject to cruelty or neglect and vicious or destructive animals; evaluation

Any town enforcement agent is authorized and empowered to remove and impound any animal in plain view, or subject to a valid search warrant, if the agent has probable cause to believe any of the following:

A. That an animal is in distress caused by mistreatment, tie out, exposure to the elements, extremes of temperature, lack of adequate ventilation or drainage, lack of sanitation, deprivation of proper food or potable water, restraint, restriction of movement, confinement, lack of sufficient exercise space, constrictive gear, injury, illness, physical impairment, hoarding conditions as described in section 6-6-5, or parasites.

B. That an animal's well-being is threatened by a dangerous condition or circumstance and the agent has reason to believe either:

   1. That the distress of the animal or the dangerous condition or circumstance was caused or allowed to be caused by the willful act or omission or negligence of the owner; or

   2. That it is likely the animal would be in distress from any cause, or its well-being would be threatened by any dangerous condition or circumstance if the owner retains ownership of the animal.

C. That an animal is vicious or destructive or may be a danger to the safety of any person or other animal.

D. Whenever the town enforcement agent removes and impounds an animal based on probable cause that the animal is vicious or destructive or may be a danger to the safety of any person or other animal, the town enforcement agent shall conduct an evaluation of the animal to determine if it is vicious or destructive.

   1. If the town enforcement agent finds that the animal is not vicious or destructive, the town enforcement agent shall release the animal to its owner. A finding that an animal is not vicious or destructive does not preclude other enforcement action on the same facts, including a criminal prosecution of the owner.

   2. If the town enforcement agent finds that the animal is vicious or destructive, the provisions of this chapter regarding impoundment and disposition of vicious or destructive animals shall apply.

6-8-4 Notice to owner

A. Whenever the town removes or impounds any animal pursuant to section 6-8-3, if the owner is known, and unless the owner signs a statement permanently relinquishing ownership of the animal to the town enforcement agent, the owner shall be provided with a written notice of the impoundment by one or more of the following means:

   1. Personal service of the notice on the owner.

2. Leaving a copy of the notice with a person of suitable discretion at the owner's residence or place of business.
3. Affixing the notice in a conspicuous place where the animal was found.
4. Mailing a copy of the notice to the owner's last-known address by registered or certified mail, return receipt requested.

B. The notice required by this section shall contain, at a minimum, the following information:

1. The town's intent to file, within ten days of the owner's receipt of the written notice, a written request with the town magistrate for a hearing to determine if the animal should be returned to the owner or forfeited to the town enforcement agent.
2. The owner's right to present witnesses and be represented by an attorney at the hearing.
3. The bond amount required pursuant to section 6-8-5, along with a statement that if the bond is not posted within ten days of the owner's receipt of the written notice, the animal shall be deemed forfeited to the town enforcement agent.

6-8-5 Bond

Whenever the town removes or impounds any animal pursuant to section 6-8-3 pending a hearing to determine if the animal should be returned to the owner or forfeited to the town enforcement agent, the owner must post 20 days of impoundment fees in advance as a bond to defray some of the costs of boarding and impoundment, and any necessary veterinary care for the animal.

6-8-6 Hearing; rules of hearing; remedies; testimony of defendant; appeal; costs

A. Upon receipt of a written request for a hearing regarding an animal impounded pursuant to section 6-8-3, the court shall set a hearing within 15 business days.

B. The hearing shall be held in an informal manner and is open to the public. Oral and documentary evidence may be taken from any interested party or witness and considered in making a determination. The rules of evidence do not apply, and hearsay is admissible.

C. Any owner who fails to appear after notice may be deemed to have waived any right to introduce evidence.

D. The town enforcement agent may be represented by the town attorney or designee.

E. The owner may be represented by counsel at the animal owner's cost.

F. Use of the civil procedures and remedies provided for in this chapter shall neither require nor preclude other enforcement action on the same facts, including a criminal prosecution of the owner. The

civil procedures and remedies provided for in this chapter are remedial and not punitive, and are not precluded by an acquittal or conviction in a criminal proceeding.

G. This chapter shall not be construed as precluding the destruction of any animal if destruction is otherwise authorized by law, nor shall anything in this chapter be construed as precluding the spaying or neutering of any animal. If any provision of this chapter is in conflict with any other provisions of this code, the provisions of this chapter shall be controlling.

H. If a defendant testifies at a hearing held pursuant to this section, the defendant does not, by so testifying, waive the right to remain silent during the trial; and if the defendant does testify at the hearing, neither this fact nor the defendant's testimony at the hearing shall be mentioned at the trial unless the defendant testifies at the trial concerning the same matters.

I. Appeal of the decision of the town magistrate shall be by way of special action to the superior court on the record of the hearing. The appealing party shall bear the cost of preparing the record of the hearing on appeal. No appeal shall be taken later than 10 days after the town magistrate's decision. The owner must post a bond equivalent to 60 days of impoundment costs in order to perfect the appeal. Notice of the amount due shall be given to the owner by the town magistrate at the time of the hearing if forfeiture is ordered.

Ordinance 2019.005 amended paragraph I to change "30 days" to "10 days"

J. Unless good cause is shown, the animal's owner shall be responsible for all fees associated with the impoundment of an animal pursuant to section 6-8-3, including without limitation veterinary, removal, impoundment, boarding, microchipping, and disposition fees, until a final decision by the town magistrate, including the pendency of an appeal. No magistrate may waive or reduce any veterinary, impound or board fees resulting from the animal's impoundment unless the owner prevails at the hearing.

6-8-7 Findings of court after hearing

A. If the town magistrate finds from a preponderance of the evidence that the animal was subject to cruelty or neglect under the circumstances set forth in section 6-8-3 (A) or (B), the town magistrate shall order the animal forfeited to the town enforcement agent.

B. If the town magistrate finds from clear and convincing evidence that the animal is vicious or destructive, or is a danger to the safety of any person or other animal, then the town magistrate shall enter such orders as the magistrate deems necessary to protect the public, taking into account the recommendations of the town enforcement agent and the animal's owner.

C. In addition to any other penalty or order, if the town magistrate finds that the animal is vicious or destructive, or is a danger to the safety of any person or other animal, the court shall order one or more of the following:

1. That the animal be kept in an enclosure that is secure enough that the animal cannot bite, harm or injure anyone outside the enclosure, and cannot escape, as follows:

   a. The court shall determine the appropriate fencing requirements for the size and nature of the animal. The court may require a fence, including gates to be six feet in height; a fence five to six feet in height to incline to the inside of the confinement area at a 45 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 court 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 court.

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

2. That the animal be muzzled and restrained whenever the animal is outside its enclosure 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. That the owner of the vicious animal display on every gate or entry way to the enclosure where the animal is kept a sign in three-inch letters, easily readable by the public, using the words "Vicious Animal."

4. That the owner maintain liability insurance in a single incident amount of at least $250,000 for bodily injury or death of any person or for damage to property caused by the vicious animal.

5. That the animal's owner pay the reasonable cost to the town enforcement agent to microchip the animal with an identification number. The town enforcement agent shall maintain a registry of the numbers and the owners of the animals.

Ordinance 2019.005 amended subparagraph 5 to change "tattoo" to "microchip"

6. That the animal be spayed or neutered at the owner's expense.

7. That the animal be defanged or declawed.

8. That the animal be banished from the town limits, after first being spayed or neutered, and microchipped by a licensed veterinarian at the owner's expense.

Ordinance 2019.005 amended subparagraph 8 to remove "tattooed"

9. That the animal be forfeited to the town enforcement agent for transfer to a legally incorporated humane society or other nonprofit corporate animal-welfare organization devoted to the welfare, protection and humane treatment of animals, as described in section 6-8-10.

10. That the animal be humanely destroyed.

D. If the owner fails to appear at the hearing, the town magistrate shall order the animal forfeited to the town enforcement agent.

6-8-8 Vicious or destructive animals; consent to inspection; inspection; order of compliance; seizure

A. By continuing to own an animal declared vicious or destructive, an owner gives consent to any town enforcement agent to inspect the animal declared vicious or destructive and the premises where the animal is kept.

B. Upon inspection, the town enforcement agent may seize and impound the animal if the owner has failed to comply with the town magistrate's order on disposition of the animal.

C. If the owner of the animal has not demonstrated compliance with the town magistrate's order within five days after the seizure of the animal, the town enforcement agent may humanely destroy the animal.

D. If the owner of the animal demonstrates proof of compliance with the town magistrate's order, then the animal will be returned to the owner after payment of impound fees and any other applicable fees.

E. Any action taken under this section shall be in addition to any available criminal penalties.

6-8-9 Vicious or destructive animals; required acts and unlawful activities; classification

A. An owner or any other person having control of an animal declared vicious or destructive shall not fail to comply with an order of the town magistrate regarding the animal.

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

C. An owner of an animal declared vicious or destructive shall provide proof of liability insurance and a veterinarian's certificate of spaying or neutering to the town enforcement agent upon demand, when applicable.

D. No person shall prevent or attempt to prevent inspection of an animal declared vicious or destructive or the premises where the animal is kept.

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

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

6-8-10 Duty to produce; exemption; classification

A. An owner of an animal charged with a violation of chapter 6-6 or chapter 6-7, or of an animal quarantined pursuant to section 6-7-4, shall produce that animal for inspection or impoundment upon the request of any town enforcement agent.

B. This section shall not apply where the violation in question occurred when the animal bit a member of the owner's household.

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

6-8-11 Authority to microchip

The town enforcement agent is authorized and empowered to place or cause to be placed an identity-tracing microchip in any animal impounded under this title.

6-8-12 Payment of costs and fees associated with impoundment

Except as otherwise provided in this title, all fees associated with the impoundment of an animal for any reason under the authority of this title, including without limitation veterinary, removal, impoundment, boarding, microchipping, and disposition fees, shall be paid by the animal's owner.

6-8-13 Disposition of animals

A. Any animal forfeited, abandoned, ownerless or unclaimed, and any other animals to be permanently disposed of by the town enforcement agent pursuant to this title shall be disposed of by one of the following methods.

1. Placed by adoption in a suitable home.
2. Transferred to a legally incorporated humane society or other nonprofit corporate animal-welfare organization devoted to the welfare, protection and humane treatment of animals. Transferred animals shall be disposed of by one of the following methods.
   a. Placed by adoption in a suitable home after first being sterilized.
   b. Released as part of a community cat program.
   c. Humanely destroyed.
3. Humanely destroyed.

B. As a condition of any transfer of animals pursuant to this section, the town enforcement agent shall verify that any organization that receives animals is organized for the pursuit of animal welfare activities, is actively engaged in those activities, does not breed nor release unsterilized animals, releases animals only through community cat programs or through adoption or fostering into suitable

homes after first being sterilized, and complies with the sterilization and placement provisions of this title, and all applicable laws. Verification shall include announced and unannounced inspections of the organization's facilities and records. The town enforcement agent may repossess any animals and their offspring from any organization that is not in compliance with these conditions, and shall repossess these animals if the organization is not in compliance with the mandates set forth in subparagraph (A)(2) of this section, or if the organization or its personnel violate a cruelty law. Any organization wishing to receive animals must agree in writing to the terms of this section.

CHAPTER 6-9. EXCESSIVE NOISE CAUSED BY ANIMALS OR BIRDS

6-9-1 Excessive noise prohibited; classification

A. 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, without provocation, if the sounds are clearly audible 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.

B. 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.

C. Except as otherwise provided in this section, violation of this section is a civil infraction.

D. Violation of this section is a class 2 misdemeanor if the owner of the animal has been found responsible or guilty of a violation of this section within the 12-month period prior to the date of offense.

6-9-2 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.

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, 2013.007, and 2019.011. 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 2018 international building code, with local amendments.
2. The 2018 international existing building code, with local amendments.
3. The 2018 international plumbing code, with local amendments.
4. The 2018 international residential code, with local amendments.
5. The 2018 international mechanical code, with local amendments.
6. The 2018 international property maintenance code, with local amendments.
7. The 2018 international energy conservation code, with local amendments.
8. The 2017 national electrical code, with local amendments.
9. The 2018 international fire code, with local amendments.
10. The 2018 international fuel gas code, with local amendments.
11. The 2018 international swimming pool and spa code, with local amendments.

B. The Marana building code adopts by reference the 2008 Marana outdoor lighting code, which is on file with the town clerk's office.

The 2008 Marana outdoor lighting code is found here.

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. Ordinance 2019.011 changed "board of appeals" to "board of adjustment in subparagraph A.2.

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 adjustment 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.

7-4-2 Credit program

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"

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.

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

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.

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

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. Ordinance 2016.009 made minor revisions to this section to update and clarify wastewater utility and regulatory review references.

A. Septic tank systems shall be designed and constructed in accordance with the standards of the Arizona department of health services and the applicable county health department, and compliance with

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

B. Sewer systems shall be designed, constructed, and reviewed in accordance with the adopted plumbing code and other applicable state and local laws and regulations. Before a building permit is issued, all connections to any sewer system must be approved in writing by the wastewater utility that owns and operates the affected sewer system.

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.

The Town of Marana's tax rates and a link to the Model City Tax Code may be found here.

Title 9

Business Regulations

9

TITLE 9. BUSINESS REGULATIONS

CHAPTER 9-1. GENERAL PROVISIONS 9-1

CHAPTER 9-2. BUSINESS LICENSES 9-3

CHAPTER 9-3. PEDDLERS....9-10

CHAPTER 9-4. SWAP MEETS 9-14

CHAPTER 9-5. MASSAGE ESTABLISHMENTS....9-15

CHAPTER 9-6. CLOTHING AND CONDUCT FOR QUALIFIED ESTABLISHMENTS....9-35

CHAPTER 9-7. SEXUALLY ORIENTED BUSINESSES 9-38

CHAPTER 9-8. LIQUOR LICENSES 9-59

CHAPTER 9-9. VIDEO SERVICE....9-60

CHAPTER 9-10. SURFACE MINING AND LAND RECLAMATION 9-61

CHAPTER 9-11. SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE....9-68

CHAPTER 9-12. COMMERCIAL FILMING AND PHOTOGRAPHY PERMITS....9-69

CHAPTER 9-13. MOBILE FOOD VENDORS....9-76

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. GENERAL PROVISIONS

Ordinance 2019.012 added Chapter 9-1

9-1-1 Purpose and effect of title

A. This title is enacted to assist businesses, citizens, and the town to collect and provide accurate information on the types and locations of businesses in the town, to help existing business growth and services, to assist in new business planning, and to protect the public from fraud and harm.

B. Persons possessing a town business license of any type shall remain subject to all applicable local, state, and federal laws, ordinances, rules, and regulations, including all applicable revenue, regulatory, and zoning laws.

9-1-2 Definitions

The following definitions shall apply throughout this title unless the context clearly indicates or requires a different meaning.

A. "Applicant" means the person who applies for a license pursuant to this title.

B. "Business" means all activities or acts, including professions, trades and occupations, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

C. "Casual activities or sales" means those transactions which are isolated sales of goods or services by a person who is not engaged in business and does not represent himself or herself as being in business, and includes transactions where persons sell personal property within the confines of that person's residential premises, so long as the activity neither exceeds three consecutive days or is performed on more than four occasions within a one-year period.

D. "Controlling person" means a natural person who either (A) has a 10% or greater interest in the ownership or earnings of the business, or (B) is any of the following:

1. An officer, director, or any stockholder who owns 10% or more, of a corporation licensee or applicant;
2. A general partner of a limited partnership licensee or applicant or partner of a non-limited partnership licensee or applicant;
3. An officer, president, or secretary of a limited liability company or corporation licensee or applicant; or
4. The sole proprietor of a sole proprietorship licensee or applicant.

E. "Designated agent" means the person designated by the licensee or applicant to receive notices from the town pursuant to this title.

F. "Federally exempt organization" means an organization determined exempt under 26 U.S.C. section 501(c) by the commissioner of the internal revenue service.

G. "Governmental entity" means the federal government, the state of Arizona, any other state, and any political subdivision, department, or agency of any of these governments.

H. "Licensee" means the person who applied for a license pursuant to this article and in whose name such license was issued by the town pursuant to this title.

I. "License inspector" means the town employee designated by the town manager to administer and enforce the provisions of this title and any designees or deputies designated by the license inspector or this chapter.

J. "Natural person" means a human being, as distinguished from a person created by operation of law (e.g., a corporation).

K. "Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, or broker.

L. "Public educational entity" means any educational entity operated pursuant to title 15 of the Arizona revised statutes.

M. "Residential real property rental" means the business of offering for rent, lease, or license a building or structure that is used for a home or residence by one or more persons who maintain a household. This definition does not include any of the following:

Ordinance 2019.016 deleted a subparagraph from paragraph M that referred to short term rentals for a period of 29 consecutive days or less, and renumbered the other subparagraphs to conform

1. The use of a home or residence for business activities, including assisted living or behavioral health residential facilities; or
2. The use of a home or residence for any other business operation that does not meet this definition of residential real property rental.

N. "Short-term vendor" means a person who engages in business in the town for ten consecutive days or less at a time and includes vendors who participate in special events in the town.

O. "Temporary business license" means a business license issued to a short-term vendor authorizing temporary business activity of ten consecutive days or less.

P. "Vacation rental" or "short-term rental" means the same as defined in A.R.S. § 9-500.39.

Ordinance 2019.016 added paragraph P

9-1-3 Conflicting provisions

If a provision of this chapter is in conflict with any other provision of this title, the more specific provision shall apply and shall control over the general provisions of this chapter.

9-1-4 Licenses not cumulative

Except as otherwise provided in this title, a licensee who holds a valid license pursuant to any chapter in this title shall not be required to obtain any additional license required by another chapter of this title for the same business activity.

9-1-5 Powers and duties of license inspector

A. It shall be the duty and responsibility of the license inspector to interpret, administer, and enforce the provisions of this title, with the assistance of deputy license inspectors and other town departments as requested. Pursuant to this duty, the license inspector or designee shall issue, renew, deny, suspend, or revoke licenses as required by this title.

On July 26, 2019, the town attorney made a scrivener's error correction to make "departments" plural in paragraph A, by authority of section 1-4-5

B. The license inspector may examine or cause to be examined all businesses in the town to ascertain compliance with the provisions of this title, including inspecting records and making sure that licenses are conspicuously posted.

C. The license inspector may make rules and regulations consistent with the provisions of this title as may be necessary to enforce the provisions of this title.

9-1-6 Deputy license inspectors

A. Any peace officer is hereby designated a deputy to the license inspector and is authorized and empowered to enforce the provisions of this title and to issue citations for violations of it.

B. Any code compliance officer, as defined in chapter 1-9 of this code, is hereby designated a deputy to the license inspector and is authorized and empowered to enforce the provisions of this title that are classified as civil offenses and to issue citations for violations of those civil offenses.

9-1-7 Classification; enforcement; continuing violations

A. Except as otherwise provided in this title, whenever in this title 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.

CHAPTER 9-2. BUSINESS LICENSES

Ordinance 2019.012 added Chapter 9-2. For prior history, see Ordinances 93.02, 96.09, 98.12, 2000.06, 2000.10, 2002.07, 2009.11, 2009.14, 2009.25, 2010.13, 2013.013, 2013.014, and 2014.021.

9-2-1 Business license required; non-transferability

A. It is unlawful for any person to operate a business in the town without first obtaining and maintaining a valid business license issued pursuant to the applicable provisions of this title.

1. Notwithstanding the general applicability of this chapter to all businesses in the town, massage establishments shall be governed by the licensing requirements in chapter 9-5, and sexually oriented businesses shall be governed by the licensing requirements in chapter 9-7.

B. A separate business license is required for each business address where a business is operated, and for each business under separate operation or ownership at the same location.

C. Any person who operates a business with a fixed location outside the town limits, but who solicits business or advertises within the town, or delivers products or performs services within the town, is required to obtain a license pursuant to this section.

D. All business licenses issued pursuant to this chapter are non-transferable. Upon the sale or transfer of any interest in a business, a new application must be submitted for that business and all provisions of this chapter shall apply to the new application.

9-2-2 Exemptions; documentation

A. The provisions of this chapter shall not apply to:

1. Any person engaging in any business exempted from licensing by the constitution or applicable statutes of the United States or of the state of Arizona.

2. A federally exempt organization, governmental entity, or public educational entity.

3. Casual activities or sales.

4. Residential real property rental.

B. Any person claiming an exemption from the licensing requirement pursuant to subparagraphs A.1 or A.2 of this section shall file a signed statement with the license inspector stating the facts upon which exemption is claimed. The license inspector shall file the signed statement in lieu of issuing a license to such person. If the license inspector subsequently obtains information that the person is not entitled to the exemption, the license inspector may revoke the person's exempt status after giving the person notice and a reasonable opportunity for a hearing.

9-2-3 Federally exempt organization registration

A. A federally exempt organization doing business within the town, to include soliciting money, donations of money or property, or financial assistance of any kind, or selling or distributing items of literature or merchandise to persons other than members of that organization, shall register with the license inspector on a form provided by the license inspector for that purpose.

B. The license inspector shall not charge a fee to a federally exempt organization registering under this section.

Ordinance 2019.016 added section 9-2-4 and renumbered the remaining sections in chapter 9-2 to conform

9-2-4 Vacation rental or short-term rental contact information

A. Before offering for rent or renting a vacation rental or short-term rental, the owner of the vacation rental or short-term rental shall provide the license inspector with contact information for the owner or the owner's designee on a form provided by the license inspector for that purpose.

B. The owner or the owner's designee is responsible for responding to complaints in a timely manner in person, by telephone, or by e-mail at any time of day.

C. The license inspector shall not charge a fee to an owner providing the information required by this section.

9-2-5 Application; fees

A. Any person desiring to obtain a business license shall apply to the license inspector on the form provided by the license inspector for that purpose.

B. Each application for a business license shall consist of, as applicable, the following:

1. The name and exact nature or type of business being operated.
2. The location and address of the business.
3. The business owner's name, address, and contact information.
4. If the applicant is an entity, the application shall include the names, addresses, and contact information for all controlling persons and the designated agent of the entity.
5. For individuals, proof required by A.R.S. § 41-1080 (A), that the applicant is a citizen of the United States, or a non-citizen authorized to work in the United States.
6. The transaction privilege tax license number for the business.
7. Proof of compliance with all regulations, if any, of the business being operated, including but not limited to, possession of any required certification, permit, or similar documentation.
8. Any additional information required by the license inspector.

C. 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.

D. Each application shall be accompanied by the applicable fee as set forth in a fee schedule approved by the council and amended from time to time. The license inspector will not process an application until the applicant has paid the applicable fee.

9-2-6 License application investigation

A. The town shall have a reasonable time within which to investigate each business license application.

B. The license inspector shall refer the application to the appropriate town departments for investigation. Based on the investigation, the departments shall recommend to the license inspector approval or denial of the business license.

9-2-7 Issuance of license; term of license; mistake

A. Upon completion of the license application investigation and the license inspector's determination that the applicant qualifies for a license, the license inspector shall issue a business license to the applicant.

B. The business license shall contain all of the following information:

1. The name of the licensed business.
2. The address where the business is to be transacted and carried on.
3. The date of the expiration of the license.
4. The type of business licensed.
5. Any other information necessary for the enforcement of this chapter.

C. Except for temporary business licenses, the business license shall remain in effect for one year, unless sooner revoked or suspended by the license inspector.

D. In no case shall any mistake made by the town in issuing any license, or collecting a fee for any license, prevent, prejudice, or stop the town from revoking any license erroneously issued and refunding the fee collected, or collecting the correct amount of fee or charge for any license.

9-2-8 License renewal

A. Within one year of the issue date for the previously effective license, all licensees under this chapter wishing to remain licensed, except for short-term vendors who possess a temporary business license, shall submit the applicable license renewal fee to the license inspector.

B. If the renewal fee is submitted more than 15 days after the expiration of the license, the licensee will also be assessed a late license renewal fee as set forth in the fee schedule approved by the council and amended from time to time.

C. The license inspector will not renew a license until the licensee has paid all applicable fees.

D. The licensee shall also submit proof of continuing compliance with all regulations, if any, of the business being operated, including but not limited to, continued possession of any required certification, permit, or similar documentation.

E. No license shall be renewed unless the licensee complies with all provisions of this chapter.

9-2-9 Posting and display of license

A. Any business required to be licensed under this chapter shall keep the license posted in a conspicuous place upon the premises of the business.

B. Notwithstanding paragraph A of this section, if the business is located in a residence, the license shall be available for inspection.

9-2-10 Temporary business license

A. A short-term vendor may apply for a temporary business license in lieu of a business license with a one-year term. Except as otherwise set forth in this section, the temporary business license shall be issued pursuant to and subject to the provisions of this chapter.

B. A temporary business license shall remain in effect for the time requested by the short-term vendor, not to exceed ten consecutive days.

C. A short-term vendor may reapply for a temporary business license at any time that the short-term vendor wishes to do business within the town.

9-2-11 Grounds for denial, suspension, revocation, or nonrenewal of license

A license issued under the provisions of this chapter may be denied, revoked, suspended, or denied renewal upon any one or more of the following grounds:

A. The applicant or licensee is guilty of fraud, deceit, misrepresentation, or material false statement in conducting the business, or in applying for or obtaining a license.

B. The applicant or licensee, or any controlling person has violated this chapter, or any local, state, or federal law, regardless of the location at which the violation occurred.

C. The business has been conducted in an unlawful manner or in a manner that constitutes a breach of the peace or a menace to the public health, safety, or welfare.

D. The applicant or licensee, or, if the applicant or licensee is not a natural person, any controlling person, is delinquent in payment to the town of any taxes, fees, fines or penalties assessed against or imposed upon the applicant or licensee, in relation to or arising out of any business activity of the applicant or licensee.

E. 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.

F. The applicant or licensee is not a United States citizen or a non-citizen authorized to work by the government of the United States, or does not provide proof required by A.R.S. § 41-1080 (A).

G. The applicant or licensee is a corporation which is not qualified to transact business in Arizona.

H. The applicant or controlling person was a licensee or controlling person for a business whose license was revoked within the 12-month period prior to the date of the current application.

I. 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.

9-2-12 Procedure for denial, suspension, revocation, or nonrenewal

A. If the license inspector determines that grounds exist to deny, suspend, or revoke a business license, or to deny renewal of a business license, the license inspector shall notify the applicant or licensee or designated agent in writing of the denial, suspension, revocation, or nonrenewal.

1. The notice shall include justification for the denial, suspension, revocation, or nonrenewal with references to the statutes, ordinances, codes or substantive policy statements on which the denial, suspension, revocation, or nonrenewal is based.

2. The notice shall be either:

a. Personally served upon the applicant or licensee or designated agent, or upon any responsible person at the business address on file with the license inspector or at the actual business address, if different; or

b. Mailed by certified mail or other method for which proof of receipt may be obtained by the license inspector to the address of the applicant or licensee or designated agent listed in the current year's license application or renewal application or to the business address of the applicant or licensee.

3. The effective date of the notice shall be the date the notice is actually received.

B. If the reason for the denial, suspension, revocation, or nonrenewal of the license is subject to remediation by the applicant or licensee, the notice described in paragraph A of this section shall state that the applicant or licensee shall have 30 days after receipt of the notice in which to remedy the issue. The notice shall advise that business activity at a currently licensed business is allowed to continue during this remedial period, unless otherwise directed by the license inspector.

1. If the applicant or licensee does not remedy the issue or notify the license inspector of remedial action within the 30-day remedial period, the license inspector shall provide a second written notice to the applicant or licensee or designated agent, delivered in the manner described in subparagraph A.2 of this section, that the license is denied, suspended, revoked, or denied renewal for the reasons set forth in the original notice, and that all business activity associated with any existing license must immediately cease.

2. The notice described in subparagraph B.1 of this section shall also advise the applicant or licensee that he or she may submit a written request for a review hearing to the license inspector within ten calendar days of receipt of the notice. The effective date of the notice shall be the date the notice is actually received.

C. If the reason for the denial, suspension, revocation, or nonrenewal is not subject to remediation by the applicant or licensee, or if the reason for the denial, suspension, revocation, or nonrenewal is due to a threat to the public health, safety, or welfare, the notice described in paragraph A of this section shall state that the license is denied, suspended, revoked, or denied renewal, and that any existing business activity shall cease immediately upon receipt of the notice. The notice shall also advise the applicant or licensee or designated agent of the right to request a review hearing, as described in subparagraph B.2 of this section.

D. If the license inspector does not receive a request for review hearing within the ten-day time period, the denial, suspension, revocation, or nonrenewal is final.

9-2-13 Review hearing

A. If an applicant or licensee requests a review hearing pursuant to the procedure described in section 9-2-12, the hearing shall be scheduled within 30 calendar days of the license inspector's receipt of the request, and the applicant or licensee or designated agent shall receive notice of the date, time and place of the review hearing delivered in the manner described in subparagraph 9-2-12 A. 2.

1. The review hearing shall be before the town manager or his or her designee to determine whether the license should have been denied, suspended, revoked, or denied renewal.

2. The hearing shall be conducted in an informal manner and the rules of evidence shall not apply.

B. If applicable, the applicant or licensee may take remedial action while awaiting the review hearing, and apply to the license inspector to have the license issued or fully restored.

C. The decision of the town manager or designee is final and not subject to any further administrative review.

CHAPTER 9-3. PEDDLERS

Ordinance 2019.012 added Chapter 9-3. For prior history, see Ordinances 93.02, 96.09, 2000.06, 2005.22, 2009.11, and 2009.14.

9-3-1 Definition

The following definition shall apply throughout this chapter unless the context clearly indicates or requires a different meaning.

A. "Peddler":

1. Means an individual, natural person, also commonly known as a "solicitor" or "transient merchant," who travels from door to door, from place to place, from house to house, from street to street, or from business to business engaging in any of the following activities:

   a. 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;

   b. Taking, attempting to take, or soliciting orders for sale of goods, wares and merchandise, or edible foodstuffs or provisions for future delivery;

   c. Taking, attempting to take, or soliciting orders for services to be furnished or performed in the future;

   d. Promoting or advertising any product or service where no sales or orders are taking place at the time of promotion or advertisement.

2. Does not include vendors who sell goods wares, merchandise, edible foodstuffs, or provisions at temporary locations such as arts and craft fairs, trade shows, special events, and similar events, as long as those vendors do not travel from door to door, from place to place, from house to house, from street to street, or from business to business as described in subparagraph A.1 of this section.

9-3-2 License required

It is unlawful for any person to conduct business as a peddler in the town without first obtaining and maintaining a valid business license issued pursuant to and subject to the provisions of chapter 9-2.

9-3-3 Exemptions

The provisions of this chapter shall not apply to:

A. Producers selling food products, as those terms are defined in A.R.S. § 3-561 *et seq*.

B. Persons conducting bona fide religious or charitable business, including:

   1. Soliciting money, donations of money or property, or financial assistance of any kind;

2. Selling or distributing items of literature or merchandise to persons other than members of that organization.

C. News vendors, as long as the news companies the vendors work for obtain and maintain a valid business license issued pursuant to and subject to the provisions of chapter 9-2.

D. Merchants or their employees soliciting orders for goods or services or delivering goods and services in the regular course of business, as long as the merchants obtain and maintain a valid business license issued pursuant to and subject to the provisions of chapter 9-2.

Ordinance 2019.016 modified paragraph D to add the phrase "soliciting orders for goods or services or"

E. Sales required by statute or by order of any court, including a bona fide auction sale pursuant to law.

9-3-4 Supplemental application requirements

A. In addition to the application requirements set forth in section 9-2-5, any person desiring to obtain a license to conduct business as a peddler shall submit:

1. A peddler supplemental license application on the form provided by the license inspector for that purpose.
2. A full set of fingerprints on a standard fingerprint card, recorded by the police department, and 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.
3. One digital photograph of the applicant taken by the license inspector or designee at the time of application.

B. The peddler supplemental license application shall consist of, as applicable, the following:

1. Name and physical description of the applicant;
2. Complete permanent home and local addresses of the applicant and, if applicable, 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 applicant's employer; a post office box address will not be accepted;
5. 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;
6. Information regarding all felony and misdemeanor convictions of the applicant, excluding those for civil traffic offenses; the grounds for each conviction; and the punishment or penalty assessed;

7. 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 locations; and

8. A description of any vehicles, including license plate numbers, to be used in conducting business in the town.

9-3-5 Authority to receive criminal history record information; use of criminal history record information

A. Pursuant to A.R.S. § 41-1750, the town is hereby authorized to receive criminal history record information for evaluating the fitness of current and prospective peddlers.

B. 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.

C. Criminal history record information obtained by the town pursuant to this chapter shall be used only for evaluating the fitness of current and prospective peddlers. The town shall comply with all relevant state and federal rules and regulations regarding the dissemination of criminal history record information.

9-3-6 Unlawful activities

It is unlawful for:

A. Any peddler to transact or carry on business without having his or her business license in his or her possession.

B. Any peddler to fail to exhibit his or her business license upon request of any person, including any town official.

C. Any peddler to exhibit a copy or facsimile of an original business license.

D. Any peddler 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.

E. Any peddler 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.

F. Any child under the age of 16 years to operate as a peddler within the town pursuant to a license issued under this chapter unless supervised by the child's parent or legal guardian holding a license issued pursuant to this chapter.

G. Any peddler to operate from door to door, from place to place, from house to house, from street to street, or from business to business earlier than 9:00 a.m. or later than 7:00 p.m. on any day.

H. Any peddler to come upon any premises posted 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.

I. Any peddler to enter or remain unlawfully on any real property after reasonable notice prohibiting entry.

9-3-7 Additional grounds for denial, suspension, revocation, or nonrenewal of license

A. In addition to the grounds set forth in section 9-2-11, a license to conduct business as a peddler issued under the provisions of this chapter may be denied, revoked, suspended, or denied renewal if the applicant or licensee, within five years from the date that the application is submitted, has been convicted of any of the following:

1. A felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, or any preparatory offenses of the aforementioned crimes;
2. A felony involving a fraudulent or dishonest act;
3. A felony involving the sale, manufacture or transportation of any dangerous drug as defined under A.R.S. § 13-3401;
4. A "violent crime" under A.R.S. title 13, chapters 11, 12, 13;
5. A "sexual offense" under A.R.S. title 13, chapter 14;
6. An offense for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this paragraph; or
7. A misdemeanor involving moral turpitude.

B. The fact that the conviction is being appealed or has been set aside shall have no effect.

9-3-8 Procedure for denial, suspension, revocation, or nonrenewal; review hearing

A. If the license inspector determines that grounds exist to deny, suspend, or revoke a business license issued pursuant to this chapter, or to deny renewal of a business license issued pursuant to this chapter, the license inspector shall proceed as set forth in section 9-2-11, except that in all cases, any existing business activity by the peddler shall cease immediately upon receipt of the notice.

B. The denial, suspension, revocation or nonrenewal of a business license issued pursuant to this chapter shall be subject to a review hearing as provided in sections 9-2-12 and 9-2-13.

CHAPTER 9-4. SWAP MEETS

Ordinance 2019.012 added Chapter 9-4. For prior history, see Ordinances 93.02, 96.09, and 2000.06.

9-4-1 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates or requires a different meaning.

A. "Operator" means any person who directly or indirectly controls the admission of participants or merchandise into the selling or trading area of a swap meet.

B. "Participant" means any person who brings merchandise to a swap meet for purposes of displaying, trading, bartering, or selling the merchandise at the swap meet.

C. "Swap meet" means a market consisting of multiple participants who operate from one general business location, under the control of a common operator or operators, on an irregular or semi-regular basis and who display, trade, barter, buy, or sell used merchandise at the location, regardless of whether new merchandise is also displayed, traded, bartered, bought, or sold at the location; also commonly known as a "park-and-swap."

9-4-2 Licenses required

A. It is unlawful for any person to conduct business as a swap meet operator in the town without first obtaining and maintaining a valid business license issued pursuant to and subject to the provisions of chapter 9-2.

B. It is unlawful for any person to conduct business as a swap meet participant for more than three consecutive days or on more than four occasions within a one-year period without first obtaining and maintaining a valid business license issued pursuant to and subject to the provisions of chapter 9-2.

9-4-3 Additional application requirements

In addition to the application requirements set forth in section 9-2-5, any person desiring to obtain a license to conduct business as a swap meet operator shall present proof either that the operator is the owner of the property where the swap meet is to be located, or that the operator has the right to use the property for the swap meet, in the form of a lease or license agreement, or similar documentation, from the property owner.

9-4-4 Display of license

A. Any operator required to be licensed under this chapter shall keep the license posted in a conspicuous place upon the premises of the swap meet.

B. Any participant required to be licensed under this chapter shall keep the license posted in a conspicuous place at the participant's stall, booth, or area at the swap meet.

9-4-5 Swap meet regulations

A. At least one properly licensed operator shall operate each swap meet.

B. The operator shall conduct each swap meet in a building, structure, enclosure, fenced lot, or other area where entry may be restricted to enable the operator to control effectively all participants and merchandise.

C. All merchandise, both new and secondhand, for which a participant asks, or intends to ask, an initial price of $25.00 or more, or which has or had a serial number, shall at all times be visible to the general public and officials of the town.

D. The operator shall provide and pay for adequate security, as determined by the chief of police.

E. The operator shall cooperate with law enforcement officials investigating, examining, or monitoring displayed merchandise.

F. The operator shall provide for daily clean-up of the premises and shall maintain the premises in good, clean, and sanitary condition at all times.

G. At the close of each day's business, all participants must vacate the premises and remove all of their merchandise and personal property.

H. The operator shall maintain a list of all participants at the swap meet for each day of operations and shall display the list to town officials upon request.

9-4-6 Prohibited merchandise

It shall be unlawful for any person to sell, exchange, display, offer for sale, or barter at any swap meet any of the following items:

A. Any live animal

B. Ammunition or blasting agents

C. Liquid petroleum gases or other combustible gases

D. Any type of display fireworks, not including permissible consumer fireworks, as those terms are defined in A.R.S. § 36-1601

E. Explosives, acids, caustics, oxidizing agents or any flammable liquids, including but not limited to, gasoline, kerosene, acetone, thinners, and solvents

F. Spray paint containers

CHAPTER 9-5. MASSAGE ESTABLISHMENTS

Chapter 9-5 was adopted as Chapter 9-4 by Ordinance 2011.01 and renumbered to 9-5 by Ordinance 2019.012. 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.

9-5-1 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.

9-5-2 Definitions

Ordinance 2012.13 amended several definitions in section 9-5-2

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.

Ordinance 2011.22 rewrote paragraph H

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.

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.

9-5-3 Duties of license inspector; appeals

A. It shall be the duty and responsibility of the town's license inspector, 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.

Ordinance 2019.012 deleted an unnecessary cross-reference in paragraph A

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

9-5-4 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.

9-5-5 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.

9-5-6 Massage establishment license required; non-transferability; exclusions

Ordinance 2011.22 added "non-transferability" to the title of section 9-5-6, 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.

9-5-7 Manager license required; non-transferability

Ordinance 2011.22 added "non-transferability" to the title of section 9-5-7, 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

9-5-8 New license application; fees; supplemental information

Ordinance 2012.13 added "supplemental information" to the title and added paragraph D of section 9-5-8. 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.

9-5-9 Massage establishment license application; separate license; husband and wife; additional requirements

Ordinance 2012.13 amended section 9-5-9 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:

Ordinance 2011.22 rewrote subparagraph 14

    a. All applicants
    b. All owners of and controlling persons in the establishment
    c. The designated agent
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:

Ordinance 2011.22 rewrote the introduction to paragraph 17

    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.

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 evidencing the legally enforceable right of the applicant to have or obtain the use and possession of the tract of land on which the establishment is to be situated 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. The license inspector may also require proof of the current fee ownership of the tract of land in the form of a copy of the recorded deed.

Ordinance 2016.010 rewrote paragraph 21

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.

9-5-10 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.

9-5-11 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.

9-5-12 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 9-5-12 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.

9-5-13 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

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

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.

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.

9-5-14 Denial, suspension, revocation or nonrenewal of license

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 9-5-14, including adding subparagraphs (A)(16) through (26).

A. The license of a massage establishment or license of a manager may be denied, revoked, suspended for a period not to exceed 60 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 9-5-9 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 9-5-19.

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

9-5-15 Procedure for denial, suspension, revocation or nonrenewal; appeals

Ordinance 2011.22 added section 9-5-15 and renumbered the remaining sections of chapter 9-14 to conform. Ordinance 2012.13 made various clarifying revisions to section 9-5-15.

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 applicant 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.

9-5-16 Application after denial, revocation or nonrenewal

Ordinance 2011.22 renumbered, inserted "or revocation" in the title of, and rewrote section 9-5-16. 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.

9-5-17 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.

9-5-18 Inspection of massage establishments

Ordinance 2012.13 added "or designated agent" to the introductory paragraph of section 9-5-18

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.

9-5-19 Massage establishment special requirements

Ordinance 2012.13 made various changes to section 9-5-19, 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

9-5-20 Unlawful activities; definition; duty of manager

Ordinance 2012.13 revised section 9-5-20 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 9-5-14 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.

9-5-21 Display of license; update, retention and inspection of records

Ordinance 2012.13 made several miscellaneous revisions to section 9-5-21

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

9-5-22 Manager list; manager, designated agent or licensee required on premises

Ordinance 2012.13 substantially rewrote and revised section 9-5-22

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.

9-5-23 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.

9-5-24 Licenses; cumulative regulation

A. The licenses required in this chapter are in addition to any transaction privilege license required by the Marana town code or state law.

Ordinance 2019.012 deleted mention of business license in paragraph A

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 9-6. CLOTHING AND CONDUCT FOR QUALIFIED ESTABLISHMENTS

Ordinance 2000.06 rewrote this chapter, which was renumbered by Ordinance 2019.012. See Ordinance 95.12 and 96.09 for prior history.

9-6-1 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)

9-6-2 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 9-6-2 (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.

9-6-3 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 9-6-3

9-6-4 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

Ordinance 2005.22 and Ordinance 2014.014 simplified the statutory reference in section 9-6-4

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.

9-6-5 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.

9-6-6 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.

9-6-7 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.

9-6-8 Classification; continuing violations

Ordinance 2014.014 added section 9-6-8. 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 9-7. SEXUALLY ORIENTED BUSINESSES

Ordinance 2000.06 adopted this chapter, which was renumbered by Ordinance 2019.012

9-7-1 Purpose

It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general 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.

9-7-2 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 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

Ordinance 2000.10 rewrote the "adult motel" definition

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 regu-

Ordinance 2000.10 added the word "regularly" to the definition of nude model studio

larly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

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, control, or supervision of the licensee, as described in the application for a business license pursuant to this chapter.

Ordinance 2005.22 deleted a redundant definition of "person" (see section 1-3-2)

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.

9-7-3 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.

9-7-4 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.

9-7-5 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

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

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.

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 docu-

ments, 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 a full set of the applicant's fingerprints on a standard fingerprint card recorded 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. Ordinance 2019.012 made minor revisions to subparagraph 1.

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.

J. Pursuant to A.R.S. § 41-1750, the town is hereby authorized to receive criminal history record information for evaluating the fitness of current and prospective sexually oriented business licensees and current and prospective sexually oriented business employee licensees.

Ordinance 2019.012 added paragraphs J, K, and L

K. 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.

L. Criminal history record information obtained by the town pursuant to this chapter shall be used only for evaluating the fitness of current and prospective sexually oriented business licensees and current and prospective sexually oriented business employee licensees. The town shall comply with all relevant state and federal rules and regulations regarding the dissemination of criminal history record information.

9-7-6 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 90 days from the date of the completed application. After the investigation, the license inspector 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:

Ordinance 2000.10 added the third sentence and added "review" to the fourth sentence of paragraph A. Ordinance 2019.012 changed the application review duration from 30 to 90 days.

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 90 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. Ordinance 2019.012 changed "45 days" to "90 days" in the first sentence.

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 9-7-3 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 9-7-3. 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 90 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.

Ordinance 2019.012 changed "45 days" to "90 days" in paragraph H

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 90 days of receiving the completed application. The renewal of a license shall be subject to the fee as set forth in section 9-7-7. Non-renewal of a license shall be subject to appeal as set forth in this chapter.

Ordinance 2019.012 changed "30 days" to "90 days" in paragraph I

9-7-7 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.

9-7-8 Inspection

Ordinance 2000.10 rewrote section 9-6-8

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.

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

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.

9-7-9 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 license inspector 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. Ordinance 2019.012 changed "town clerk" to "license inspector" in the first sentence of paragraph B.

9-7-10 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:

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

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.

9-7-11 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;
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

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

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.

9-7-12 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 inspector'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.

9-7-13 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.

9-7-14 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.

9-7-15 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.

9-7-16 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.

9-7-17 Additional reporting requirements

Section 9-7-17 was added by Ordinance 2019.012. An earlier section adopted by Ordinance 2000.06 ("Additional regulations for adult motels") that appeared here was deleted by Ordinance 2000.10.

To ensure compliance with the provisions of this chapter, whenever the license inspector has reason to believe that the sale or rental for any form of consideration of any merchandise defined in section 9-7-2(B) is a principal business purpose of any business licensed under this title, 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.

9-7-18 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.

9-7-19 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.

9-7-20 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.

9-7-21 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.

9-7-22 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.

9-7-23 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.

9-7-24 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.

9-7-25 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.

9-7-26 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.

9-7-27 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.

9-7-28 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 9-8. 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.

9-8-1 Definition

For purposes of this chapter, "spirituous liquor" is defined as provided in A.R.S. § 4-101.

9-8-2 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.

9-8-3 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 9-9. VIDEO SERVICE

Ordinance 2019.013 adopted chapter 9-9 (video service) and deleted the former chapter entitled "cable television" in its entirety. For previous history, see Ordinances 87.09, 96.09, 2000.06, 2002.29, and 2005.22.

9-9-1 Definitions and requirements

A. Terms used in this chapter are defined in A.R.S. § 9-1401.

B. This chapter supplements and carries out the provisions of Arizona revised statutes title 9 chapter 13 (A.R.S. § 9-1401 *et seq.*), which sets forth the regulations and requirements for providing video service and constructing and operating a video service network in the town.

9-9-2 Video service license required

A person wishing to provide video service and to construct and operate a video service network in any service area within the boundaries of the town shall do all of the following:

A. Submit a completed application and affidavit for uniform video service license.

B. Sign and comply with the terms of the uniform video service license agreement.

C. Comply with all applicable provisions of Arizona revised statutes title 9 chapter 13 (A.R.S. § 9-1401 *et seq.*).

9-9-3 License fee

A. For the privilege of a video service provider to occupy or use, in whole or in part, any highway within the boundaries of the town to provide video service through a video service network, each video service provider shall pay the town a license fee of 5% of the gross

revenue the video service provider receives from its subscribers located within the boundaries of the town.

B. The license fee shall be paid quarterly, with the payment for each calendar quarter due no more than 30 calendar days following the end of the calendar quarter.

C. If any license fee payment is not made on or before the its due date agreement, the video service provider shall pay an interest charge, computed from the due date, at an annual rate equal to the federal short-term rate determined pursuant to 26 U.S.C. § 6621(b) plus 1½% during the period for which payment was due.

9-9-4 Grant of authority

A. The local government receipt section of the application and affidavit for uniform video service license may be signed by or for the town clerk.

B. The town engineer is authorized to sign the uniform video service license agreement on behalf of the town.

CHAPTER 9-10. SURFACE MINING AND LAND RECLAMATION

Ordinance 2002.08 added chapter 9-10. A former chapter entitled "Penalty" that appeared here was deleted by Ordinance 2019.012. For prior history, see Ordinances 2000.06 and 2014.014.

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 for a surface mining license in an amount set forth in a fee schedule adopted by the council and amended from time to time. An increased fee is necessary to:

Ordinance 2019.012 rewrote paragraph B and added subparagraphs 1-3

1. Support town staff and other efforts to monitor, inspect, and enforce the provisions of this chapter and chapter 10-1, transportation and dumping of garbage or aggregate material as it relates to aggregate material;
2. Ensure that surface mining operations 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 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, including the safeguarding 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.

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

Ordinance 2005.22 inserted "town engineer" for "development services director" in paragraph C

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.

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.

CHAPTER 9-12. COMMERCIAL FILMING AND PHOTOGRAPHY PERMITS

Ordinance 2019.001 added chapter 9-12

9-12-1 Purpose and intent

It is the purpose of this chapter to provide rules and regulations governing the issuance of permits for filming activities in locations within the town of Marana. The intent of this chapter is to encourage still photographers, motion picture, television, commercial, and nontheatrical companies to use locations for filming activities within the town as long as said activities are consistent with the general safety and welfare of the public and the protection of property and resources.

9-12-2 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates or requires a different meaning.

A. "Applicant" means the person who applies for a permit to film in the town pursuant to this chapter.

B. "Film permit" means the written authorization from the film permit officer to conduct the filming described in the permit. A film permit does not authorize a permittee to create or maintain a public or private nuisance; to violate any law, statute or ordinance; or to endanger the public health, safety, or welfare whether intentionally or negligently.

C. "Film permit officer" means the town employee designated and authorized by the town manager to coordinate filming activities and issue film permits in the town.

D. "Filming activity" means the staging, shooting, filming, videotaping, photographing, or other similar process conducted for the making of still photographs, motion pictures, television programs, commercials, or nontheatrical film productions.

E. "Filming for private and family use" means filming activities which are conducted and intended for private, personal use and not for commercial use or for the generation of profit or financial gain, whether or not the activity is performed by a professional.

F. "News purposes" means a filming activity conducted for the purposes of reporting on persons, events, or scenes which are in the news for newspapers, television news, and other news media. "News purposes" shall not include advertising or publicity filming.

G. "Permittee" means the person issued a film permit pursuant to this chapter.

H. "Person" means and individual, firm, organization, corporation, association, or other entity.

I. "Private road" means any street, road, or right-of-way owned, occupied, or under the control of a private individual, individuals, or private corporation.

J. "Public road" means any street, road, or right-of-way owned, occupied, or under the control of the town and located within the town limits.

K. "Still photography" means and includes all activities attendant to shooting or staging commercial still photographs without use of motion picture or video equipment.

9-12-3 Permit required; non-transferable

A. It is unlawful for any person to conduct filming activity for commercial purposes on town property, including public right-of-way, without first obtaining and maintaining a valid film permit for such activity from the film permit officer.

B. The permit must be in the possession of the permittee at all times while on location.

C. A film permit does not constitute or grant permission to use or occupy private property or a private road.

D. All film permits issued pursuant to this chapter are non-transferable.

9-12-4 Permit exemptions

The provisions of this chapter shall not apply to any of the following activities when lawfully conducted and not detrimental to the peace and enjoyment of the area affected:

A. Filming activities conducted on private property.

B. Filming activities conducted for news purposes.

C. Filming activities conducted for use in a criminal investigation or civil or criminal court proceeding.

D. Filming activities conducted solely for private or family use.

E. Filming of the proceedings of a court, tribunal or governing body.

F. Filming activities conducted by town employees for the benefit of the town.

G. Filming activities by students for the purpose of fulfilling classwork assignments.

H. Filming activities conducted by public or private schools.

I. Filming activities by individuals or entities solely intended for non-commercial purposes and not intended for the generation of financial profit.

9-12-5 Cumulative regulation

The permit required by this chapter is in addition to any other permits or licenses required by this code.

9-12-6 Application process

A. The applicant or the applicant's authorized representative shall submit a written film permit application to the film permit officer on the form provided by the town for that purpose.

B. Applications for film permits shall be submitted to the film permit officer a minimum of five business days prior to the date the filming activity is to begin, except that applications for film permits which include road closures for traffic safety, stunts, or special effects involving electrical devices or pyrotechnics, shall be filed a minimum of ten business days prior to the date the filming activity is to begin.

   1. The film permit officer may accept film permit applications after the deadline if it is determined by the film permit officer that sufficient time to review and process the application by affected town departments is available.

C. Upon receipt of the application, the film permit officer shall circulate the application for review by the appropriate town departments and by the fire department. The departments shall review the application and may require reasonable supplementation of the information in the application if necessary. The departments may impose permit conditions consistent with the general safety and welfare of the public and the protection of property and resources.

9-12-7 Notice to adjacent property owners

A. When deemed necessary by the film permit officer, the permittee shall provide written notice of the filming activity to adjacent property owners as part of the permit application process. The permittee shall provide proof of the written notice to the film permit officer.

B. The notice required by paragraph A of this section shall be given to all occupants and owners of real property located within a minimum of 300 feet of the site of the proposed filming activity, as determined by the most recent assessor's tax roll, or as otherwise specified by the film permit officer.

C. For unusual filming conditions where the sensitivity of the area may warrant it, the film permit officer may require signed acknowledgments from the residents acknowledging notification.

D. Any notice required by this section shall include the following information relating to the proposed filming activity:

1. Time and date(s) of proposed filming activity.
2. Specific location or address.
3. Brief description of activity and any special equipment usage.
4. Aircraft or other vehicles involved and parking locations.
5. Name and office telephone number of the film permit officer.
6. Local contact or agent of the permittee.

E. The notice shall be given in advance of the proposed activity as specified by the film permit officer to assure timely notice to affected property owners and/or occupants. The film permit officer may prescribe a minimum time for advance notice in each case as necessary.

F. In all cases, the film permit officer shall consider any comments and protests received from affected occupants and owners within 72 hours of notice, before issuing any permit under this chapter. The issuance of any permit shall include conditions reasonably necessary to address any protests and comments received pursuant to this section.

9-12-8 Permit issuance or denial; review by town manager

A. The film permit shall be approved or denied within three business days of acceptance of the complete application by the film permit officer unless the proposed filming activity requires extensive notice or review by other town departments due to fire, traffic safety, environmental quality, or other concerns.

B. The film permit shall be approved unless the film permit officer determines that any of the following conditions exist:

1. The filming activity will substantially disrupt the use of a public or private road at a time when it is usually subject to traffic congestion, or will interfere with the use of emergency vehicles in the proposed permit area.
2. The location of the filming activity will substantially interfere with road maintenance work or a previously authorized excavation permit or other valid permit.
3. The filming activity will substantially interfere with other previously authorized activities or contracts, or with the safety of the public or town employees.
4. The filming activity will substantially interfere with the conduct of town business or the scheduled maintenance of town buildings, roads, or grounds.
5. The filming activity presents a substantial risk of injury to persons or damage to property or a significant degradation of the environment.
6. The filming activity will result in an undue impact on the town's property, operations, resources, or staff.
7. The filming activity is not an appropriate or desired use of the town property in question, based on the size and scope of the filming activity, the length of the filming activity, the nature of the filming activity, or any other relevant factors.
8. The filming activity will unreasonably interfere with or detract from the general public enjoyment of the property, or cause annoyance or the disturbance of any other person's reasonable use of the property, or cause annoyance or disturb the peace of persons residing near the property, or interfere with the maintenance of the property or its facilities.
9. The applicant has previously engaged in filming activity in the town that resulted in complaints or disturbances.
10. The applicant failed to complete the application after being requested to do so, or the information contained in the application is found to be false or misleading in any detail.
11. The particular filming activity will violate any federal, state, or local law.

C. Notwithstanding paragraph B of this section, the town reserves the right to deny any permit application to film inside of town buildings and facilities, as the town's buildings and facilities are primarily intended and designed for town of Marana government business and municipal office purposes.

D. If the permit is denied, the film permit officer 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.

E. 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.

9-12-9 Permit conditions

The film permit officer shall condition the issuance of a film permit by imposing requirements concerning the time, place, manner, and duration of filming activities, including, but not limited to, the following:

A. Requirements for the presence of employees or agents of the town at the applicant's expense when required for the particular filming activity.

B. Requirements concerning posting of signs, placement of traffic control devices, and employment of traffic and crowd control monitors, including, but not limited to, Marana police department officers, at the applicant's expense.

C. Requirements providing for identification of the filming activity area boundaries, providing advance notice to affected residents, property owners, homeowners associations, and business owners.

D. Requirements concerning the posting of bonds or deposits to secure restoration or performance of any other condition, such as the cleanup, restoration, and repair of town roads and other town property used in the filming activity.

E. Restrictions concerning the use of town employee services, vehicles, and other equipment in the filming activity.

F. Requirements that the applicant pay all fees, and obtain all permits and licenses required for the filming activity under local, state, and federal law.

G. Restrictions on the use of aircraft, firearms, pyrotechnics, explosives, amplified sound sources, lighting and other noise-creating devices, or devices which may tend to be hazardous or disturb the peace.

H. Restrictions on activity involving open flames, vehicle crashes, or hazardous materials.

I. Requirements concerning cover-up of police, fire, and other official uniforms worn by actors when the actors are not on the set.

J. Restrictions concerning the use of town logos, seals, insignias, badges, or decals for filming purposes.

K. Restrictions on the daily hours of the filming activity, including all setup and teardown of equipment.

9-12-10 Road closures

A. An applicant for a film permit may request in the permit application that the town authorize an intermittent interruption in traffic flow on public roads at the site of the filming activity. All road closure requests are subject to the town engineer's or designee's approval. All street barricading and signage placement must be completed by a licensed barricade company and set up according to the manual of uniform traffic control.

B. Road closures shall in no way interfere with emergency vehicles and shall not present a detriment to the area affected or to the peace, enjoyment, and safety of the public consistent with applicable law.

Pursuant to the authority granted by section 1-4-5, on February 19, 2019, the town attorney corrected a scrivener's error in paragraph B, changing "affected ot" to "affected or"

C. Road closures may be supervised by a law enforcement or traffic enforcement officer as determined by the film permit officer at the permittee's expense.

9-12-11 Fees

A. The permittee shall pay any fees applicable to the filming activity as those fees are set forth in the fee schedule approved by the council and amended from time to time.

B. Fees may include, without limitation, fees associated with the use or rental of town property, or fees for town staff to be present during filming activity, including off-duty police officers for security.

C. Final determination of the need for town personnel at the filming site will be determined by the affected department and the film permit officer.

9-12-12 Insurance; indemnification

A. 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, are required for all film permits.

1. The amount and type of insurance required for a film permit shall be determined by the town on a case by case basis.
2. At a minimum, the permittee shall provide proof of commercial general liability of $1,000,000 per occurrence.
3. Insurance certificates and endorsements must be provided to the film permit officer prior to the date filming activity begins.

B. Prior to the issuance of the film permit, the permittee shall sign an insurance and indemnification agreement, provided by the film permit officer, which holds the town, its officers, agents, and employees harmless for any actions of the permittee, its agents, or employees.

9-12-13 Permit revocation; effect of revocation on prosecution

A. The film permit may be revoked by the film permit officer or designee, by any law enforcement officer, or by any fire department official for any of the following reasons:

1. If the permittee, its agents, employees or contractors fail to comply with the requirements set forth in this chapter, or with the conditions imposed on filming by the film permit officer.
2. If the film permit officer determines that the permit was issued based on false or misleading information.
3. If the person revoking the film permit determines that the public safety or welfare is being imperiled by the filming activity.

B. Except for activities necessary to close down the location and remove equipment and other property of the permittee, no permittee shall allow any filming activity to continue after the revocation of a film permit.

C. Revocation of a film permit shall not be a defense against prosecution.

CHAPTER 9-13. MOBILE FOOD VENDORS

Ordinance 2019.012 added chapter 9-13

9-13-1 Purpose

This chapter is adopted to protect the health, safety, and welfare of the citizens of the town by enacting reasonable regulations for mobile food vendors, their employees, agents, lessees, or independent contractors by requiring compliance with minimum standards for safety and security.

9-13-2 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates or requires a different meaning.

A. "Legal parking space":

1. Means an area designated for vehicle parking in the town right-of-way that may be paved or unpaved and may be delineated by road surface markings.
2. Does not include a parking space in a parking lot on property owned by the town.

B. "Mobile food unit" means a food establishment that is licensed by this state, that is readily movable, and that dispenses food or beverages for immediate service and consumption, and other incidental retail items, from any vehicle, as defined in A.R.S. § 28-101.

C. "Mobile food vendor" means any person who owns, controls, manages, or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive, or operate a mobile food unit.

D. "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.

E. "Semi-permanent structure" means equipment, or any dining area, including, but not limited to, tables, chairs, booths, bar stools, benches, and standup counters.

9-13-3 Compliance with state licensing requirements

It is unlawful for any person to operate a mobile food unit or act as a mobile food vendor without first obtaining and maintaining in effect a valid license from the state of Arizona department of health services pursuant to A.R.S. § 36-1761.

9-13-4 License required

It is unlawful for any person to operate a mobile food unit in the town without first obtaining and maintaining a valid business license issued pursuant to and subject to the provisions of chapter 9-2.

9-13-5 Additional application requirements

In addition to the application requirements set forth in section 9-2-5, any person desiring to obtain a license to conduct business as a mobile food unit shall submit all of the following supplemental information:

A. A description, license plate number, and photograph of the mobile food unit;

B. A general description of the goods to be sold by the mobile food unit;

C. A valid driver's license;

D. A copy of required certificate(s) issued by the county health services department.

Ordinance 2019.016 deleted a former paragraph E, which required a copy of the state-issued license

9-13-6 Display of license

Any mobile food unit required to be licensed under this chapter shall keep the license posted in a conspicuous place upon the mobile food unit.

9-13-7 Operational requirements

A. Fire safety and inspection.

1. A mobile food vendor must ensure that all mobile food units comply with the version of the international fire code in effect at the time when the license is issued, state law, and the town code relating to fire and explosion safety standards.

2. A mobile food unit shall be inspected by the fire department, or the mobile food vendor shall provide evidence that the mobile food unit passed a fire inspection by another city or town fire department in this state within the preceding 12 months.

B. Refuse, trash, and litter maintenance. A mobile food vendor shall:

1. Provide a minimum of one 15 gallon trash receptacle within 15 feet of each individual mobile food unit for customers and employees;
2. Maintain an area around the mobile unit clear of litter, garbage, rubble and debris; and
3. Transport the trash from the area of operation to an authorized waste disposal location.

C. Noise restrictions. A mobile food vendor shall not use, play, or cause to be used or played any amplifier, loudspeaker, microphone, amplified music, or any other amplified instrument or device used for the production of sound in a vending area when the mobile food unit from which mobile food vendor is vending is stationary or mobile upon any right-of-way, park, or other public place. For purposes of this paragraph, the factors for determining whether a sound is amplified include, but are not limited to, the following:

1. The proximity of the sound to sleeping facilities, whether residential or commercial;
2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
3. The time of day or night when the sound occurs; it shall be presumed that any amplified noise between 10:00 p.m. and 6:00 a.m. is reasonably disturbing;
4. The duration of the sound; and
5. Whether the sound is recurrent, intermittent, or constant.

D. Security.

1. The mobile food unit and the surrounding vending area shall be maintained in a safe and clean manner at all times.
2. A mobile food unit shall have adequate lighting to ensure customer safety in the vending area. Lighting shall be directed downwards and away from rights-of-way and adjacent properties.
3. The mobile food unit and its customers shall not obstruct the movement of pedestrians or other vehicles using the sidewalk, street, alley, or other public right-of-way.

E. Insurance.

1. If the mobile food unit operates at an event sponsored by the town or operates on public property, including rights-of-way or property owned by the town, the mobile food vendor shall obtain insurance naming the town as an additional insured in amounts as required by the town and in accordance with the requirements of A.R.S. title 9, chapter 4, article 7.2.

2. The insurance company issuing the policy shall be authorized to issue commercial liability policies in Arizona by the Arizona department of insurance.

3. The policy shall designate by manufacturer's serial or identification number all mobile food units for which coverage is granted.

4. The policy shall insure the person named in the policy and any other person using the mobile food unit with the express or implied permission of the named insured against any liability arising out of the ownership, maintenance or use of the mobile food unit in Arizona.

F. Location.

1. Approved areas. Except as otherwise provided in this paragraph, a mobile food vendor shall operate a mobile food unit only in commercial, industrial, and mixed-use zoning districts in accordance with the land development code.

2. Residential areas. A mobile food vendor shall not operate in an area zoned for residential use or within 250 feet of an area zoned for residential use, except:

   a. A mobile food vendor selling only ice cream may operate on public rights-of-way in areas zoned for residential use.

   b. Subject to applicable laws, a mobile food vendor may operate on private property in a residential area if the mobile food vendor obtains a separate agreement with the property owner to operate a mobile food unit for a maximum of six hours within a 24-hour period on the private property.

3. Town-owned property. A mobile food vendor shall only operate in a legal parking space, as defined in this chapter. If the mobile food vendor desires to operate on town property other than a legal parking space, the mobile food vendor shall obtain from the town:

   a. A separate license for use, services contract, or similar agreement, which will be entered into at the town's sole discretion and applicable law; or

   b. A special event permit or similar permission in accordance with the town code.

4. Private property: A mobile food vendor shall obtain written permission to use any private property where a mobile food unit is operating and shall provide proof of such written permission on demand by the town.

G. Parking. A mobile food unit shall comply with this paragraph and applicable law as it pertains to parking, unless parking is governed by a separate paragraph in this chapter.

1. A mobile food unit shall only operate in a legal parking space.

2. A mobile food unit, including any semi-permanent structure used or associated with the mobile food unit, may use no more than one legal parking space, unless the mobile food vendor has a separate agreement with the town to use additional legal parking spaces or parking spaces on town property other than right-of-way.

3. No mobile food unit exceeding 24 feet in length may park diagonally in a diagonal parking space or park in any manner that occupies more than one diagonal parking space.

4. No mobile food unit shall operate with the serving window facing street traffic.

5. A mobile food unit shall abide by all parking regulations, including posted time limits. If there are no other time restrictions on the use of a legal parking space, a mobile food unit shall not occupy a legal parking space for more than six hours in a 24-hour period. "Occupy" within this subparagraph means within 100 feet of the location in which the mobile food unit was initially parked.

6. A mobile food unit shall not occupy a legal parking space with insufficient parking capacity as prescribed by the land development code and applicable law. The behavior prohibited by this subparagraph includes occupying a legal parking space that reduces the number of available parking spaces surrounding the area which is required for the principal use or uses of the property associated with the parking spaces as set forth in A.R.S. title 9, chapter 4, article 7.2.

7. A mobile food vendor shall not claim or attempt to establish any exclusive right to park at a particular street location, unless the parking space is part of a permitted event.

H. Signs. A mobile food vendor shall comply with all land development code provisions regarding signs.

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

CHAPTER 10-4. TRAVEL REDUCTION CODE 10-8

CHAPTER 10-5. FIREWORKS 10-14

CHAPTER 10-6. SPECIAL EVENTS 10-16

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.

Ordinance 2018.003 expanded the definition of "refuse"

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, discarded or scrapped parts of furniture, inoperable or abandoned equipment or appliances, cabinetry, household fixtures, construction material, mechanical parts, 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, metal, discarded or empty containers, 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, neglected, 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

Ordinance 2016.019 inserted "board of adjustment" for "council" in three locations in section 10-2-6

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 board of adjustment.

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 board of adjustment may affirm or withdraw the notice or modify the scope of the work required by the notice. The decision of the board of adjustment is final.

10-2-7 Removal by town; costs assessed; appeal; recording of assessment

Ordinance 2016.019 inserted "board of adjustment" for "council" in five locations in section 10-2-7

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 board of adjustment. 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 board of adjustment may affirm or modify the amount of the assessment or determine that no assessment at all shall be made. The decision of the board of adjustment 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 board of adjustment 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 board of adjustment-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

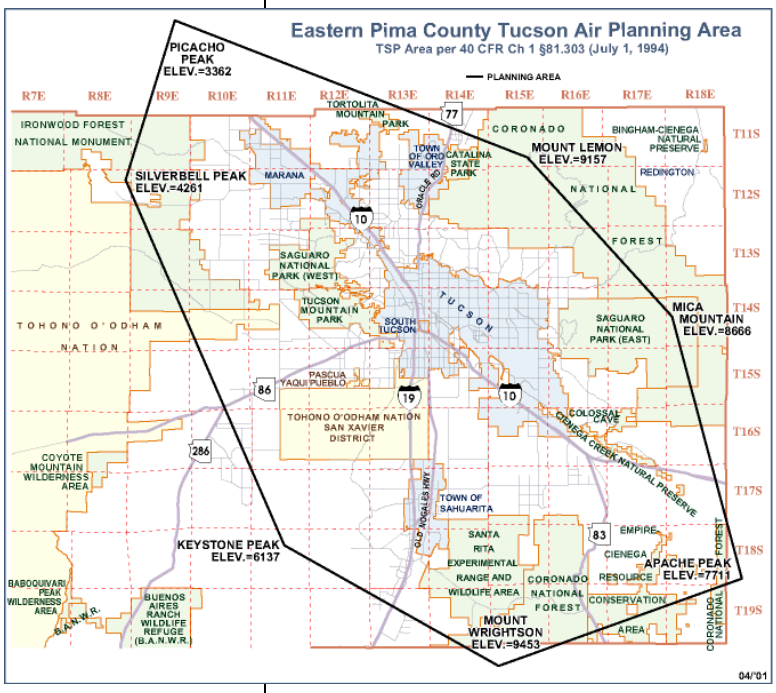
10-4-1 Purpose

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.

Ordinance 2005.22 corrected the cross-reference in subparagraphs (D)(4)(a) and (b)

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.

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 renumbered 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 before 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.

Ordinance 2017.001 amended the insurance requirement in subparagraph (J)(2)

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.

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.

H. The proposed event will result in an undue impact on the town's property, operations, resources or staff.

Ordinance 2017.001 amended subparagraph E and added subparagraphs H through L

I. The applicant has held other events in the town that resulted in complaints or disturbances.

J. If the proposed event is to be held on town property, the town determines that the event is not an appropriate or desired use of the town property in question, based on the size and scope of the event, the length of the event, the nature of the event, or any other relevant factors.

K. If the proposed event is to be held on town property, the town determines that the proposed use of the town's property will unreasonably interfere with or detract from the general public enjoyment of the property or cause annoyance or the disturbance of any other person's reasonable use of the property, or cause annoyance or disturb the peace of persons residing near the property, or interfere with the maintenance of the property or its facilities.

L. The proposed event is reasonably anticipated to incite violence, crime or disorderly conduct.

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

CHAPTER 11-1. DRIVING OR PARKING ON PROPERTY OF ANOTHER 11-1

CHAPTER 11-2. DRUG PARAPHERNALIA 11-1

CHAPTER 11-3. GRAFFITI 11-2

CHAPTER 11-4. MINORS; LOITERING AND CURFEW 11-4

CHAPTER 11-5. NOISE 11-7

CHAPTER 11-6. PUBLIC URINATION OR DEFECATION 11-14

CHAPTER 11-7. STORAGE OF INOPERABLE OR JUNKED VEHICLES 11-14

CHAPTER 11-8. UNATTENDED CHILD IN MOTOR VEHICLE; CLASSIFICATION; PENALTY 11-16

CHAPTER 11-9. PENALTIES 11-16

CHAPTER 11-10. UNRULY RESIDENTIAL ACTIVITIES 11-17

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 step-parent 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 11-4-2 D 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 res-

idential 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 level 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 adjudicating 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:

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.

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"

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.

11-9-3 Violation of section 11-5-3

Ordinance 2002.12 adopted section 11-8-3

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.

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

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.
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

CHAPTER 12-1. ADMINISTRATION 12-1

CHAPTER 12-2. TRAFFIC CONTROL 12-1

CHAPTER 12-3. PARKING 12-6

CHAPTER 12-4. OFF-ROAD MOTOR VEHICLE USE 12-11

CHAPTER 12-5. IMPOUNDMENT OF VEHICLES 12-14

CHAPTER 12-6. BICYCLE HELMETS FOR MINORS 12-15

CHAPTER 12-7. CONSTRUCTION IN TOWN RIGHTS-OF-WAY 12-16

CHAPTER 12-8. WIRELESS COMMUNICATION FACILITIES IN THE RIGHT-OF-WAY 12-24

CHAPTER 12-9. OVERDIMENSIONAL VEHICLES 12-99

CHAPTER 12-10. OTHER PENALTIES 12-102

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 permanent 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.

12-3-3 Blocking traffic

Ordinance 2006.31 renumbered and substantially modified section 12-3-3

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.

Ordinance 2006.31 renumbered and slightly modified section 12-3-6

12-3-6 Stopping, standing or parking in handicap parking space

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. Ordinance 2019.008 amended paragraph A by deleting a sentence about vehicle storage on town property.

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. 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.

12-6-2 Violations – chapter 12-6; penalty

Ordinance 2006.31 renumbered and modified section 12-6-2

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 12-6-1 A 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, drainageways 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 12-7-3 A, 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; grounds for denial

Ordinance 2018.007 revised the title of section 12-7-5 to add "grounds for denial" and added paragraph E

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 9-2 of this code.

C. Projects which are to be self-certified under section 12-7-10 C 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.

E. Notwithstanding the provisions of paragraph D of this section, the town engineer may deny a permit requested pursuant to this chapter under the following circumstances:

Ordinance 2018.007 revised section 12-7-5 to add paragraph E

1. The town engineer has notified the applicant that the applicant failed to comply with the construction requirements set forth in section 12-7-8 on a previously-issued permit and the applicant

has failed to remedy the violation at the time of the new permit application.

2. The applicant has failed to pay any fees owed to the town for previously-issued permits, including, but not limited to, application fees, late fees, and fees incurred by the town to repair or remedy work completed by the applicant.

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 latest edition of the Pima association of governments (PAG) standard specifications and details for public improvements.

Ordinance 2018.007 revised subparagraph B.1 of section 12-7-8

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 12-7-10 C 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-

Ordinance 2013.011 added the last sentence to paragraph K

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.

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 Additional requirements for specified asphalt pavements

Ordinance 2018.007 revised the title and introductory paragraph of section 12-7-9 to refer to the pavement OCI instead of age

In addition to the requirements set forth in section 12-7-8, on asphalt pavements having an overall condition index (OCI) of over 70, 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 repair 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. WIRELESS COMMUNICATION FACILITIES IN THE RIGHT-OF-WAY

Chapter 12-8 was adopted by Ordinance 2018.002. For prior history, see Ordinances 2008.11 and 2016.005

12-8-1 Purpose and background

A. The purpose of this chapter is to:

1. Implement Arizona laws 2017, chapter 124 (A.R.S. § 9-591 *et seq.*);
2. Incorporate standard terms by reference in each individual telecom license agreement and right-of-way permit;
3. Promote uniformity in the telecom license agreements; and
4. Streamline the preparation and administration of telecom license agreements.

B. Various laws (the "telecommunications laws") authorize the town to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of telecommunications systems. The telecommunications laws include, without limitation, the following:

1. Chapter 12-7 of the town code (construction in town rights-of-way) (the "street code"). Town code section 12-7-3 (permit required; exception) applies to a wireless provider, as defined in A.R.S. § 9-591(26).
2. A.R.S. §§ 9-581 through 9-583, §§ 9-591 through 9-599, and other state and federal statutes.
3. The constitution of the state of Arizona.
4. Other applicable federal, state and local laws, codes, rules and regulations.
5. The town's police powers, its authority over public right-of-way, and its other governmental powers and authority.

C. The town owns public street and alley rights-of-way and public utility easements within the boundaries of the town that are designated

for use by utility companies for installation, operation and repair of water, electrical and other utilities pursuant to franchises, licenses or other agreements between utility companies and the town (collectively the "right-of-way").

D. The town anticipates that one or more wireless providers may desire to locate antennas and immediately related equipment at various locations ("the sites") within the right-of-way.

E. The standard terms become effective as to each site as they are incorporated in the telecom license agreement by reference. Except as otherwise stated, each telecom license agreement stands on its own.

F. Because the town's existing streetlight poles and traffic signed poles are not designed to safely support the additional weight and stress of wireless facilities, wireless providers shall be required to provide poles designed to support these facilities to replace existing poles prior to attaching wireless facilities.

12-8-2 Definitions

A. The following definitions apply to each telecom license agreement and right-of-way permit:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.

2. "Antenna mounting bracket" means the hardware required to secure the antenna to the pole.

3. "Antenna mounting post" means the vertical post or pipe that the antenna mounting bracket is mounted to in order for the antenna to be attached to the pole.

4. "Antenna shroud" means the three-sided cover that is mounted at the base of the antenna to conceal the appearance of the cables and wires from the hand-hole port on the pole to the bottom-fed antenna.

5. "Base use fee" means the amount that the company shall pay to the town for each year of a license for use of the town right-of-way and the town-owned pole, in an amount established by a fee schedule adopted by the council and amended from time to time.

6. "Canister antenna" means the canister or cylinder style housing used to conceal the antenna(s), amplifier(s), radio(s), cables, and wires at the top of a pole.

7. "Communications equipment" means any and all electronic equipment at the small wireless facility location that processes and transports information from the antennas to the wireless provider's network.

8. "Competing users" means entities that own the water pipes, cables and wires, pavement, and other facilities which may be located within the right-of-way. The competing users include without limitation, the town, the state of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of each use area.
9. "Dog house" means the plastic or metal attachment to the base of a pole that covers the transition point of underground cables and wires to the vertical section of the pole.
10. "FCC" means the federal communications commission.
11. "FCC rules" means all applicable radio frequency emissions laws and regulations.
12. "FCC OET bulletin 65" means the FCC's office of engineering & technology bulletin 65 that includes the FCC radio frequency exposure guidelines.
13. "Ground mounted equipment" means any communications equipment that is mounted to a separate post or to a foundation on the ground.
14. "Light emitting diode" or "LED" is a type of lighting fixture installed on town streetlight and traffic signal poles.
15. "Light fixture" means the lighting unit or luminaire that provides lighting during the evening hours or during the hours of darkness.
16. "Luminaire mast arm" means the horizontal post that attaches the light fixture to the streetlight pole or traffic signal pole.
17. "Omni-directional antenna" or "omni antenna" is an antenna that is round in shape, like a pipe, and may be about one inch diameter up to about six inches diameter.
18. "Ordinary permit use fee" means all fees related to the issuance of the right-of-way permit in an amount established by a fee schedule adopted by the council and amended from time to time (including without limitation all fees listed in the currently-adopted comprehensive fee schedule under the subheading "right of way").
19. "Outside diameter" means the points of measurement, using the outer edges of a pole, pipe or cylinder.
20. "Panel antenna" means the style of antenna that is rectangular in shape and with dimensions that are generally four feet to eight feet in height, by eight inches to 12 inches wide, and four inches to nine inches deep.
21. "Remote radio heads/remote radio units" or "RRU/RRH" means the electronic devices used to amplify radio signals so that there is increased performance (farther distance) of the outgoing radio signal from the antenna.

22. "RF" means radio frequency.

23. "RF letter" means a letter attesting to the wireless provider's compliance with FCC RF exposure guidelines from the wireless provider's senior internal engineer.

24. "Right-of-way" as defined for wireless sites in A.R.S. § 9-591 (18) means the area on, below or above a public roadway, highway, street, sidewalk, alley, or utility easement. Right-of-way does not include a federal interstate highway, a state highway or state route under the jurisdiction of the department of transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.

25. "Right-of-way permit" means a permit issued pursuant to town code section 12-7-3.

26. "Sight distance easement" means the area of land adjacent to an intersection, driveway or roadway that has restrictive uses in order to preserve the view of oncoming or crossing vehicular and pedestrian traffic by drivers in vehicles attempting to merge with traffic or enter a roadway.

27. "Sight visibility triangle" means the traffic engineering and safety concept that requires clear view by the driver of a vehicle to crossing traffic at a stop sign, driveway or intersection. In order to achieve clear visibility of the cross traffic, the land areas in the sight visibility triangle has specific maximum heights on landscaping, cabinets, and other potential view obstructions.

28. "Signal head" means the "red, yellow and green" light signals at a signal-controlled intersection.

29. "Signal head mast arm" means the horizontal pole that has the signal heads mounted to it and attaches to the traffic signal pole.

30. "Site documents" means the depiction of the use area, schematic plans and map showing location of the installation of the wireless facility in the right-of-way, including but not limited to the title report of the use area, vicinity map, site plan, elevations, technical specifications and the cubic feet of the non-antenna wireless equipment.

31. "Small wireless facility" as defined in A.R.S. §9-591 (19), means a wireless facility that meets both of the following qualifications:

    a. All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume.

    b. All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume, or 50 cubic feet in volume if the equipment was ground mounted

before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

i. An electric meter.

ii. Concealment elements.

iii. A telecommunications demarcation box.

iv. Grounding equipment.

v. A power transfer switch.

vi. A cutoff switch.

vii. Vertical cable runs for the connection of power and other services.

32. "Standard terms" means the provisions of this chapter 12-8.

33. "Stealth and concealment elements" means the use of shrouds, decorative elements, design concepts and faux elements so that a small wireless facility can be designed to blend in with the surrounding streetscape with minimal to any visual impact.

34. The "street code" means chapter 12-7 (construction in town rights-of-way).

35. "Supplemental parcel agreement" means an agreement authorizing the wireless provider to use property outside of the town's right-of-way.

36. "Telecom license agreement" means the wireless communication facilities license that incorporates this chapter of the town code—the standard recitals and the standard terms for wireless providers to install and operate wireless facilities in the right-of-way.

37. "Third party areas" means the portions of the right-of-way, such as canal crossings or other areas that for any reason have limited right-of-way dedications or that have regulatory use restrictions imposed by a third party.

38. "Use area" means the portions of the right-of-way where a wireless provider is authorized to construct or place its wireless communication facilities pursuant to a right-of-way permit and telecom license agreement (see section 12-8-3, wireless communication facilities use area). As applied to the telecom license agreement, "use area" refers collectively to all use areas authorized by the telecom license agreement.

39. "Utility pole" as defined in A.R.S. § 9-591 (21) means a pole or similar structure that is used in whole or in part for communications services, electric distribution, lighting or traffic signals. Utility pole does not include a monopole.

40. "Violation use fee" means the types of fees that the town has available to remedy certain breaches of the telecom license

agreement by a wireless provider, in an amount established by a fee schedule adopted by the council and amended from time to time.

41. "Wireless facility" as defined in A.R.S. § 9-591 (22):

    a. Means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:

        i. Equipment associated with wireless communications.

        ii. Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.

    b. Includes small wireless facilities.

    c. Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

    d. Does not include wi-fi radio equipment described in A.R.S. § 9-506 (I) or microcell equipment described in A.R.S. § 9-584 (E).

42. "Wireless infrastructure provider" as defined in A.R.S. § 9-591 (23) means any person authorized to provide telecommunications service in this state and who builds or installs wireless communications transmission equipment, wireless facilities, utility poles or monopoles but who is not a wireless service provider. Wireless infrastructure provider does not include a special taxing district.

43. "Wireless provider" as defined in A.R.S. § 9-591 (24) means a cable operator, wireless infrastructure provider, or wireless services provider.

44. "Wireless provider's improvements" means all improvements installed by the wireless provider, including but not limited to all elements of the wireless facility, all screening elements, any landscaping plants or materials, and any other elements provided by the wireless provider in the approved telecom license agreement.

45. "Wireless services" as defined in A.R.S. § 9-591 (25) means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

46. "Wireless services provider" as defined in A.R.S. § 9-591 (26) means a person that provides wireless services. Wireless services provider does not include a special taxing district.

47. "Wireless support structure" as defined in A.R.S. § 9-591 (27):

    a. Means:

        i. A freestanding structure, such as a monopole.

        ii. A tower, either guyed or self-supporting.

        iii. A sign or billboard.

        iv. Any other existing or proposed structure designed to support or capable of supporting small wireless facilities.

    b. Does not include a utility pole.

12-8-3 Wireless communication facilities use area

Authority to use right-of-way. The town grants to wireless provider the right to install wireless facilities in the town's right-of-way upon approval of a telecom license agreement and issuance of a right-of-way permit for each use area, as set forth below:

A. Limitations. Notwithstanding anything in this chapter 12-8 or in the telecom license agreement to the contrary, the use area includes and is limited to only certain areas that wireless provider is permitted to exclusively use and occupy (the "exclusive areas") and certain areas that wireless provider is permitted to use on a shared basis (the "shared areas"). Each use area is defined by the boundary plan.

B. Use area boundary. The use area is the smallest geometric shape that includes the exclusive areas and the shared areas. The use area excludes other parts of the right-of-way and all other land. Wireless provider shall not occupy or use any other portion of the right-of-way or adjoining lands. The telecom license agreement does not allow any use of land outside the right-of-way. If any portion of wireless provider's work, improvement or equipment is to be located on other land, then such work, improvements and equipment are prohibited unless wireless provider first obtains from the owner of said land (including the town, if applicable) an agreement allowing such work, improvements and equipment (a "supplemental parcel agreement").

C. Exclusive areas. The exclusive areas are limited to the following, if and as defined by the boundary plan:

    1. The land area defined as "enclosure" on the boundary plan to be used by wireless provider solely for the enclosure housing the electronic ground equipment shown on the site plan (the "enclosure"). The area of the enclosure is confined to the actual area occupied by the exterior structure and the interior of the enclosure. If the boundary plan does not show a clearly defined and correctly labeled "enclosure" area, then no enclosure area is available for wireless provider's use under an issued right-of-way permit and any enclosure for wireless provider's use must be located outside the right-of-way and authorized by a supplemental parcel agreement.

2. The area on the pole defined as "antennas" on the boundary plan to be used by wireless provider solely for mounting the antennas. Such area is confined to the town approved elevations and locations actually occupied by the antennas and their supporting brackets. If the boundary plan does not show a clearly defined and correctly labeled "antennas" area, then no main antennas area is available for wireless provider's use under an issued right-of-way permit and any main antennas for wireless provider's use must be located outside the right-of-way and authorized by a supplemental parcel agreement.

D. Shared areas. Shared areas are limited to the following areas, if and as defined by the boundary plan:

1. A motor vehicle parking space (the "parking space") at the "parking space" location described on the boundary plan to be used by wireless provider solely for parking a service vehicle to service the communications equipment and for ingress and egress to that parking space.

2. No temporary construction area is provided by these standard terms or an issued right-of-way permit. Wireless provider must obtain from the town a separate written document giving wireless provider permission to work in the right-of-way.

3. An underground cable route (the "signal route") labeled as the "signal route" described on the boundary plan from the enclosure to the antenna to be used by wireless provider solely for underground radio frequency lines between the enclosure and the antenna. Notwithstanding the preceding sentence, the portion of the signal route upon the pole shall not be underground but shall be within the pole. If the boundary plan does not show a clearly defined and correctly labeled "signal route" area, then no signal route area is available for wireless provider's use under these standard terms or an issued right-of-way permit and any signal route for wireless provider's use must be located outside the right-of-way and authorized by a supplemental parcel agreement.

E. Power and telephone service. Nothing in this chapter 12-8 grants permission for any use of any portion of the right-of-way for power, telephone or other service routes, if any. Use of the public street right-of-way or public utility easements for these purposes, if any, is governed by normal town right-of-way rules and policies and by the franchise between the town and the electrical and telephone service providers.

F. Rights in adjacent land. Wireless provider's rights are expressly limited to the real property defined as the "use area" in the issued right-of-way permit. Without limitation, in the event any public right-of-way or other public or private property at or adjacent to the use area is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by the town, such property shall not accrue to wireless provider but shall be the town's only.

G. Variation in area. In the event the use area consists of more or less than any stated area, wireless provider's obligations under the telecom license agreement shall not be increased or diminished.

H. Condition of title. Wireless provider shall not have power to amend, modify, terminate or otherwise change the site documents or create new site documents.

1. The town does not warrant its own or any other person's title to or rights to use the use area or any other property.

2. Wireless provider shall pay, indemnify, defend and hold harmless the town and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs that arise from or relate to wireless provider's non-compliance with the site documents.

I. Condition of use area. Each use area is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to its condition or fitness for any use.

J. No real property interest. Notwithstanding any provision of this chapter 12-8 to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, wireless provider's rights under the telecom license agreement and any right-of-way permit are limited to use and occupation of the use area for the permitted uses. Wireless provider's rights in the use area are limited to the specific rights created in the approved telecom license agreement and right-of-way permit.

K. Reserved right and competing users and activities. Notwithstanding anything in this chapter 12-8 or in the approved telecom license agreement to the contrary, the town specifically reserves to itself and excludes from an issued right-of-way permit a non-exclusive delegable right (the "reserved right") over the entire use area for all manner of real and personal improvements and for streets, sidewalks, trails, landscaping, utilities and every other land use of every description. Without limitation:

1. Competing users. Wireless provider accepts the risk that the town and others (the "competing users") may now or in the future install their facilities in the use area in locations that make parts of the right-of-way unavailable for wireless provider's use.

2. Competing activities. Wireless provider accepts the risk that there may now or in the future exist all manner of work and improvements upon the use area (the "competing activities"). The competing activities include without limitation any and all laying construction, erection, installation, use, operation, repair, re-

placement, removal, relocation, raising, lowering, widening, re-aligning or other dealing with any or all of the following, whether above, upon or below the surface of the use area and whether occasioned by existing or proposed uses of the right-of-way or existing or proposed uses of adjoining or nearby land:

a. All manner of streets, alleys, sidewalks, trails, ways, traffic control devices, subways, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances.

b. All manner of pipes, wires, cables, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, access points and guy wires of every description, and all manner of other utility facilities and their appurtenances.

c. All manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances.

d. All other uses of the right-of-way that the town may permit from time to time.

3. The town's rights cumulative. All of the town's reserved rights under various provisions of the town code or an approved telecom license agreement shall be cumulative to each other.

4. Use priorities. This chapter 12-8 and the approved telecom license agreement and right-of-way permit do not grant to wireless provider or establish for wireless provider any exclusive rights or priority in favor of wireless provider to use the use area. Wireless provider shall not obstruct or interfere with or prevent any competing user from using the use area.

5. Regulation. The town shall have full authority to regulate use of the use area and to resolve competing demands and preferences regarding use of the use area and to require wireless provider to cooperate and participate in implementing such resolutions. Without limitation, the town may take any or all of the following into account in regulating use of the use area:

a. All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for competing activities.

b. All other factors the town may consider relevant, whether or not mentioned in this chapter 12-8, the telecom license agreement, or issued right-of-way permits.

c. Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to competing users and competing activities.

6. Communications equipment relocation. Upon 180 days' notice from the town, wireless provider shall temporarily or permanently relocate or otherwise modify the communications equipment relocation (the "relocation work") as follows:

   a. Wireless provider shall perform the relocation work at its own expense when required by the town engineer or designee.

   b. The relocation work includes all work determined by the town to be necessary to accommodate competing activities, including without limitation temporarily or permanently removing, protecting, supporting, disconnecting or relocating any portion of the communications equipment.

   c. The town may perform any part of the relocation work that has not been performed within the allotted time. Wireless provider shall reimburse the town for its actual costs in performing any relocation work. The town has no obligation to move wireless provider's, the town's or others' facilities, but will in good faith assist wireless provider to find a new location and to expedite the approval process.

   d. The town and not wireless provider shall be entitled to use any of wireless provider's facilities that are abandoned in place or that are not relocated on the town's request.

   e. All relocation work shall be subject to and comply with all other provisions of the telecom license agreement.

7. Disruption by competing users. Neither the town nor any agent, contractor or employee of the town shall be liable to wireless provider, its customers or third parties for any service disruption or for any other harm caused them or the communications equipment due to competing users or competing activities.

8. Emergency disruption by the town. The town may remove, alter, tear out, relocate or damage portions of the communications equipment in the case of fire, disaster, or other emergencies if the town engineer deems such action to be reasonably necessary under the circumstances. The town will make reasonable efforts to contact the wireless provider's network operations center. In that event, neither the town nor any agent, contractor or employee of the town shall be liable to wireless provider or its customers or third parties for any harm so caused to them or the communications equipment. When practical, the town shall consult with wireless provider in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the communications equipment. In any event, the town shall inform wireless provider after such actions. Wireless provider's work to repair or restore the communications equipment shall be relocation work.

9. Public safety. If the communications equipment or any other wireless provider equipment, improvements or activities present any immediate hazard or impediment to the public, to the town, to the town's equipment or facilities, to other improvements or activities within or without the use area, or to the town's ability to safely and conveniently operate the right-of-way or perform the town's utility, public safety or other public health, safety and welfare functions, then wireless provider shall immediately remedy the hazard, comply with the town's requests to secure the right-of-way, and otherwise cooperate with the town at no expense to the town to remove any such hazard or impediment. Wireless provider's work crews shall report to the use area within four hours of any request by the town under this paragraph (the "safety paragraph").

L. Third party permission. There may be portions of the right-of-way, such as canal crossings or other areas that for any reason have limited right-of-way dedications or that have regulatory use restrictions imposed by a third party ("third party"). Areas subject to such restrictions or regulations by third parties are referred to as "third party areas" and communications equipment may not be built without permission from the third party or third parties that have property rights or regulatory authority over a specific third party area. Wireless provider's right to use any use area shall be suspended, but not its obligations with respect thereto, during any period that a third party permission is not in effect.

M. Telecom license agreement use area list. Upon wireless provider's satisfactory completion of construction or installation of wireless communication facilities pursuant to an issued right-of-way permit, the town engineer shall add the use area to the use area list attached to the wireless provider's telecom license agreement.

12-8-4 Term of telecom license agreements

A. Term of agreement. The term of each telecom license agreement shall be as follows:

1. Original term. The original term of each telecom license agreement shall be for a period of ten years commencing on the effective date as stated in the approved telecom license agreement, and the terms of all related right-of-way permits shall have the same term as the approved telecom license agreement.

2. Extensions. The term of each telecom license agreement may be extended as follows:

a. The term of each telecom license agreement may be extended for one additional ten-year period subject to consent by the town and wireless provider, which either may withhold in its sole and absolute discretion.

b. Both the town and wireless provider shall be deemed to have elected to extend unless the town or wireless provider, respectively, gives notice to the contrary to the other at least 90 days prior to the end of the original term or the current extension.

c. The second term shall begin ten years plus one day after the initial effective date.

B. Holding over. In any circumstance whereby wireless provider would remain in possession or occupancy of the use area after the expiration of the applicable telecom license agreement and issued right-of-way permits (as extended, if applicable), such holding over shall not be deemed to operate as a renewal or extension of the telecom license agreement and issued right-of-way permits, but shall only create a use right from month to month that may be terminated at any time by the town upon 30 days' notice to wireless provider, or by wireless provider upon 60 days' notice to the town.

C. The town's right to cancel. Notwithstanding anything contained in this chapter 12-8 or in the approved telecom license agreement to the contrary, the town shall have the unconditional right, with or without cause, to terminate any right-of-way permit for reasons including but not limited to street widening, right-of-way abandonment, or development that may impact the location of the site, upon 180 days' notice given at any time after the first 180 days. The town shall assist wireless provider in locating a new site for the facility and expedite the process.

D. Wireless provider's right to cancel. Wireless provider shall have the unilateral right to terminate any right-of-way permit without cause upon 30 days' written notice. Wireless provider has no right to terminate any time after an event of default by wireless provider has occurred (or an event has occurred that would become a default after passage of time or giving of notice).

12-8-5 Wireless provider's payments

A. Wireless provider's payments. Wireless provider shall make payments to the town as follows:

1. Use fee items. Wireless provider shall pay to the town each of the following separate and cumulative amounts (collectively the "use fee"):

a. An annual amount (the "base use fee").

b. An amount (the "ordinary permit use fee") based on wireless provider's permit review and other costs as set out below.

c. An amount (the "violation use fee") based on certain breaches by wireless provider of the telecom license agreement as set out in paragraph 12-8-15 C below.

d. All other amounts required by the telecom license agreement.

2. Base use fee amount. The amount of base use fee wireless provider shall pay to the town for each year of the telecom license agreement shall be the total of all applicable fee line items for wireless communications facilities (including without limitation "antenna base fee" and "ground equipment fee", as applicable), in an amount established by a fee schedule adopted by the council and amended from time to time.

3. Ordinary permit use fee amount. The amount of the ordinary permit use fee shall be the total amount of all applicable ordinary fees payable to the town for the town's review of plans, issuance of permits, and inspection of wireless provider's work upon the use area (including, without limitation, right-of-way permits and any required building permits), in amounts established by a fee schedule adopted by the council and amended from time to time.

4. Use fee cumulative. All items of use fee shall be cumulative and separate from each other.

5. Use fee schedule. Wireless provider shall pay base use fee and ordinary permit use fee at the times and in the amounts specified by the town's normal processes for the payment of base use fees and ordinary permit use fees.

6. Letter of credit. The initial letter of credit amount shall be based upon the wireless provider's good faith projection of the number of sites to be constructed within the town limits of the town during the current calendar year. The initial letter of credit shall be received by the town before the first right-of-way permit is issued as follows:

   a. The amount of the letter of credit shall be as follows:

      i. $30,000 for up to ten wireless sites

      ii. $60,000 for 11 to 20 wireless sites

      iii. $105,000 for 21 to 35 wireless sites

      iv. $180,000 for 36 to 60 wireless sites

      v. $300,000 for 61 to 100 wireless sites

      vi. $450,000 for 101 to 150 wireless sites

      vii. $675,000 for 151 to 225 wireless sites

      viii. $1,050,000 for 226 to 350 wireless sites

      ix. $1,500,000 for 351 to 500 wireless sites

      x. $2,250,000 for 501 to 750 wireless sites

      xi. $3,000,000 for 751 to 1,000 wireless sites

      xii. If the number of wireless provider's wireless sites is more than 1,000, the $3,000,000 letter of credit shall remain in effect and the letter of credit for the wireless sites

in excess of 1,000 sites shall be calculated using the schedule provided in this subsection.

b. The town will determine at least once annually if the number of wireless provider's wireless sites that are licensed require that the letter of credit be upgraded to a higher amount. If the town requires a new letter of credit, it shall provide formal notice in writing to the wireless provider. The wireless provider must provide the new letter of credit within 45 days of receiving written notice.

c. The letter of credit is a security deposit for wireless provider's performance of all of its obligations under this chapter 12-8 and the approved telecom license agreement within the town limits of the town.

d. The letter of credit shall meet the following requirements.

i. The letter of credit shall be printed on bank safety paper.

ii. The following terms and no others shall be stated on the face of the letter of credit:

a) The letter of credit is clean, unconditional, and irrevocable.

b) The letter of credit is payable to the town upon presentation of the town's draft.

c) The town may make partial draws upon the letter of credit.

d) The letter of credit is conditioned for payment solely upon presentation of a sight draft and a copy of the letter of credit.

e) Within ten days after the town's draft on the letter of credit is honored, the town must make the original of the letter of credit available to the issuer in Pima County, Arizona upon which the issuer may endorse its payments.

f) The issuer specifies a telefax number, email address, and street address at which the town may present drafts on the letter of credit.

g) The letter of credit is valid until a specified date.

h) The letter of credit will be automatically renewed for successive one year periods, unless at least 120 days prior to expiration the issuer notifies the town in writing, by either registered or certified mail, that issuer elects not to renew the letter of credit for the additional period. In the event of such notification, any then unused portion of the letter of credit shall be available by draft on or before then current expiration date.

i) The letter of credit is otherwise subject to the most recent edition of the uniform customs and practices for documentary credits, published by the international chamber of commerce.

j) The letter of credit need not be transferable.

iii. Approved forms. The form of the letter of credit and of drafts upon the letter of credit shall be as set forth in section 12-8-26 (forms)

iv. Issuer requirements. The issuer of the letter of credit shall meet all of the following requirements:

a) The issuer shall be a federally insured financial institution with offices in Pima County, Arizona, at which drafts upon the letter of credit may be presented.

b) The issuer shall be a member of the New York clearing house association or a commercial bank or trust company satisfactory to the town.

c) The issuer shall have a net worth of not less than $1 billion.

e. Wireless provider shall provide and maintain the letter of credit during the entire term of each telecom license agreement as follows:

i. Wireless provider shall cause the original letter of credit to be delivered to the town engineer for deposit with the town finance director.

ii. Wireless provider shall pay all costs associated with the letter of credit, regardless of the reason or manner such costs are required.

iii. Within ten business days after the town gives wireless provider notice that the town has drawn on the letter of credit, wireless provider shall cause the letter of credit to be replenished to its prior amount.

f. The town may draw on the letter of credit upon any event of default, and in the following circumstances whether or not they are an event of default:

i. Wireless provider fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by these standard terms.

ii. Wireless provider fails to make monetary payments as required by these standard terms.

iii. The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.

g. The town shall also have such additional rights regarding the letter of credit as may be provided elsewhere in the telecom license agreement.

7. Late fees. Use fee is deemed paid only when the town actually receives good cash payment. Should any use fee not be paid on or before the date due, a late fee shall be added to the amount due in an amount established by a fee schedule adopted by the council and amended from time to time. Any use fee that is not timely paid shall accrue simple interest at the rate of 1½% per month from the date the amount first came due until paid. Wireless provider expressly agrees that the foregoing represent fair and reasonable estimates by the town and wireless provider of the town's costs (such as accounting, administrative, legal, and processing costs) in the event of a delay in payment of use fee. The town shall have the right to allocate payments received from wireless provider among wireless provider's obligations.

8. Use fee amounts cumulative. All amounts payable by wireless provider under this chapter 12-8 or an approved telecom license agreement or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the town or the state of Arizona shall be cumulative and payable in addition to each other payment required under this chapter 12-8 or an approved telecom license agreement, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

12-8-6 Use restrictions

Use restrictions. Wireless provider's use and occupation of the use area shall in all respects conform to all and each of the following cumulative provisions:

A. Permitted uses. Wireless provider shall use the use area solely for the permitted uses and shall conduct no other activity at or from the use area.

B. Enclosure use. Wireless provider shall use the enclosure solely for locating utility cabinets and housing the communications equipment used for the antennas.

C. Small wireless facility. Wireless provider may install a small wireless facility, as defined in A.R.S. § 9-591 (19), to be limited as follows:

1. All antennas, including the antenna's exposed elements, are located inside an enclosure of not more than six cubic feet in volume, and

2. All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume.

3. The following ancillary equipment is not included in the equipment volume:

a. Electric meter

b. Concealment elements

c. telecom demarcation box

d. Grounding equipment

e. Power transfer switch

f. Cutoff switch

g. Vertical cable runs

D. Communications operations restriction. Wireless provider shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of the town's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, wireless provider shall immediately discontinue using the equipment, methodology or technology that causes the interference until wireless provider takes corrective measures to alter the communications equipment to eliminate such interference. Any such corrective measures shall be made at no cost to the town. Wireless provider shall give to the town notice containing a list of the radio frequencies wireless provider is using at the use area and shall give notice to the town of any change in frequencies.

E. Other equipment. Wireless provider shall not disturb or otherwise interfere with any other antennas or other equipment the town may have already installed or may yet install upon the right-of-way.

F. Signs. All signage is prohibited except in compliance with the following requirements:

1. Wireless provider shall install and thereafter maintain the following signs and other markings as reasonably determined by the town from time to time:

   a. All signs and markings required for safe use of the use area by the town, wireless provider and other persons who may be at the use area at any time for any reason.

   b. Any signage the town may request directing parking, deliveries and other vehicles and other users to comply with the telecom license agreement.

   c. Warning signs listing only wireless provider's name, permanent business address, telephone number, emergency telephone number, and any information required by law.

2. All signage not expressly allowed by these standard terms is prohibited.

3. The location, size, content and style of each sign shall be subject to the provisions of the applicable sign ordinance and shall comply with the town's sign programs as the same may change from time to time. Wireless provider shall update signs as required to

comply with changes in the applicable sign ordinance and the town's sign programs.

4. Wireless provider shall design, make, install and maintain all signage in a first class, professional manner without broken panels, faded or peeling paint or other damage.

5. Wireless provider shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits regardless of the reason for any such activity, even if such activity is required by the town pursuant to these standard terms.

6. The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.

G. Wireless provider's lighting. Except for security lighting operated with the town's approval from time to time, wireless provider shall not operate outdoor lights at the use area.

H. Noise. Except during construction permitted under these standard terms and for burglar alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited. All equipment shall be operated so that sound coming therefrom does not exceed the ambient noise level at the boundary of the right-of-way and cannot be heard at the closer of (i) the exterior boundary of the right-of-way or (ii) 200 feet outside the boundary of the right-of-way. The preceding sentence does not apply to use of normal, properly maintained construction equipment used as permitted by an issued right-of-way permit, to infrequent use of equipment that is as quiet or quieter than a typical well maintained gasoline powered passenger automobile, or to use of an air conditioning unit that is no noisier than a typical well maintained residential air conditioning unit.

I. Limited access. It is wireless provider's and not the town's responsibility to keep unauthorized persons from accessing the communications equipment and the exclusive areas.

J. Standards of service. Wireless provider shall operate the use area in a first-class manner, and shall keep the use area attractively maintained, orderly, clean, neat and tidy at all times.

K. Wireless provider's agent. Wireless provider shall at all times retain on call available to the town by telephone an active, qualified, competent and experienced person to supervise all activities upon the use area and operation of the communications equipment and who shall be authorized to represent and act for wireless provider in matters pertaining to all emergencies and the day-to-day operation of the right-of-way and all other matters affecting the issued right-of-way permit. Wireless provider shall also provide notice to the town of the name, street address, electronic mail address, and regular and

after hours telephone number of a person to handle wireless provider's affairs and emergencies at the right-of-way. Any change shall be given in writing to the town engineer in the manner stated for notices required under this chapter 12-8 and the approved telecom license agreement.

L. Coordination meetings. Wireless provider shall meet with the town and other right-of-way users from time to time as requested by the town to coordinate and plan construction on the use area and all matters affected by these standard terms. Without limitation, wireless provider shall attend the town's scheduled utility planning meetings.

M. Toxic substances. Wireless provider's activities upon or about the use area shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to regulation under the comprehensive environmental response compensation and liability act, 42 U.S.C. §§ 9601, *et seq*., the Arizona hazardous waste management act, A.R.S. §§ 49-901, et seq., the resource conservation and recovery act, 42 U.S.C. §§ 6901, *et seq*., the toxic substances control act, 15 U.S.C. §§ 2601, *et seq*., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "toxic substances"):

a. Wireless provider understands the hazards presented to persons, property and the environment by dealing with toxic substances. Notwithstanding anything in this chapter 12-8 or in the approved telecom license agreement to the contrary, the town makes and has made no warranties as to whether the use area contains actual or presumed asbestos or other toxic substances.

b. Within 24 hours after discovery by wireless provider of any toxic substances, wireless provider shall report such toxic substances to the town in writing. Within 14 days thereafter, wireless provider shall provide the town with a written report of the nature and extent of such toxic substances found by wireless provider.

c. Disturbance of toxic substances. Prior to undertaking any construction or other significant work, wireless provider shall cause the use area to be inspected to prevent disturbance of potential asbestos or other toxic substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other toxic substances, wireless provider shall cause the contractor or other person performing such work to give to the town notice by the method described in this chapter 12-8 or in the approved telecom license agreement to the effect that the person will inspect for toxic substances, will not disturb toxic substances, and will indemnify, defend and hold the town harmless against any

disturbance in toxic substances in the course of the contractor's or other person's work. Wireless provider shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving toxic substances by wireless provider in connection with the use area to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Wireless provider shall promptly deliver to the town copies of all reports or other information regarding toxic substances.

N. Required operation. During the entire term of the telecom license agreement and any renewals or extensions, wireless provider shall actively and continuously operate the communications equipment 24 hours a day, seven days a week, for the permitted uses. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this paragraph shall be effective commencing on the earlier of completion of the project or the completion deadline and shall continue through the date the telecom license agreement terminates or expires for any reason. In the event of relocation of the communications equipment or damage to the use area severe enough that the communications equipment cannot reasonably be operated during repairs, the operation requirements of this paragraph shall be suspended during the time specified by these standard terms for accomplishing repair of such damage to relocation of the communications equipment. Wireless provider may temporarily cease operating the communications equipment for short periods necessary to test, repair, service or upgrade the communications equipment.

O. Actions by others. Wireless provider shall be responsible to ensure compliance with these standard terms by all persons using the right-of-way through or under wireless provider or these standard terms.

12-8-7 Wireless provider's improvements generally

All of wireless provider's improvements and other construction work, whether or not specifically described in this chapter 12-8 or in the approved telecom license agreement, upon or related to the use area (collectively "wireless provider's improvements") shall comply with the following:

A. Wireless provider's improvements. Wireless provider's improvements include without limitation, all modification, replacement, repairs, installation, construction, grading, structural, utility, lighting, plumbing, sewer or other alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description and all installation or alteration of the communications equipment.

B. Zoning and similar approval process. The zoning processes, building permit processes, right-of-way management policies and similar

regulatory requirements that apply to wireless provider's improvements are completely separate from the plans approval processes set forth in these standard terms. Wireless provider's satisfaction of any requirement set forth in these standard terms does not substitute for compliance with any regulatory requirement. Wireless provider's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of these standard terms. Wireless provider must make all submittals and communications regarding the requirements of these standard terms through the town engineer and not through planning, zoning, building safety or other staff. Wireless provider shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the use area. Wireless provider bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals. Notwithstanding anything in this paragraph, to the extent regulatory requirements and requirements of these standard terms are identical, compliance with regulatory requirements shall constitute compliance with these standard terms and vice versa.

C. Batching sites for approval. Only sites that do not have a new or a replacement pole required for the antennas, and do not have any underground cables, conduit, and foundations, are eligible for batch processing of the applications.

D. Relationship of plans approval to regulatory processes. Wireless provider's submission of plans under these standard terms, the town's approval of plans for purposes of these standard terms, and the plans approval process herein shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply as provided under state law, in addition to the requirements of these standard terms and its approvals. Building permits, zoning clearances, or any other governmental reviews or actions do not constitute approval of any plans for purposes of the telecom license agreement.

E. The town's fixtures and personalty. Wireless provider shall not remove, alter or damage in any way any improvements or any personal property of the town upon the use area without the town's prior written approval. In all cases, wireless provider will repair any damage or other alteration to the town's property caused by wireless provider or its contractors, employees or agents to as good or better condition than existed before the damage or alteration.

F. Design requirements. All wireless provider's improvements shall comply with the following design requirements:

1. All wireless provider's improvements shall be contained entirely within the use area and without any encroachment or dependence upon any other property, except for permitted utility service.

2. Any changes to utility facilities shall be strictly limited to the use area, shall not affect utilities used by the town, and shall be undertaken by wireless provider at its sole cost and expense.

3. The antennas and other communications equipment shall be properly designed, installed and maintained so as not to create a risk of damage to the pole, to persons or property upon or using the right-of-way or the town's other property.

4. To the extent requested by the town, wireless provider's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the use area and protect other facilities at the right-of-way and surrounding properties.

5. All specifications set forth in sections 12-8-8 through 12-8-12 below.

G. Approval required. Wireless provider shall not construct any of wireless provider's improvements (including work on adjacent public lands, if applicable) without having first received written plans approval from the town. Such consent requirement shall apply to all improvements, furnishings, equipment, fixtures, paint, wall treatments, utilities of every description, communications cabling and other construction work of any description as described in all plans heretofore or hereafter delivered by wireless provider to the town. Such consent requirement does not apply to work on the communications equipment that is confined to the area inside the enclosure and not visible, audible, or otherwise discernible outside the enclosure.

H. Effect of plans approval. Wireless provider shall submit engineering and construction plans to the town for review and approval. The town's approval of plans submitted shall be for purposes of these standard terms only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. The town shall not reject subsequent plans to the extent the matter to which the town objects was plainly shown on plans previously approved by the town. However, the town is not precluded from objecting to matters not previously approved, changes to plans, matters not previously clearly disclosed on approved plans, or refinements or implementation of matters previously approved.

I. Plans required. Wireless provider's design of all wireless provider's improvements shall occur in three stages culminating in final working construction documents for the wireless provider's improvements (the "final plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

a. Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, and other features significantly

affecting the appearance, design, function or operation of each element of wireless provider's improvements.

b. Preliminary plans showing all surface finishes and treatments, finished elevations, general internal and external design (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of these standard terms. The preliminary plans shall show all detail necessary prior to preparation of final plans.

c. Final plans. In addition to the information that the town required for preliminary plans, the final plans shall include engineering design documents for the pole foundation, pole structural design, and other generally required engineering specifications for construction drawings for permits.

J. Approval process. The following procedure shall govern wireless provider's submission to the town of all plans for wireless provider's improvements, including any proposed changes by wireless provider to previously approved plans:

a. All plans wireless provider submits under these standard terms shall show design, appearance, capacity, views, and other information reasonably deemed necessary by the town for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by the town for the level of plans required herein.

b. Wireless provider shall deliver all plans submissions for non-regulatory approvals required in this chapter 12-8 or in the approved telecom license agreement directly to the town engineer and shall clearly label the submissions to indicate that they are submitted pursuant to this chapter 12-8 and the approved telecom license agreement and not for building permits, zoning or other approvals. Each submittal of plans by wireless provider for the town's review shall include the number and format of plans conforming to then-current town administrative procedures.

c. All construction plans shall be prepared by qualified registered professional engineers.

d. The town and wireless provider shall endeavor to resolve design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason or however arising, in light of the town's ownership and other uses of the use area, and as a condition of the town's issuance of a right-of-way permit, final decision authority regarding all design and construction issues shall rest with the town engineer.

e. All of wireless provider's improvements shall comply with all requirements of law, any applicable insurance contracts and these standard terms.

K. Cost of wireless provider improvements. All wireless provider's improvements shall be designed and constructed by wireless provider at wireless provider's sole cost and expense, including without limitation any alteration or other change to the town's equipment or other improvements or personalty that may occur. In no event shall the town be obligated to compensate wireless provider in any manner for any of wireless provider's improvements or other work provided by wireless provider during or related to the term of the telecom license agreement or any right-of-way permit. Wireless provider shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless the town and the town's employees, officers, contractors and agents against all claims related to such items. Wireless provider shall bear the cost of all work required from time to time to cause the use area and the town's adjoining property (if directly affected by wireless provider's work) to comply with local zoning rules, the Americans with disabilities act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by wireless provider, by wireless provider's use of the use area, or by any exercise of the rights granted to wireless provider under this chapter 12-8 or a telecom license agreement.

L. Improvement quality. Any and all work performed on the use area by wireless provider shall be performed in a workman-like manner meeting or exceeding the best practices of similar facilities in Pima County, Arizona, and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of wireless provider's improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by the town through the plans approval processes described in these standard terms in addition to any zoning, building code or other regulatory processes that may apply.

M. Ownership of wireless provider's improvements. All wireless provider's improvements (including without limitation poles and lights) except the communications equipment shall be and become part of the real property of the town "brick by brick" as constructed or installed.

N. Damage during work. Upon performing any work upon the right-of-way, wireless provider shall simultaneously restore the right-of-way to its prior condition, as directed by the town and repair any holes, mounting surfaces or other damage whatsoever to the right-of-way. Such work shall include revegetation and appropriate irrigation systems for revegetated areas.

O. Replacement pole. If the town approves a wireless provider proposal to install antennas on a town owned pole, then in addition to the other requirements, the following shall apply:

a. Wireless provider shall provide and deliver to the town a replacement pole, including mast arm, so that a replacement is immediately available to the town in case the original pole is damaged.

b. If the town uses a replacement pole, then wireless provider shall provide another replacement pole.

c. Upon installation of a replacement pole, the town will determine if the original pole, mast arm(s), signal head(s), and light fixture(s) shall be delivered by wireless provider to the town's operations center yard or if the wireless provider shall dispose of the original pole, mast arm, signal head and light fixture.

d. All performance under this paragraph shall be at wireless provider's expense. The town owns the original pole and all replacement poles.

P. Coordination. The use area is located in the town's public right-of-way. Wireless provider shall obtain permits at wireless provider's expense as follows:

a. Wireless provider shall perform no construction work in the right-of-way without obtaining a right-of-way permit giving permission for the construction work in the right-of-way.

b. Wireless provider shall not alter or modify its antennas, wireless equipment or any improvements without submitting plans or drawings of the proposed alteration or modification to the town and obtaining approval from the town engineer and any required building permits.

c. Wireless provider shall not perform any work on its own antennas or wireless equipment without first obtaining from the town a right-of-way permit giving it permission to work in the right-of-way.

d. Wireless provider shall not in any way obstruct pedestrian or vehicular traffic within the right-of-way without first obtaining from the town a right-of-way permit giving permission to obstruct traffic.

Q. Time for completion. Wireless provider shall diligently and expeditiously pursue to completion the construction of all approved wireless provider's improvements. Wireless provider shall complete initial construction of the project no later than the completion deadline. Wireless provider shall complete construction of all of other wireless provider's improvements no later than 180 days of right-of-way permit issuance unless the town and wireless provider agree to extend this period or a delay is caused by a lack of commercial

power at the site. If the town, in its sole examination of the construction activity at a site, determines that wireless provider has not substantially performed construction at a site within 180 days of the right-of-way permit issuance date, the town may require the wireless provider to cease construction and resubmit the site for approval.

R. Construction notification. The town may establish requirements for notification of nearby residents and property owners prior to construction.

S. Work time and manner restrictions. All installation, construction, maintenance, inspection, repair and other work of any kind shall be done in a manner that does not disrupt traffic (except in compliance with appropriate right-of-way permits) or nearby land uses. Without limitation, such work shall be done in compliance with applicable the town policies and directions from time to time, taking into account the various sensitivities of traffic, tourism, events, adjoining land uses, other right-of-way uses, and all other needs and concerns that are likely to be affected by wireless provider's work.

12-8-8 Common standard design concepts, requirements and details for all wireless facilities in the right-of-way

A. The standard design requirements set forth in this section shall apply to all new wireless facilities in the right-of-way.

B. The design standards set forth in sections 12-8-8 through 12-8-12 below are not exhaustive. The town engineer may modify or adjust the requirements on a case-by-case basis to address restraints or conditions peculiar to a particular location.

C. All work shall be performed by and on behalf of wireless provider in a professional manner consistent with the highest standards of workmanship.

D. All wireless communication facilities shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.

E. Pole design and installation.

1. Replacement pole clearances – underground utilities. All ground-mounted electrical equipment shall maintain minimum horizontal clearance from underground utilities.

   a. General clearances shall be as follows:

      i. Clearance from water lines shall be at least six feet.

      ii. Clearance from sewer lines shall be at least six feet.

      iii. Clearance from telecommunications shall be at least one foot.

      iv. Clearance from cable television lines shall be at least one foot.

v. Clearance from all other underground infrastructure shall be at least six feet.

b. The town, in its sole discretion, may grant a variance, upon approval by the town engineer, from these horizontal separation distances on a case-by-case basis. The approval of a variance is dependent on factors specific to the site.

c. In the case where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the impacted utility to have lines, pipes or property moved so that minimum clearance is achieved. All relocation of town-owned or a privately-owned utility shall be at the sole expense of the wireless provider.

2. Calculating the base height of an existing pole. The base height, from which the calculation of the "increase in pole height" is referenced for determining the overall pole height, shall be calculated as follows:

a. Streetlight pole (refer to exhibits A1 and A2 in section 12-8-25 below)

i. A streetlight with a separate luminaire mast arm mounted to the vertical pole shall use the top of the vertical pole as the base height.

ii. A streetlight, with the luminaire mast arm integrated (e.g. telescopic style pole) into the top vertical section of the pole, shall use the point on the pole where the mast arm is connected plus 24 inches as the base height.

b. Traffic signal pole (refer to exhibit B in section 12-8-25 below). A traffic signal pole with a luminaire mast arm that is mounted above the signal head mast arm to the pole shall use the top of the vertical portion of the pole as the base height.

3. Replacement pole clearance—original streetlight pole or traffic signal pole. The minimum distance of the replacement pole from the original pole location shall be 60 inches or more so that construction can occur safely. The town may change this minimum distance on a case-by-case basis.

4. Replacement pole clearances—sidewalks. The new or replacement pole shall maintain 12-inch minimum clearance distance from sidewalks. The town, in its sole discretion, may increase that minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area.

5. Sight distance easements and sight visibility triangles. All new and replacement poles shall be installed in a location that does not impair or interfere with sight distance easement or sight visibility triangle safety requirements.

6. Cables, wires and jumpers.

a. All cables for the wireless equipment and antennas (except where such cables or wires attach to the ports in the antenna) shall be located inside a conduit, inside the caisson and pole. There shall not be any "dog house" or externally visible conduit or entry point of the cables unless specified by the town.

b. All electrical wires for the streetlight luminaire, traffic signal heads, and any town device on the pole shall be new and connected to the existing power source.

7. Hand-holes.

a. All hand-hole locations shall be called out on the plans.

b. All hand-holes near antennas shall have the top of the hand-hole no lower than the bottom height of the antennas.

c. The bottom of the hand-hole should not exceed six inches below the bottom of the antenna.

8. Wireless facility identification information

a. A four inch by six inch radio frequency safety notice may be mounted no less than 24 inches from the bottom of the antenna, facing away from traffic.

b. The wireless provider may place a discreet site identification or number. The size, color and location of this identifier shall be determined by the town.

c. No wireless provider signs may be placed on a streetlight, traffic signal pole, wireless support structure, or a new or replacement pole except to the extent required by local, state or federal law or regulations.

9. Interference with town wireless network. The town has certain wireless devices in a network that connects traffic signals, community centers, water sites, and other locations for the town's proprietary use. The selection of a location for a wireless site shall consider the potential interference of the town's wireless network with RF from a wireless provider's proposed site.

10. Cable chase and dog houses. The town, in its sole discretion, shall determine if an exterior cable chase and dog house are aesthetically compatible with the pole and immediate area. The materials and paint color of the cable chase and dog house shall be determined on a case-by-case basis.

F. Removal of original pole, equipment and pole foundation

1. Removal of original signal pole, mast arm, signal heads and luminaire

a. The town shall determine what original components, (e.g., original pole, mast arm, signal heads and luminaire, etc.) shall be delivered at no cost to the town, to the town's operations yard by the wireless provider.

b. If the town accepts some of the original components, then only those components shall be delivered by the wireless provider to the town' operations yard and the remaining components shall be discarded by the wireless provider.

2. Removal of original streetlight or traffic signal pole foundation. The concrete pole foundation for the original streetlight or traffic signal pole shall be removed by the wireless provider as instructed by the town:

a. Partial removal. The original pole foundation shall be taken back to a level that is 12 inches below existing grade and covered with four inches of half-inch to three-quarter-inch rock materials. The remaining eight inches shall be native soil.

b. Complete removal. If the entire original pole foundation must be removed, then all materials (concrete, rebar, metals, bolts, etc.) shall be removed. The town engineer shall determine, on a case-by-case basis, the type of backfill material and compaction required, ranging from native soil that is compacted to a half-sack slurry for the entire depth, or a combination of native soil and slurry.

G. Antennas, RRH/RRU, cables and mounting on pole.

1. General requirement: All antennas shall be installed in a manner that minimizes the visual impact to the general public. All work shall be performed in a professional manner that is consistent with the highest standards of workmanship.

2. Specific criteria:

a. Antenna mounting posts and brackets.

i. All panel antennas shall be mounted directly to the pole or onto a mounting pole so that the distance from the "face" of the streetlight pole to the back of the antenna does not exceed nine inches.

ii. All mounting posts shall be trimmed so that the poles do not extend higher than the top of the antenna or protrude lower than the antenna unless necessary to install the shroud.

iii. All pole attached wireless equipment must be a minimum ten feet from the sidewalk elevation.

b. Panel antennas.

i. All panel antennas for a small cell site shall fit within an imaginary enclosure of not more than six cubic feet in volume in accordance with A.R.S. § 9-591 (19) (a). (NOTE: This volume does not include antenna cable shrouds when required.)

ii. All panel antennas with exposed cables from the bottom of the antenna shall have a shroud installed on the antenna or antenna mounting posts to conceal the cables. (refer to exhibits D1 and D2 in section 12-8-25 below)

a) The type of shroud may be a 45-degree angle (away from the bottom of the antenna; toward the pole) or a 90-degree angle (parallel to the bottom of the antenna) depending on the location of the site.

b) The shroud shall extend from the bottom of the antenna to two inches below the bottom of the nearest hand-hole.

c. Canister antennas.

i. All canister antennas for a small cell site shall fit within an imaginary enclosure of not more than six cubic feet in volume. (Note: This volume does not include the canister as it is a stealth device and not the antenna.)

ii. The canister shall be no larger than 18 inches (outside diameter).

iii. All canister antennas shall be located in a canister mounted to a base plate at the top of the vertical section of the replacement pole.

iv. All cables protruding from the canister shall be concealed within the canister or by a shroud at the point where the canister is mounted to the base plate.

d. Remote radio heads/remote radio units (RRU/RRH). Under A.R.S. § 9-591 (19) (a), the RRH/RRU is not considered part of the antenna. If allowed, the RRH/RRU shall be calculated as part of "all other wireless equipment associated with this facility…" in A.R.S. § 9-591 (19) (b) and subject to the 28 cubic foot maximum size for small cell sites. On a case-by-case basis, the town in the sole discretion of the town engineer— upon reviewing the landscape in the immediate surrounding area, the location of the pole, and stealth options— may allow a site to have an RRH/RRU installed on the pole.

e. Painting antennas and mounting equipment.

i. All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted with the town's standard color and quality of paint, as specified by the town engineer.

ii. All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the town engineer.

iii. If the antenna is mounted on a wood pole, the color of the antenna, antenna canister, mounting brackets and posts, shrouds and cable chases shall be painted a color specified by the town engineer that will closely match the color of the wood.

H. Ground-mounted equipment.

1. General requirements.

a. All ground-mounted equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.

b. All ground-mounted wireless equipment must be screened or concealed to reduce the visual impact to the surrounding area. The screening or concealment shall take into account the location of the site, the use of the immediate area, and the existing aesthetic elements surrounding the site.

2. Specific criteria:

a. Sight distance easements and sight visibility triangles. All ground-based wireless equipment shall be installed in a location that does not impair or interfere with sight distance easement or sight visibility triangle safety requirements. To ensure proper sight distance, all town standard details shall apply.

b. Ground equipment location—generally. All ground-based wireless equipment, including but not limited to equipment cabinets or power pedestals, shall be placed as far as practical to the back of the right-of-way while maintaining at least three feet of ingress/egress in the right-of-way or public utility easement around the equipment.

c. Ground equipment clearances—underground utilities.

i. All ground-mounted electrical equipment shall maintain the following minimum horizontal clearance from below-ground utilities:

a) Clearance from water lines shall be at least six feet.

b) Clearance from sewer lines shall be at least six feet.

c) Clearance from telecommunications shall be at least one foot.

d) Clearance from cable television lines shall be at least one foot.

e) Clearance from all other underground infrastructure shall be at least six feet.

ii. The town, in its sole discretion, may grant a variance upon approval from the town engineer, from these horizontal separation distances on a case-by-case basis. The

approval of a variance is dependent on factors specific to the site.

iii. Where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the affected utility to have its lines, pipes or property moved so that minimum clearance is achieved. All relocation work of town-owned or a privately-owned utility shall be at the sole expense of the wireless provider.

d. Ground equipment clearance – sidewalks. Ground equipment shall maintain a minimum 12-inch clearance distance from sidewalks. The town, in its sole discretion, may increase the minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area.

e. Compliance with height requirements. Evidence or documentation that, where the above-ground structure is over 36 inches in height, given its proposed location, the structure will comply or be in compliance with the town's land development code.

f. Screening of ground equipment. The town, in its sole discretion, may require ground-mounted equipment to be screened; the type of screening materials and design will be addressed on a case-by-case basis. In cases when screening is not required, the town may specify the paint color of the ground-mounted equipment.

g. Decals and labels

i. All equipment manufacturers' decals, logos and other identification information shall be removed unless required for warranty purposes.

ii. The wireless provider may affix an emergency contact decal or emblem to the ground equipment.

iii. The ground-mounted equipment shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.

h. Equipment cabinets on residential property.

i. Residential single-family lot. The wireless equipment and ancillary equipment listed in A.R.S. § 9-591 (19) (b) shall not exceed 36 inches in height in the front yard of a residential single-family zoned property.

ii. Air-conditioning units. Unless otherwise specified by town, a wireless equipment cabinet with air-conditioning (not a fan only) shall be enclosed by walls and setback a minimum of 15 feet from lots where the existing or planned primary use is a residential single-family dwelling.

i. Electric company meter.

i. All electric company meters shall be installed in the right-of-way or in an adjacent public utility easement. The location of the meter equipment shall have minimum ingress and egress clearance from private property lines and driveways.

ii. All electric company meters shall maintain minimum clearance from above-ground utility cabinets and below-ground utilities.

iii. All electric company meters shall be installed in a location that does not impair or interfere with the sight distance easement or sight visibility triangle safety requirements of the town.

iv. The electric company meters shall be screened or contained within a "Myers-type" or "Milbank-type" pedestal cabinet that is painted to match the ground equipment or as specified by the town. (refer to exhibit E in section 12-8-25 below)

v. In the case where screening is not required, the town may specify the paint color of the electric company meter cabinet on a case-by-case basis.

12-8-9 Standard design requirements for a small wireless facility on an existing streetlight.

A. General. In addition to the common standards set forth in section 12-8-8 above, the design standards in this section shall apply to the proposed collocation of a small wireless facility on an existing town-owned or third party-owned streetlight in the town right-of-way.

B. Purpose of streetlight pole. The primary purpose of the pole shall remain as a pole structure supporting a streetlight luminaire and related streetlight fixtures used to provide lighting to the town right-of-way. The attachment of wireless equipment to an existing streetlight pole or to a replacement pole that impedes this primary purpose will not be approved.

C. General requirements.

1. A small wireless facility shall be designed to blend in with the surrounding streetscape with minimal visual impact.

2. A replacement pole shall match the town's standard streetlight pole, as closely as possible, subject to more specific criteria below.

3. As specified in paragraph 12-8-7 O above, for each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by the wireless provider to town in advance so the pole can be replaced promptly in case of a knockdown.

4. All plans shall be signed and sealed by a registered professional engineer.

5. All other standard town details shall apply.

D. Specific criteria.

1. New or replacement pole height. A new or replacement pole may be installed without zoning review under town code chapter 17-18 (wireless communication facilities) if one of the two following height requirements is met:

   a. Up to a ten-foot increase, not to exceed 50 feet total (whichever is less), per A.R.S. § 9-592 (I); or

   b. Up to 40 feet above ground level, per A.R.S. § 9-592 (J).

2. Overall height of replacement pole.

   a. The "base" height of an existing streetlight pole shall be the height of the vertical pole section from the existing grade. The height of the luminaire mast arm, if higher than the vertical pole section, shall not be used to determine the new overall height of the replacement pole.

   b. If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister, top of the omni-directional antenna, or the top of the panel antenna.

3. Increase in outside diameter of pole. The non-tapered replacement pole outside diameter of the base section shall be equal to the top section, and the outside diameter shall not exceed eight and five-eighths inches (the pole manufacturing industry standard outside diameter for an 8-inch diameter pole) or a 100% increase in diameter of the original pole, whichever is less.

4. Luminaire mast arms.

   a. All luminaire mast arms shall be the same length as the original luminaire arm, unless the town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.

   b. Unless otherwise approved, all luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.

   c. The replacement luminaire mast arm shall be at the same height above the ground as the existing luminaire.

5. Luminaire fixtures.

   a. All replacement poles shall have the town standard light-emitting diode (LED) light fixture installed.

   b. All replacement light fixtures shall have a new town standard photo-cell or sensor provided by the wireless provider.

6. Pole foundation

   a. All pole foundations shall conform to the town's standards and specifications on streetlight design and shall be modified for wireless communications equipment and cables.

   b. The town, in its sole discretion, may allow the pole foundation design to be "worst case" for all soil conditions.

   c. A separate, one-inch diameter conduit shall be installed in the pole foundation for the town's luminaire wire and any additional town wires or cables. The town's conduit shall be trimmed to three inches above the top of the pole foundation.

   d. The height of the pole foundation shall be two inches above finished grade. If the pole foundation encroaches into any portion of the sidewalk, then the pole foundation shall be flush with the sidewalk.

   e. Shrouds for the streetlight pole mounting bolts may be required for the replacement pole.

7. Painting of replacement pole.

   a. If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the town.

   b. For powder coated poles, the wireless provider shall replace with same powder coated color and/or color combination per the town's street light standards, as directed by the town engineer.

8. Painting antennas and mounting equipment

   a. All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted per the town's street light standards, as directed by the town engineer.

   b. All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the town.

9. Wireless provider shall install pole numbers on each replacement pole (to match the number on the existing streetlight pole being replaced) per the town's street light standards, as directed by the town engineer.

12-8-10 Standard design requirements for a small wireless facility on a traffic signal pole.

A. General. In addition to the common standards set forth in section 12-8-8 above, the design standards in this section shall apply to the

proposed collocation of a small wireless facility on an existing town-owned or third party-owned traffic signal in the town right-of-way.

B. Purpose of traffic signal pole.

1. The primary purpose of the traffic signal pole shall remain as a pole structure supporting a traffic signal and related streetlight fixtures used to provide traffic control and lighting to the town right-of-way.

2. The attachment of wireless equipment to a new or replacement traffic signal pole that impedes the traffic signal pole's purpose will not be approved.

C. General requirements.

1. A small wireless facility shall be designed to blend in with the surrounding streetscape with minimal visual impact.

2. A replacement pole shall match the town's standard traffic signal pole, as closely as possible, subject to more specific criteria below.

3. As specified in section 12-8-7 O above, for each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by wireless provider to town in advance so the pole can be replaced promptly in case of a knockdown.

4. All plans shall be signed and sealed by a registered professional engineer.

5. All other standard town details shall apply.

D. Specific criteria.

1. New or replacement pole height. A new or replacement pole may be installed without zoning review under town code chapter 17-18 (wireless communication facilities) if one of the two following height requirements is met:

   a. Up to a ten-foot increase, not to exceed 50 feet total (whichever is less), per A.R.S. § 9-592 (I); or

   b. Up to 40 feet above ground level, per A.R.S. § 9-592 (J).

2. Overall height of replacement pole. The height of the replacement pole is measured from grade to the top of the antenna canister or the top of the panel antennas if the antennas are the highest elements.

3. Increase in outside diameter of pole.

   a. If the replacement pole is a taper design, the outside diameter of the base section of the replacement pole shall not exceed 12 inches or a 100% increase in the outside diameter of the base section, whichever is less.

b. If the replacement pole is non-tapered, then the diameter of the base section shall be equal to the top section and the outside diameter shall not exceed 12 inches or a 100% increase, whichever is less.

4. Signal head mast arms.

a. The traffic signal head mast arms shall be the same length as the original signal head mast arm unless the town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.

b. All signal head mast arms shall match the arc (if applicable) and style of the original signal head mast arm.

5. Luminaire mast arms.

a. All luminaire mast arms shall be the same length as the original luminaire arm unless the town requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.

b. All luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.

6. Signal heads.

a. All existing signal heads shall be replaced, at no cost to town, with new standard town light-emitting diode (LED) signal heads.

b. All signal heads shall be procured from a town approved signal heads supplier or manufacturer.

7. Luminaire fixtures

a. All replacement poles shall have the town standard light-emitting diode (LED) light fixture installed.

b. All replacement light fixtures shall have a new town standard photo-cell or sensor provided by the wireless provider.

8. Other town elements on signal mast arm or pole.

a. All existing emergency signal detection units, video detection cameras, video cameras, cross walk service buttons, cross walk signals, and any other pedestrian or traffic devices shall be replaced with new units by wireless provider and installed at no cost to the town.

b. All equipment shall be procured from a list of town approved suppliers.

9. Signs and other miscellaneous items. All street name plates or signs, directional signs and any other town approved signs shall be replaced with new signs at no cost to the town. All signs and attachments shall be procured from a list of town approved suppliers.

10. Traffic signal pole foundation

    a. All pole foundations shall conform to the town's standards and specifications on traffic signal pole design and shall be modified for wireless communications equipment, hand holes and cables.

    b. The wireless provider shall install a three-inch outside diameter conduit in the pole foundation for the town's cables and wires for the signal heads, luminaire and devices on the signal mast arm and luminaire mast arm. The town's conduit shall be trimmed to three inches above the top of the pole foundation.

    c. In addition to the conduits for the town's use inside the pole, the wireless provider shall install one of the following two conduit options for its cables and wires:

        i. One six-inch outside diameter conduit in the pole foundation; or

        ii. Two four-inch outside diameter conduits in the pole foundation.

    d. The length of the conduit installed as required by subparagraph c above shall extend from the pole foundation to six inches above the signal head mast arm.

    e. Height above ground level.

        i. If the pole foundation is in a landscaped or unimproved area, the height of the caisson shall be two inches above finished grade.

        ii. If the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.

    f. Shrouds shall be provided for the traffic signal pole mounting bolts, including for the replacement pole.

11. Painting of pole, antennas and mounting equipment

    a. If the replacement traffic signal pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the town.

    b. For powder coated traffic signal poles, the wireless provider shall replace with same powder coated color and/or color combination per the town's traffic signal standards, as directed by the town engineer.

12. Construction of traffic signal. The installation work of the replacement traffic signal pole, including mast arms, signal heads and devices, must be performed by an Arizona licensed traffic signal contractor with a minimum of five years of experience installing traffic signals.

12-8-11 Standard design requirements for a small wireless facility on an existing utility pole.

A. General. In addition to the common standards set forth in section 12-8-8 above, the design standards in this section shall apply to the proposed collocation of a small wireless facility on an existing town-owned or third party-owned utility pole in the town right-of-way.

B. Purpose of the utility pole.

1. The primary purpose of the pole shall remain as a pole structure supporting a cables and wires used to provide communications services and electric distribution in the town right-of-way.

2. The attachment of wireless equipment to an existing third party-owned utility pole that impedes the utility pole's primary purpose will not be approved.

C. General requirements.

1. A small wireless facility shall be designed to blend in with the surrounding streetscape with minimal visual impact.

2. All plans shall be signed and sealed by a registered professional engineer.

D. Specific criteria.

1. Replacement pole height. A replacement pole may be installed without zoning review under town code chapter 17-18 (wireless communication facilities) if one of the two following height requirements is met:

   a. Up to a ten-foot increase, not to exceed 50 feet total (whichever is less), per A.R.S. § 9-592 (I); or

   b. Up to 40 feet above ground level, per A.R.S. § 9-592 (J).

2. Overall height of replacement utility pole

   a. The base height of an existing utility pole shall be the height of the vertical pole section from the existing grade.

   b. If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister or the top of the panel antenna.

3. Use of existing pole – wood.

   a. An existing wood pole used for a small wireless facility shall have the antennas contained within an 18-inch outside diameter canister mounted at the top of the pole.

   b. Unless otherwise approved, the cables and wires from the base of the pole to the antennas shall be installed in a conduit or cable chase outside of the pole, facing away from the street or away from on-coming traffic.

c. If a dog house is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the town shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis (refer to exhibit C in section 12-8-25 below).

4. Use of existing pole – metal.

a. An existing metal pole used for a small wireless facility shall have the antennas contained within an 18-inch outside diameter canister mounted at the top of the pole.

b. Panel antennas on a metal pole shall have the same center of radiation so the antennas will be at the same height on the pole.

c. The cables and wires from the base of the pole to the antennas shall be installed in a conduit or cable chase on the outside of the pole, facing away from the street or away from on-coming traffic.

d. If a dog house is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the town engineer shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis (refer to exhibit C in section 12-8-25 below).

5. Painting of pole and dog house.

a. If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the town.

b. If the existing or replacement pole includes a dog house for the transition of the cables and wires to the pole, the dog house shall be painted the same color as the pole or a color specified by the town.

12-8-12 Standard design requirements for a new wireless facility.

A. General.

1. The wireless provider shall obtain a conditional use permit under town code chapter 17-18 (wireless communication facilities) for any new wireless facility in the right-of-way, including without limitation those proposed to be placed on a wireless support structure or new utility pole, except those expressly exempt from zoning by Arizona law.

2. In addition to the common standards set forth in section 12-8-8 above, the design standards in this section shall apply to any wireless facility that a wireless provider may install in the right-of-way that is not being placed on an existing streetlight (see section 12-8-9 above), an existing traffic signal pole (see section 12-

8-10 above), or an existing utility pole (see section 12-8-11 above).

3. A new wireless support structure, including a monopole not to exceed an outside diameter of 40 inches, shall incorporate the highest level of stealth and concealment of the antennas and wireless equipment in order to minimize the visual impact of the site to the public.

B. Purpose of wireless support structure. The sole purpose of a new vertical element or wireless support structure is to attach antennas for the provision of wireless services by a wireless provider in the town's right-of-way.

C. General requirements.

1. A new wireless support structure shall be designed to minimize the visual and aesthetic impact of the new vertical element and associated equipment upon the look, feel, theme, and use of the surrounding area.

2. A small wireless facility shall be designed to blend in with the surrounding streetscape with minimal visual impact.

3. The new wireless support structure shall be architecturally integrated and compatible with the use of the surrounding area.

4. The height of the new wireless support structure shall not exceed the maximum allowed height of the zoning district of the nearest property outside the right-of-way where the site is proposed to be located.

5. All plans shall be signed and sealed by a registered professional engineer.

D. Specific criteria.

1. New pole height.

a. Except as provided in subparagraph b below, the new pole shall not exceed the maximum allowed height of the zoning district of the nearest property outside the right-of-way where the site is proposed to be located.

b. A new monopole or utility pole may be installed without zoning review under town code chapter 17-18 (wireless communication facilities) if it falls within the zoning exemptions set forth in A.R.S. § 9-529 (I) and (J).

i. A.R.S. § 9-529 (I) provides that a new, replacement or modified utility pole that is associated with the collocation of small wireless facilities and that is installed in the right-of-way is not subject to zoning review and approval if the utility pole does not exceed the greater of either:

a) Ten feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on August 9, 2017, that is located within 500 feet of the new, replacement or modified utility pole and that is in the same right-of-way within the jurisdictional boundary of the authority, but not more than 50 feet above ground level.

b) Forty feet above ground level.

ii. A.R.S. § 9-529 (J) provides that new small wireless facilities collocated on a utility pole or wireless support structure in the right-of-way are not subject to zoning review and approval if they do not extend more than ten feet above the utility pole or wireless support structure and do not exceed 50 feet above ground level

2. Overall height of new pole. The height of the new wireless support structure is measured from grade to top of the antenna canister, or the top of the panel antenna if the antennas are the highest elements of the site. Otherwise, the measured height shall be from existing grade to the highest point of the wireless support structure.

3. Outside diameter of monopole. The maximum outside diameter of a monopole shall not exceed 40 inches.

4. Stealth and concealment elements. As part of the stealth and concealment elements of the wireless support structure, the town may require the wireless provider to install street name plates, directional signs, and other decorative signs or artistic elements on the structure.

   a. The wireless provider is solely responsible for the cost of all stealth and concealment elements and the installation of other elements required by the town.

   b. The wireless provider is responsible for the performance of and any costs incurred for regular upkeep, maintenance and replacement (if necessary) of all stealth and concealment elements.

5. Architectural integration with surrounding area.

   a. The new wireless support structure shall be designed in consultation with various internal town stakeholders and may include external stakeholders.

   b. The town may require the new wireless support structure to be constructed of a specific material that will enhance the stealth and concealment of the site.

6. Pole foundation.

   a. The pole foundation for the wireless support structure shall conform to civil and structural engineering standards acceptable to the town, with design modifications for wireless communications equipment and cables.

   b. The height of the pole foundation shall be two inches above finished grade, except that if the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.

   c. Shrouds must be provided for the pole mounting bolts.

12-8-13 RF safety for town employees

To assure that the town's employees, agents, and representatives have uninterrupted and safe access to the right-of-way and all structures located in the right-of-way, wireless provider must comply with at least one of the following safety protocols:

A. Participate in a town-approved or sponsored RF safety program (a "safety program"), enrollment in which shall include:

   1. A one-time contribution to the town of two RF personal monitors, as specified below, for monitoring radio frequency emissions from wireless provider facilities during the repair and maintenance of the town's Facilities and right-of-way. The RF personal monitors shall be delivered to the town engineer within 60 days of the effective date of the telecom license agreement.

      a. The RF personal monitor shall be a new, with full original manufacturer's warranty, NARDA (2271/101) – Nardalert S3 personal & area monitor or equivalent device that is approved by the town.

      b. The wireless provider shall provide for each Nardalert S3 personal & area monitor, a protective silicon or rubberized cover, and a case to store and carry the device.

   2. An annual contribution in an amount established by a fee schedule adopted by the council and amended from time to time ("annual contribution") for third-party training of the town employees who will work on poles that have a wireless facility and for the ongoing operation—including the annual recertification training of the town employees, test set calibration, and test set maintenance and repair—of the town's safety program.

      a. The first annual contribution, payable to the town, shall be delivered or transferred as directed by the town engineer within 60 days of the effective date of the telecom license agreement.

      b. Each annual contribution thereafter shall be made payable to the town as directed by the town engineer on or before the

anniversary date of the within 60 days of the effective date of the telecom license agreement.

3. On each five-year interval of the effective date of the telecom license agreement, the wireless provider shall provide the town with one additional RF personal monitor that meets or exceeds the requirement in subparagraph 12-8-13 A. 1 above that the town must approve prior to purchase.

4. Prior to performing any work on a wireless site in the right-of-way, the town's employee will contact the wireless provider's network operations center, whose information shall be located on the ground equipment or on the pole. The town's employee shall identify himself or herself as an employee of the town and needs the RF to be turned off at the site for a specified period to perform maintenance or repair work at the site. Upon completion of the work, the town's employee shall contact the wireless provider's network operations center and inform them that the site may activate the RF signals.

B. Provide access to a "kill switch" for each wireless site that the town's employees, agents, or representatives can use to turn off all power to the wireless provider's facilities while the town's work is performed at the location.

C. Within 24 hours of a request, agree to send a technician with an RF monitor to confirm that all RF emitting equipment has, in fact, been deactivated, and to install all appropriate lockout tags and devices.

12-8-14 Maintenance and utilities

Except as expressly provided below, wireless provider shall be solely responsible for all maintenance, repair and utilities for the use area during the term of the telecom license agreement. Without limitation, wireless provider shall perform the following:

A. Maintenance by the town. The town has no maintenance or repair obligations for the communications equipment or other of wireless provider's improvements.

B. Maintenance by wireless provider. Wireless provider shall at all times repair and maintain the use area at wireless provider's sole expense in a first-class, sound, clean, safe and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in Pima county, Arizona, as determined in the town's reasonable discretion. The preceding sentence does not require wireless provider to repair or maintain the town's facilities at the use area unless such work is attributable in whole or in part to wireless provider's use of the use area.

C. Utility service. Wireless provider shall contract for and pay all charges, fees, deposits and other amounts for electricity and telephone and other data communication service to the use area at the rates applicable thereto. Wireless provider shall use no other utilities at the use area.

D. Utility interruptions. The town is not responsible for any interruption of utilities to or upon the use area or other difficulties related to utilities at the use area.

E. Right of inspection. The town shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms herein, the street code, or other telecommunications laws. All the town plans reviews, inspections, standards and other rights and actions with relation to wireless provider's improvements are for the town's sole and exclusive benefit and neither wireless provider nor any other person shall rely thereon or have any rights related thereto. The preceding sentence does not prevent wireless provider from relying on consents, permits or approvals the town may grant based on the town's plans, reviews, and inspections. This right of access is in addition to access rights for the town inspectors or other employees and officers acting within their legal authority.

F. Construction notification. The town may establish requirements for wireless provider to notify nearby residents prior to construction.

G. Blue stake. Wireless provider shall register with and comply with the local blue stake program.

12-8-15 Breach by wireless provider

Wireless provider shall comply with, perform and do each obligation required of wireless provider in this chapter 12-8 and in the approved telecom license agreement, and shall cause all persons using the use area on behalf of wireless provider to do the same. Wireless provider's failure to do so shall be a material breach by wireless provider of these standard terms.

A. Events of default. Each telecom license agreement and right-of-way permit is approved upon the condition that each and every one of the following events shall be deemed an "event of default" by wireless provider of wireless provider's material obligations under these standard terms:

1. If wireless provider shall be in arrears in the payment of use fee and shall not cure such arrearage within 15 days after the town has notified wireless provider of such arrearage.

2. If wireless provider shall fail to operate the communications equipment (except during specific periods expressly excused herein) for a period of 30 consecutive days or a total of 60 days within any 12-month period.

3. If wireless provider shall fail to maintain any insurance required under these standard terms. Notwithstanding the preceding sentence, such failure shall not be a default if within five business days after notice from the town, wireless provider provides to the town the required insurance and the required evidence

thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by these standard terms.

4. If the wireless provider's right to use a pole expires or is terminated for any reason.

5. If wireless provider does not commence and diligently pursue to completion each required stage of construction of the site within the times required herein. The times specified for concluding each stage of required construction have been established far enough in advance, and have taken into account the likelihood of construction delays, so that no cure period is provided.

6. If wireless provider is the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of wireless provider's or such other person's property is made for the benefit of creditors or if wireless provider or such other person dies or is not regularly paying its debts as they come due (collectively a "wireless provider insolvency").

7. If the issuer of any letter of credit fails for any reason to timely and fully honor any request by the town for funds or other performance under the instrument and wireless provider fails to cause the issuer to or some other person to honor the request within ten days after the town notifies wireless provider that a town request for funds has not been honored.

8. If wireless provider fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the right-of-way or timely pay any taxes pertaining to the right-of-way and does not cure the failure within 30 days which shall be extended to 90 days if wireless provider begins to cure in good faith within 30 days.

9. If the town is exposed to any liability, obligation, damage, cost, expense, or other claim of any description, whether or not asserted; except that this is not an event of default if wireless provider does all of the following:

   a. Gives immediate notice to the town of wireless provider's commitment to indemnify, defend and hold the town harmless against the claim.

   b. Promptly commences and continues to indemnify, defend and hold the town harmless against the claim.

10. If wireless provider fails to meet its obligations under section 12-8-13 (RF safety for town employees).

11. If wireless provider engages in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained in this chapter 12-8 or in the approved telecom license agreement. After the town has once given notice of any failure

by wireless provider to comply with its obligations set forth in these standard terms, the following shall constitute a repeated failure by wireless provider to comply with such provision:

a. Another failure to comply with any provision of these standard terms during the following 30-day period.

b. Three or more failures to comply with any provision of these standard terms during any 90-day period.

c. Six or more failures to comply with any provision of these standard terms during any 12-month period.

12. If wireless provider fails or neglects to timely and completely do or perform or observe any other provisions of this chapter 12-8 or the approved telecom license agreement and the failure or neglect continues for a period of 30 days after the town has notified wireless provider in writing of the failure or neglect.

B. The town's remedies. Upon the occurrence of any event of default or at any time thereafter, the town may, at its option and from time to time, exercise at wireless provider's expense any or all or any combination of the following cumulative remedies in any order and repetitively at the town's option:

1. Terminate the telecom license agreement and right-of-way permits issued to the wireless provider due to wireless provider's breach; provided, however, that this shall not terminate wireless provider's obligations arising during the time simultaneous with or prior to or the termination, and in no way eliminates or reduces wireless provider's liability resulting from the breach.

2. Pay or perform, for wireless provider's account, in wireless provider's name, and at wireless provider's expense, any or all payments or performances required under these standard terms to be paid or performed by wireless provider.

3. Abate at wireless provider's expense any violation of these standard terms.

4. Notwithstanding anything under these standard terms to the contrary, unilaterally and without wireless provider's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter of credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held by the town or pledged or otherwise obligated to the town by wireless provider or by any third party (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by these standard terms.

5. Require an additional security deposit adequate in the town's sole discretion to protect the town and the right-of-way.

6. Assert, exercise or otherwise pursue at wireless provider's expense any and all other rights or remedies, legal or equitable, to

which the town may be entitled, subject only to the limitation set out below on the town's ability to collect money damages in light of the violation use fee.

C. Violation use fee. In lieu of certain money damages (the "inconvenience costs") set out below, the following shall apply to wireless provider's violation of certain limited requirements of these standard terms (the "violation fee provisions"):

1. The inconvenience costs are the money damages that the town suffers in the form of administrative cost and inconvenience, disharmony among competing users, and general inconvenience in right-of-way use by the town, competing users and the public when wireless provider fails to comply with the violation fee provisions.

2. Wireless provider's failure to comply with violation fee provisions will result in inconvenience costs in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that, in lieu of wireless provider paying to the town as damages the actual amount of the inconvenience costs for violating the violation fee provisions, wireless provider shall pay the violation use fee.

3. The violation use fee is only intended to remedy inconvenience costs that the town suffers because of wireless provider's breach of the violation fee provisions. Wireless provider's payment of a violation use fee does not in any way excuse any breach by wireless provider of these standard terms or limit in any way wireless provider's obtaining any other legal or equitable remedy provided by these standard terms or otherwise for such breach. For example, wireless provider's obligation to pay the violation use fee does not in any way detract from wireless provider's indemnity and insurance obligations under these standard terms, which shall apply according to their terms in addition to wireless provider's obligation to pay the violation use fee.

4. Wireless provider may elect to draw upon the letter of credit to collect the violation use fee.

5. The violation fee per day is an amount established by a fee schedule adopted by the council and amended from time to time.

6. Violation use fees shall be assessed as follows:

   a. If the town determines that wireless provider is liable for a violation use fee, then the town shall issue to wireless provider a notice of the town's assessing a violation use fee. The notice shall set forth the nature of the violation and the amount of the assessment.

   b. Wireless provider shall pay the violation use fee within ten days after the town's notice unless the violation use fee

amount exceeds $5,000, in which case the following shall apply:

i. Wireless provider shall have 30 days after the notice to pay the violation use fee or give the town notice contesting the assertion of noncompliance.

ii. If wireless provider fails to respond to the notice, wireless provider shall pay the violation use fee. Otherwise, the town shall schedule a public hearing to investigate whether the violation use fee is properly assessed. The town shall provide wireless provider at least ten days' notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, wireless provider shall be provided an opportunity to be heard and present evidence. If the result of the hearing is that wireless provider is liable for the violation use fee, then the violation use fee is due ten days after the hearing decision is announced.

D. Non-waiver. Wireless provider acknowledges wireless provider's unconditional obligation to comply with these standard terms. No failure by the town to demand any performance required of wireless provider under these standard terms, and no acceptance by the town of any imperfect or partial performances under these standard terms, shall excuse such performance or impair in any way the town's ability to insist, prospectively and retroactively, upon full compliance with these standard terms. No acceptance by the town of use fee payments or other performances under this chapter 12-8 and the approved telecom license agreement shall be deemed a compromise or settlement of any right the town may have for additional, different or further payments or performances as provided for in these standard terms. Any waiver by the town of any breach of condition or covenant set forth in chapter 12-8 or the approved telecom license agreement shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent the town from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by the town or wireless provider concerning payments or other performances due under chapter 12-8 or the approved telecom license agreement, or failure by the town to demand any performance under chapter 12-8 or the approved telecom license agreement, shall excuse wireless provider from compliance with its obligations nor estop the town (or otherwise impair the town's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with the telecom license agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against the town unless made in writing by a duly authorized representative of the town specifically identifying the particular provision being waived and specifically stating the scope of the waiver. Wireless provider expressly disclaims and shall not have the right to rely on

any supposed waiver or other change or modification, whether by word or conduct or otherwise, not conforming to this paragraph.

E. Reimbursement of the town's expenses. Wireless provider shall pay to the town within 30 days after the town's demand any and all amounts expended or incurred by the town in performing wireless provider's obligations (upon wireless provider's failure to perform the same after notice from the town) together with interest thereon at the rate of 10% per annum from the date expended or incurred by the town.

F. Breach by the town. Notwithstanding anything in these standard terms to the contrary, if the town at any time is required to pay to wireless provider any amount or render any performance, such amount or performance is not due until 30 days after notice by wireless provider to the town that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, the town shall not be in default so long as the town commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within 60 days after the notice.

G. Right to setoff and credit. In addition to its other rights and remedies the town shall have the right to setoff and credit from time to time and at any time, any and all amounts due from wireless provider to the town, whether pursuant to these standard terms or otherwise, against any sum which may be due from the town to wireless provider.

12-8-16 Termination

The following provisions shall apply at the expiration of the term of the telecom license agreement:

A. Surviving obligations. Expiration or termination of the telecom license agreement does not terminate wireless provider's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

B. Delivery of possession. Wireless provider shall cease using the use area of the expired or terminated telecom license agreement. Wireless provider shall without demand, peaceably and quietly quit and deliver up the use area to the town thoroughly cleaned, in good repair with the use area maintained and repaired and in as good order and condition, reasonable use and wear excepted, as prior to wireless provider's activities.

C. Confirmation of termination. Upon expiration or termination of a telecom license agreement for any reason, wireless provider shall provide to the town upon demand recordable disclaimers covering the use area executed and acknowledged by wireless provider and by all persons claiming through these standard terms, the telecom license agreement, any right-of-way permit, or wireless provider any interest in or right to use the use area.

D. Removal of improvements. Wireless provider shall remove all communications equipment and restore the use area including pole, mast arms, luminaires, or wireless support structure to its prior condition, or to a condition matching the town's surrounding land and improvements, as directed by the town, at wireless provider's expense prior to normal expiration of the term of a telecom license agreement, or within 90 days after full or partial termination of a telecom license agreement for any other reason whatsoever. Without limitation, such work shall include revegetation and appropriate irrigation systems for revegetated areas. Notwithstanding anything in these standard terms to the contrary, the town may elect to require wireless provider to leave any or all construction or other items (except the communications equipment) in place, and all such items shall be owned by the town. Unless the town directs otherwise, all wiring, pipes and conduits shall be left in good and safe condition, in working order, with each end properly labeled and enclosed in proper junction boxes.

E. Prior improvements. This article also applies to any improvements that wireless provider may have made to the use area.

12-8-17 Indemnity and insurance

During the entire term of the telecom license agreement, wireless provider shall insure its property and activities at and about the use area and shall provide insurance and indemnification as follows:

A. Insurance required. Not later than the date of the telecom license agreement, and at all times thereafter when wireless provider is occupying or using the use area in any way, wireless provider shall obtain and cause to be in force and effect the following insurance:

1. Commercial general liability. Commercial general liability insurance with a limit of $10,000,000 for each occurrence, a limit of $10,000,000 for products and completed operations annual aggregate, and a limit of $10,000,000 general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including the telecom license agreement. The policy will cover wireless provider's liability under the indemnity provisions set forth in these standard terms. The policy shall contain a "separation of insured's" clause.

2. Automobile liability. Automobile liability insurance with a limit of $1,000,000 for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with wireless provider's use of the right-of-way. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off-loading.

3. Workers' compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of $100,000 for each accident, $100,000 disease for each employee, $500,000 policy limit for disease. All contractors and subcontractors must provide like insurance.

4. Special risk property. Unless waived by the town in writing, all risk property insurance covering damage to or destruction of all real and personal improvements to the right-of-way, including without limitation all improvements existing upon the right-of-way or constructed after the telecom license agreement or right-of-way permit is in effect, shall be effective and in force prior to the effective date of an approved telecom license agreement or right-of-way permit, in an amount equal to full replacement cost of all such improvements. The insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of $50,000.

5. Other insurance. Any other insurance the town may reasonably require for the protection of the town and the town's employees, officials, representatives, officers and agents (all of whom, including the town, are collectively "additional insureds"), the right-of-way, surrounding property, wireless provider, or the activities carried on or about the right-of-way. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities might reasonably purchase.

B. Policy limit escalation. The town may elect by notice to wireless provider to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that the town reasonably determines to affect the prudent amount of insurance to be provided.

C. Form of all insurance. All insurance provided by wireless provider with respect to the right-of-way, whether required in these standard terms or not, shall meet the following requirements:

1. "Occurrence" coverage is required.

2. If wireless provider uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

3. Policies must also cover and insure wireless provider's activities relating to the business operations and activities conducted away from the right-of-way.

4. Within five business days of receiving a written request from the town, wireless provider shall provide copies of insurance certificates, insurance policies, formal endorsements or other documentation acceptable to the town that all insurance coverage required herein is provided.

5. Wireless provider's insurance shall be primary insurance with respect to claims arising out of wireless provider's operations, activities and obligations set forth in these standard terms.

6. All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against the town, and the other additional insureds.

7. All deductibles, retentions, or "self-insured" amounts shall be subject to the following:

   a. Wireless provider shall be solely responsible for any self-insurance amount or deductible.

   b. Such amounts shall not exceed in total $100,000 per loss. At such times as wireless provider's net worth is more than $100,000,000, such limit shall be $1,000,000.

   c. Any self-insured exposure shall be deemed to be an insured risk under the telecom license agreement.

   d. Wireless provider shall provide to the beneficiaries of all such amounts no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required this section.

   e. The right to self-insure is limited and specific to wireless provider and does not extend to wireless provider's contractors or others.

8. All policies except workers' compensation must name the town and the other additional insureds as additional insureds. Wireless provider shall cause coverage for additional insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of wireless provider's operations, activities and obligations under these standard terms.

9. All policies must require the insurer to provide the town with at least 30 days' prior notice of any cancellation. The insurer's duty to notify the town of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

10. All policies shall require that notices be given to the town in the manner specified for notices to the town set forth in these standard terms.

D. Insurance certificates. Wireless provider shall evidence all insurance by furnishing to the town certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that

the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of these standard terms applicable to the policy. For example, certificates must evidence that the town and the other additional insureds are additional insureds. Certificates must also be in an industry standard form reasonably acceptable to the town. Wireless provider shall provide updated certificates at the town's request.

E. Acceptable insurers. All insurance policies shall be issued by insurers acceptable to the town. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the state of Arizona, department of insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

F. No representation of coverage adequacy. By requiring insurance, the town does not represent that coverage and limits will be adequate to protect wireless provider. The town reserves the right to review any and all of the insurance policies and/or endorsements cited in these standard terms but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in these standard terms or failure to identify any insurance deficiency shall not relieve wireless provider from, nor be construed or deemed a waiver of, wireless provider's obligation to maintain the required insurance at all times.

G. Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of each telecom license agreement and right-of-way permit and until all obligations and performances under or related to these standard terms are satisfied and all matters described in this paragraph are completely resolved, wireless provider and all other persons using, acting, working or claiming through or for wireless provider (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally indemnify, defend and hold harmless the town and all other additional insureds for, from and against any and all claims or harm related to wireless provider's use of the right-of-way or the rights granted to wireless provider with respect to the right-of-way or wireless provider's exercise of its rights under these standard terms (the "indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the right-of-way or other property pursuant to any telecom license agreement or right-of-way permit or any actions, acts, errors, mistakes or omissions relating to work

or services in the performance of or related to the telecom license agreement or right-of-way permit, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the right-of-way or surrounding areas related to wireless provider's exercise of its rights under the telecom license agreement, including without limitation, claims, liability, harm or damages caused in part by the town or any other additional insured or anyone for whose mistakes, errors, omissions or negligence wireless provider or the town may be liable. As a condition to the town's approval of any telecom license agreement or right-of-way permit, wireless provider specifically agrees that to the extent any provision of this paragraph is not fully enforceable against wireless provider for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to wireless provider's use of real property under each right-of-way permit. Notwithstanding the foregoing, the Indemnity does not apply to:

1. Claims arising only from the sole gross negligence or intentionally wrongful acts of the town.
2. Claims that the law prohibits from being imposed upon the indemnitor.

H. Risk of Loss. Wireless provider assumes the risk of any and all loss, damage or claims related to wireless provider's use of the right-of-way or other property of the town, wireless provider or third parties throughout the term of any telecom license agreement or right-of-way permit. Wireless provider shall be responsible for any and all damage to its property and equipment related to these standard terms.

I. Insurance to be provided by others. Wireless provider shall cause its contractors or other persons occupying, working on or about, or using the right-of-way pursuant to these standard terms to be covered by their own or wireless provider's insurance as required by these standard terms. The required policy limits for commercial general liability insurance provided by such persons shall be $1,000,000 for each occurrence, $1,000,000 for products and completed operations annual aggregate, and $2,000,000 general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the right-of-way (such as wireless provider's consulting design engineers).

12-8-18 Condemnation

This section governs any condemnation of any part of or interest in the use area and any conveyance to the town or another condemnor in avoidance or settlement of condemnation or a threat of condemnation.

A. Termination for condemnation. The wireless provider's right to use the use area shall terminate on the date that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession. Notwithstanding the foregoing, if the town reasonably determines that the use area continues to be suitable for wireless provider to conduct the permitted uses, the town may elect to cause the telecom license agreement to continue to remain in effect as to the part of the use area not taken and the use fee shall not be reduced or abated. Nevertheless, if wireless provider reasonably determines that the use area is not suitable for wireless provider to conduct the permitted uses, then the wireless provider's right to use that use area shall terminate when wireless provider gives written notice to the town engineer of the termination of the telecom license agreement as to that use area.

B. Condemnation proceeds. Wireless provider hereby assigns and transfers to the town wireless provider's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "condemnation proceeds"). Wireless provider shall execute and deliver to the town assignments or other instruments requested by the town confirming such assignment and transfer. Wireless provider shall immediately pay to the town any condemnation proceeds wireless provider may receive. The condemnation proceeds shall not include relocation benefits, if any, awarded specifically to wireless provider to cover expenses of relocating wireless provider's business located at the use area at the time of the condemnation, or any compensation specifically awarded to wireless provider for any taking of the communications equipment itself. Any repair, relocation or similar costs relating to the communications equipment shall be borne by wireless provider.

C. Power to condemn. Wireless provider acknowledges that the town and others from time-to-time may use the power to condemn the use area or any interest in it. The town has not relinquished any right of condemnation or eminent domain over the use area. The town does not warrant that the town will not condemn the use area during the term of the telecom license agreement, but (unless the town's representatives state otherwise at the time of the right-of-way permit issuance) the town represents by its issuance of the right-of-way permit that it does not presently have intentions to condemn the use area.

12-8-19 Damage to or destruction of the use area

This section governs damage to or destruction of the use area by fire, flood, explosion, the elements, the public enemy, or other casualty (collectively "casualty damage"):

A. Damage to wireless provider's improvements. Wireless provider shall commence restoring the casualty damage to wireless pro-

vider's improvements within 30 days after any casualty damage occurs. Wireless provider shall complete the restoration work within 30 days after commencement. The work shall be subject to the plans approval process and all other requirements for wireless provider's improvements. Wireless provider shall perform all restoration work at wireless provider's sole cost and expense.

B. Monthly restoration work report. Wireless provider shall provide to the town no later than the tenth day of each month a written narrative report of the progress of the restoration work.

12-8-20 Wireless provider's records

During the entire term of the telecom license agreement, wireless provider shall keep records and provide information to the town as provided in this section.

A. Scope of information. Unless otherwise specified, all of wireless provider's recordkeeping and disclosure obligations under this article are limited to the following (collectively the "covered information"):

1. The status of the construction, repair or restoration of wireless provider improvements.

2. Information indicating whether the town or wireless provider is in compliance with the terms of this chapter, all other applicable provisions of the town code, and the telecom license agreement.

3. Records inspection. At wireless provider's expense, wireless provider shall:

a. Permit and assist the town and its representatives upon 21 days' notice to inspect, audit, and copy wireless provider's records of covered information.

b. Make the records of covered information (and reasonable accommodations for the town's audit and inspection) available to the town at wireless provider's Arizona offices.

c. Cause wireless provider's employees and agents and accountants to give their full cooperation and assistance in connection with the town's access to the covered information.

B. Record retention. Wireless provider shall preserve records of the covered information in a secure place at wireless provider's corporate headquarters in the continental United States for a period ending seven years after the time period reported by the records.

C. Record media included. The town's and wireless provider's rights and obligations regarding the covered information apply regardless of the type of media, materials, or data repositories that may contain the covered information. The town shall have access to covered information contained, without limitation, in records, books, papers, documents, recordings, computer data, contracts, logs, notes, ledgers, correspondence, reports, drawings, and memoranda, and any

and all other sources, records and repositories of covered information.

D. Reports. Wireless provider shall deliver to the town written reports (and, if requested by the town, a presentation to the town's governing council or designee) covering such covered information as the town may request from time to time. The town shall not request such reports more often than once in any 12-month period.

E. Standards for records. Wireless provider shall maintain a standard, modern system of recordkeeping for the covered information and shall keep and maintain proper and accurate books and other repositories of information relating to the covered information.

12-8-21 Compliance with law

Wireless provider shall perform its obligations under these standard terms in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, wireless provider shall comply with all and each of the provisions set forth in this section.

A. Applicability of municipal law. Without limitation, wireless provider shall comply with municipal laws as follows:

1. Wireless provider acknowledges nothing set forth in this chapter 12-8 or in the telecom license agreement or any right-of-way permit constitutes, and the town has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to wireless provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the town or any other governmental body upon or affecting wireless provider, the use area, or the right-of-way or wireless provider's use of the use area, or the right-of-way.

2. All of wireless provider's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to wireless provider.

3. The town, by entering into the telecom license agreement or issuing a right-of-way permit, cannot and has not relinquished or limited any right of condemnation or eminent domain over the use area or any other property related to these standard terms or within the right-of-way.

4. A telecom license agreement or right-of-way permit cannot and does not impair the town's, power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way wireless provider, any use area, or the right-of-way.

5. The town's rights and remedies under the telecom license agreement and any right-of-way permit for wireless provider's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the town or any other governmental body.

6. Wireless provider's rights under the telecom license agreement and any right-of-way permit are further subject to all present and future building restrictions, regulations, zoning laws, and all ordinances, resolutions, rules and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over any use area or wireless provider's use of any use area. Wireless provider shall comply with all of the foregoing.

B. Radio frequency compliance requirements. Wireless provider shall document, report and confirm its compliance with FCC radio frequency exposure guidelines (FCC OET bulletin 65) and all other FCC rules as follows:

1. Wireless provider shall cause its senior internal engineer responsible for compliance with the FCC rules to deliver to the town a letter attesting that wireless provider's operation of the communications equipment is in compliance with the FCC rules. A statement from wireless provider declaring exemption from reporting to FCC is not acceptable to comply with the requirements of this paragraph.

2. Wireless provider shall maintain records of radio frequency measurements and communications equipment performance in accordance with the FCC rules.

3. Wireless provider shall also evidence and demonstrate its compliance with the FCC rules in such manner and at such intervals as the town code and other applicable laws and regulations may mandate.

C. Government property lease excise tax. Wireless provider shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 et seq. or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by wireless provider to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting wireless provider of any interest in or right of occupancy of the use area.

D. Use area regulations. The town reserves the right to adopt, amend and enforce against wireless provider rules and regulations governing the operation of the right-of-way, including the use area, wireless provider's activities on them, and the public areas and facilities used by wireless provider in connection with them.

E. Taxes, liens and assessments. In addition to all other amounts provided in this chapter 12-8 and in the telecom license agreement and

any right-of-way permit, and to the extent consistent with applicable law, wireless provider shall pay, when they become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of any telecom license agreement or right-of-way permit may be levied upon or assessed upon or with respect to wireless provider's use of the right-of-way, the operations conducted there, any amounts paid or other performances required by these standard terms by either party, and all possessory interest in the right-of-way and wireless provider's improvements and other property located there. Wireless provider shall pay, indemnify, defend and hold harmless the town from any and all obligations, including any interest, penalties and other expenses which may be imposed, and from any lien or sale or other proceedings to enforce their payment.

F. Permits. Nothing in these standard terms relieves wireless provider of the obligation to obtain permits, licenses and other approvals from the town or other units of government that are required for the erection, construction, reconstruction, installation, operation or maintenance of the communications equipment or provision of telecommunications services; or from compliance with applicable municipal codes, ordinances, laws and policies, such as zoning and land use ordinances and regulations, pavement cut and restoration ordinances and regulations, subdivision and project improvement ordinances, curb cut permits, building permits, right-of-way permits and the like.

12-8-22 Assignment

Telecom license agreements and right-of-way permits are not assignable by wireless provider (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the requirements of this section.

A. Assignments affected. Every assignment of any of wireless provider's interest in the right-of-way, the telecom license agreement, any right-of-way permit, or any of wireless provider's rights or interests under this chapter 12-8 is prohibited unless wireless provider first receives from the town notice of the town's consent to the assignment. The town's consent to assignment shall not be unreasonably withheld, conditioned, or delayed. All references in these standard terms to assignments by wireless provider or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

1. Any voluntary or involuntary assignment, conveyance or transfer of wireless provider's right to use the right-of-way under the telecom license agreement or any right-of-way permit, or any interest or rights of the town under the telecom license agreement or any right-of-way permit, in whole or in part.

2. Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting wireless provider's rights to use the right-of-way (collectively "liens").
3. Any voluntary or involuntary assignment by wireless provider of any interest in the telecom license agreement or any right-of-way permit for the benefit of creditors.
4. A wireless provider insolvency.
5. The occurrence of any of the foregoing by operation of law or otherwise.
6. The occurrence of any of the foregoing with respect to any assignee or other successor to wireless provider.

B. Pre-approved assignments. Subject to certain conditions hereafter stated, the town hereby consents to certain assignments (the "pre-approved assignments"). Only the following assignments are pre-approved assignments:

1. Complete assignment of telecom license agreement. Wireless provider's complete assignment of all of wireless provider's rights and interests in the telecom license agreement and associated use areas to a single assignee who meets all of the following requirements, as determined by the town in the town's reasonable discretion (a "qualified operator"):
   a. The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than wireless provider's and adequate to successfully perform the obligations set forth herein.
   b. The assignee is experienced in the management and operation of similar projects.
   c. The assignee assumes all of wireless provider's obligations under the telecom license agreement.
   d. The assignee has a net worth of not less than $50,000,000.
2. Stock transfers. The transfer of publicly traded stock, regardless of quantity.
3. Merger. The merger or consolidation of wireless provider with another entity that is a qualified operator.
4. Common ownership transfer. Wireless provider's complete assignment of all of wireless provider's rights and interests in the telecom license agreement and associated use areas to single assignee who is and remains a wholly owned subsidiary of wireless provider's sole owner as of the date of the telecom license agreement (or a wholly owned subsidiary of a wholly owned subsidiary of wireless provider's sole owner as of the date of the telecom license agreement).

C. Limitations on assignments. The town's consent to any assignment, including without limitation, pre-approved assignments, is not effective until the following conditions are satisfied:

1. Except for the sale of stock, wireless provider shall provide to the town a summary of provisions of the transaction documents assigning its interests.

2. Each assignee must execute an assumption of the telecom license agreement in substantially the form set forth in section 12-8-26 (forms).

3. Each pre-approved assignment must satisfy all other requirements of these standard terms pertaining to assignments.

D. Assignment remedies. Any assignment without the town's consent shall be void and shall not result in the assignee obtaining any rights or interests. The town may, in its sole discretion and in addition to all other remedies available to the town under these standard terms or otherwise, and in any combination, terminate the telecom license agreement and any and all right-of-way permits, collect use fee from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of the town under these standard terms. No cure or grace periods shall apply to assignments prohibited under these standard terms or to enforcement of any provision under these standard terms against an assignee who did not receive the town's consent.

E. Effect of assignment. Prior to any assignment, each assignee must execute an assumption of the telecom license agreement in the form set forth in section 12-8-26. No action or inaction by the town shall be deemed a waiver of the prohibition on assignments or any other provision herein, or the acceptance of the assignee, wireless provider or occupant as wireless provider, or a release of wireless provider from the further performance by wireless provider of the provisions of the telecom license agreement or any right-of-way permit. Consent by the town to an assignment shall not relieve wireless provider from obtaining the town's consent to any further assignment. No assignment shall release wireless provider from any liability under this chapter 12-8 or the telecom license agreement.

F. Enforceability after assignment. No consent by the town shall be deemed to be a novation. The town's consent to any assignment does not in any way expand or modify the terms set forth in these standard terms or waive, diminish or modify any of the town's rights or remedies under the telecom license agreement or any right-of-way permit. The terms set forth in these standard terms shall be enforceable against wireless provider and each successor, partial or total, and regardless of the method of succession, to wireless provider's interest under this chapter 12-8 or the telecom license agreement. Each successor having actual or constructive notice of the telecom license agreement or any right-of-way permit shall be deemed to have agreed to the preceding sentence.

G. Grounds for refusal. Except for the pre-approved assignments, no assignment of any telecom license agreement by wireless provider is contemplated or bargained for. Without limitation, the town has the right to impose upon any consent to assignment such conditions and requirements as the town may deem appropriate.

H. Consent to assignments. Wireless provider shall attach to each pre-approved assignment a copy of wireless provider's notice to the town of the pre-approved assignment and other required documents, wireless provider shall attach to each other assignment, a copy of the town's notice to wireless provider of the town's consent to the assignment. These standard terms shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

I. Assignment fee. Wireless provider shall pay to the town in advance a nonrefundable fee in an amount established by a fee schedule adopted by the council and amended from time to time for legal, administrative and other expenses related to every pre-approved assignment of any license agreement (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not the town grants the request.

12-8-23 Miscellaneous

The additional provisions set forth in this section apply to each and every telecom license agreement and right-of-way permit.

A. Amendments. These standard terms may not be amended except by a formal writing executed by all of the parties.

B. Dates. Any reference to a year shall refer to a calendar year unless a fiscal year is specifically stated. Sunday, Saturday and Arizona legal holidays are holidays.

C. Time of essence. Time is of the essence of each and every provision of this chapter 12-8, the telecom license agreement, and any right-of-way permit.

D. Severability. If any provision of these standard terms shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:

1. The invalidity or unenforceability of the provision shall not affect the validity of any remaining provisions of these standard terms.

2. These standard terms shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.

E. Conflicts of interest. No officer, representative or employee of the town shall have any direct or indirect interest in the telecom license agreement or any right-of-way permit, or participate in any decision relating to any telecom license agreement or right-of-way permit that is prohibited by law.

F. No partnership. The transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

G. Nonliability of officials and employees. No official, representative or employee of the town shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by the town or for any amount which may become due to any party or successor, or with respect to any obligation of the town or otherwise under the terms of the telecom license agreement or any right-of-way permit, or in any way related to the telecom license agreement or any right-of-way permit.

H. Notices. Notices under this chapter 12-8 and under the telecom license agreement and any right-of-way permit shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid to the addresses set forth in the telecom license agreement and to the town as follows:

If to the town:	Town engineer Town of Marana 11555 West Civic Center Drive Marana, Arizona 85653
With a copy to:	Town attorney Town of Marana 11555 West Civic Center Drive Marana, Arizona 85653

By notice from time to time, a person may designate any other street address within Pima County, Arizona as its address for giving notice under this chapter 12-8 and under the telecom license agreement. Service of any notice by mail shall be deemed to be complete three days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

I. Construction. Whenever the context of these standard terms requires herein the singular shall include the plural, and the masculine shall include the feminine.

J. Funding. This subparagraph shall control notwithstanding any provision of the telecom license agreement or any exhibit or other agreement or document related to it. If funds necessary to fulfill the town's obligations under the telecom license agreement are not appropriated by the town council, the town may terminate the telecom license agreement by notice to wireless provider. The town shall use best efforts to give notice of termination to wireless provider at least 30 days prior to the end of the town's then current fiscal period. Termination in accordance with this provision shall not constitute a breach of the telecom license agreement by the town. No person will be entitled to any compensation, damages or other remedy from the town for the termination of a telecom license agreement pursuant to the terms of this subsection.

K. No third party beneficiaries. No person or entity shall be a third party beneficiary to the telecom license agreement or shall have any right or cause of action hereunder. The town shall have no liability to third parties for any approval of plans, wireless provider's construction of improvements, wireless provider's negligence, wireless provider's failure to comply with the provisions of these standard terms (including any absence or inadequacy of insurance required to be carried by wireless provider).

L. Exhibits. All exhibits specifically stated to be attached to this chapter 12-8 or to the telecom license agreement are hereby incorporated into and made an integral part of the telecom license agreement for all purposes.

M. Attorneys' fees. If any action, suit or proceeding is brought by either party to enforce the telecom license agreement or any right-of-way permit, or for failure to observe any of the covenants of the telecom license agreement or right-of-way permit, or to vindicate or exercise any rights or remedies under the telecom license agreement or any right-of-way permit, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court, and not a jury).

N. Approvals and inspections. All approvals, reviews and inspections by the town are for the town's sole benefit and not for the benefit of wireless provider, its contractors, engineers or other consultants or agents, or any other person.

O. Legal workers. If and to the extent A.R.S. § 41-4401 is applicable, wireless provider shall comply with laws regarding workers as follows:

1. Wireless provider warrants to the town that wireless provider and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that wireless provider and all its subcontractors now comply with the e-verify program under A.R.S. § 23-214 (A). This is referred to in these standard terms as the "immigration warranty."

2. A breach of the immigration warranty by wireless provider shall be deemed a material breach of the telecom license agreement and any issued right-of-way permit that is subject to penalties up to and including termination of the telecom license agreement and right-of-way permit.

3. The town retains the legal right to inspect the papers of any employee of wireless provider or any subcontractor who works on a use area pursuant to the telecom license agreement and any issued right-of-way permit to ensure that they or the subcontractor is complying with the immigration warranty.

4. The town may conduct random verification of wireless provider's and its subcontractors' employment records to ensure compliance with the immigration warranty.
5. Wireless provider shall indemnify, defend and hold the town harmless for, from and against all losses and liabilities arising from any and all violations of the immigration warranty.

12-8-24 Town engineer authorization

A. The town engineer is hereby authorized to sign telecom license agreements and other documents in form substantially conforming to those set forth in section 12-8-26 (forms).

B. The town council shall review and approve any telecom license agreement with a wireless provider containing different or additional terms than those authorized by this chapter (see A.R.S. § 9-592 (F)).

12-8-25 Exhibits

The following exhibits are incorporated by reference into this chapter 12-8.

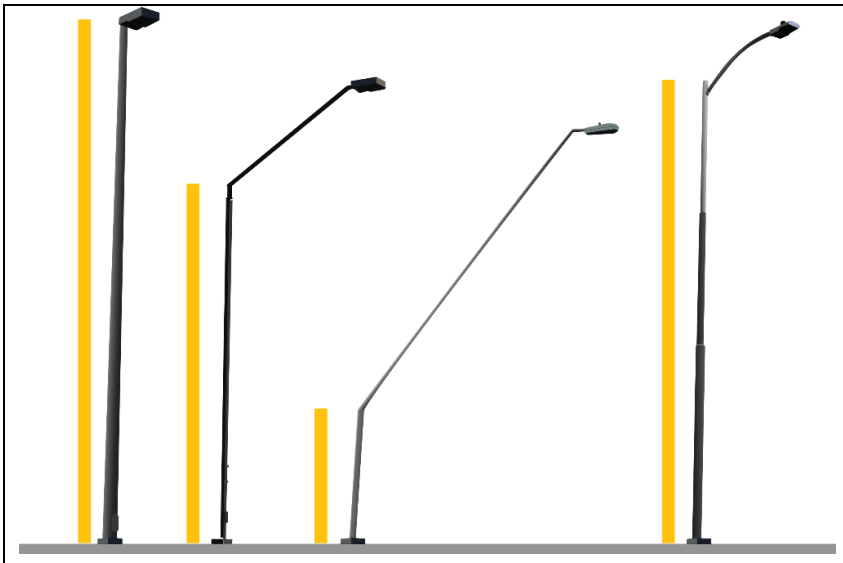


Exhibit A1: Calculation points for height of an existing streetlight with separate luminaire mast arm. The yellow line next to the streetlight depicts the section of the existing streetlight pole used to calculate the height of the existing pole. The lines are not to scale and are solely used for illustrative purposes.

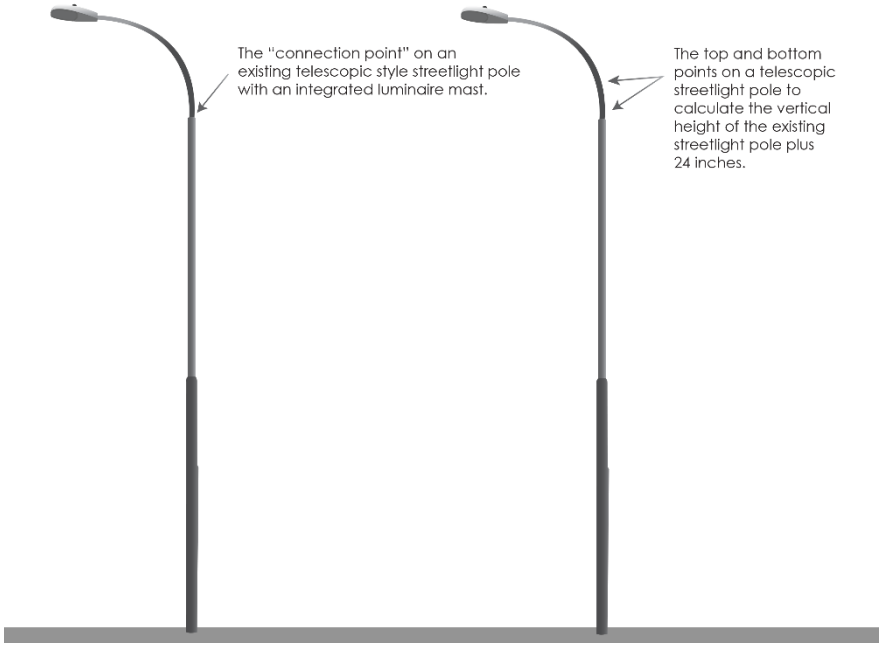


Exhibit A2: Calculation points for height of an existing streetlight with integrated luminaire mast arm.

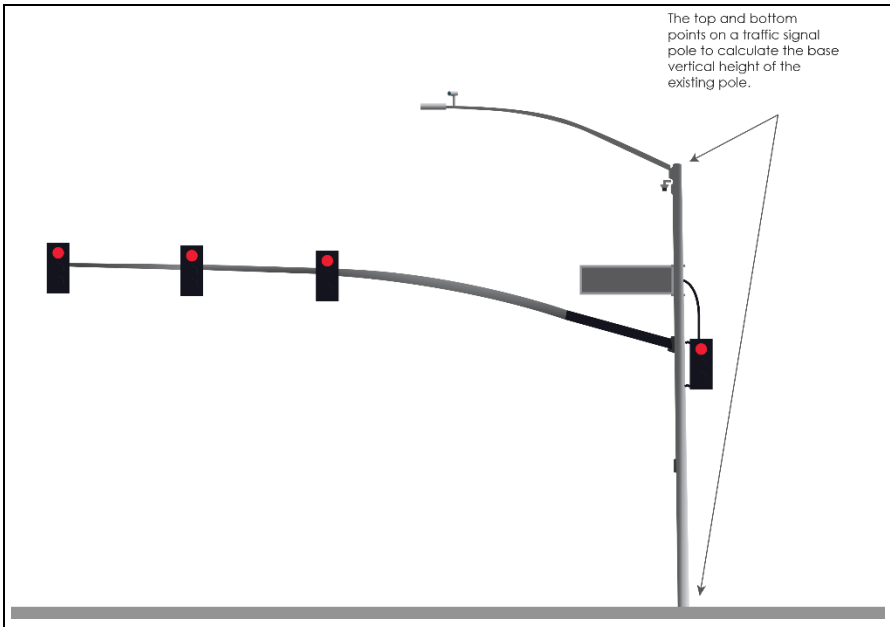


Exhibit B: Calculation points for height of existing traffic signal pole.

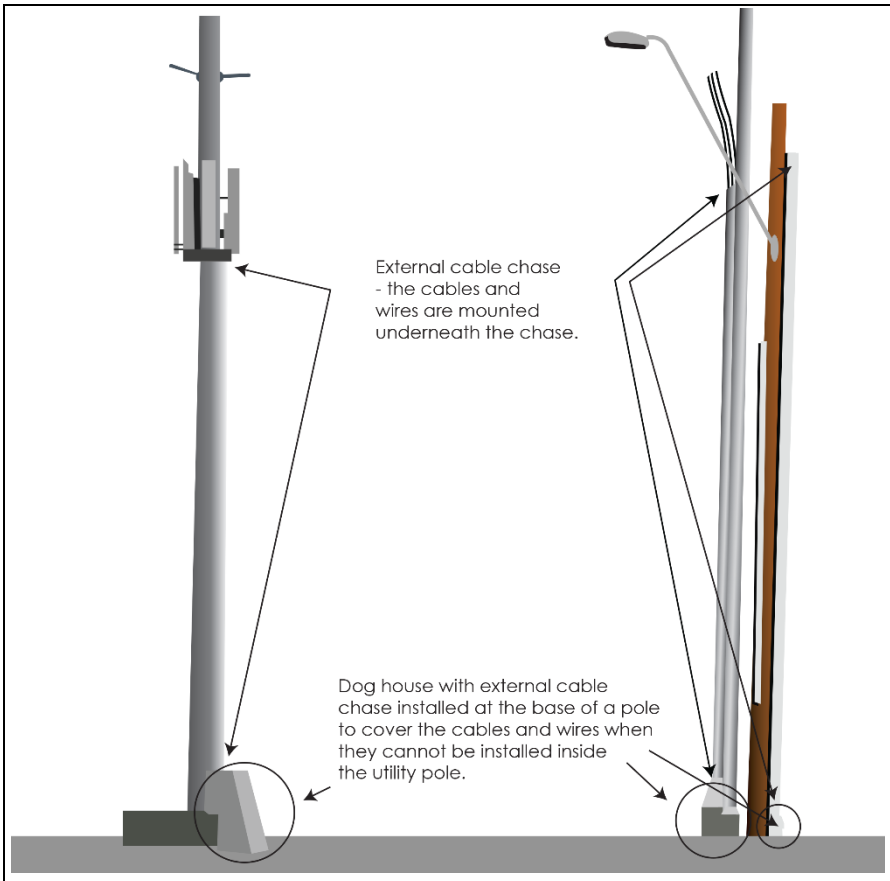


Exhibit C: Dog house—cable transition from underground to electric utility pole.

Exhibit D1: Antenna shrouds—45 degrees.

Exhibit D2: Antenna shrouds—90 degrees.

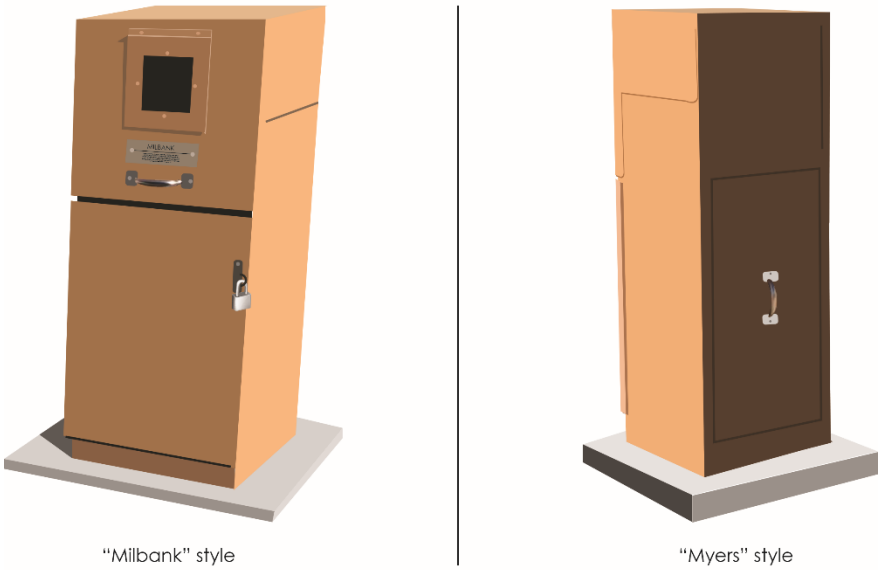


Exhibit E: Examples of electrical meter pedestals—"Myers" or "Milbank" style.

12-8-26 Forms

A. Forms shall substantially conform to those set forth in this section, with such revisions as may be approved as to substance by the town manager and town engineer and approved as to form and legality by the town attorney.

B. Form of telecom license agreement.

TOWN OF MARANA RIGHT-OF-WAY TELECOM LICENSE AGREEMENT

THIS TELECOM LICENSE AGREEMENT is granted by the TOWN OF MARANA (the "Town"), an Arizona municipal corporation; in favor of _____ (the "Wireless Provider"). The Town and Wireless Provider are each sometimes referred to as a "Party" and together referred to as the "Parties."

RECITALS

The Town owns and controls public right-of-way within the town limits of the Town of Marana.

Wireless Provider desires to install and operate wireless telecommunications receiving, processing and transmitting devices and related electronic equipment (the "Communications Equipment") in the public right-of-way in accordance with the Standard Terms, this Telecom License Agreement, and the terms of one or more right-of-way permits issued by the Town.

Wireless Provider has obtained or is in the process of seeking from the Town one or more right-of-way permits pursuant to Marana Town Code Chapter 12-7 (Construction in town rights-of-way) (the "Street Code"), each of which is referred to in this Telecom License Agreement as a "right-of-way permit" for a specifically described parcel of Town right-of-way referred to in the right-of-way permit and in this Telecom License Agreement as a "Use Area."

LICENSE

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this License as though fully restated here, and the mutual covenants set forth in this License, the Parties hereby agree as follows:

1. *Incorporation of Standard Terms*. Marana Town Code Chapter 12-8 (Wireless communication facilities in the right-of-way) sets out the various recitals and provisions (collectively the "Standard Terms") of this Telecom License Agreement, and is incorporated by reference as if set forth in full in this Telecom License Agreement. WIRELESS PROVIDER WARRANTS AND REPRESENTS THAT WIRELESS PROVIDER HAS READ AND AGREES TO THE STANDARD RECITALS AND THE STANDARD TERMS. Terms used but not defined in this Telecom License Agreement shall have the meanings assigned by the Standard Terms.

2. *License*. The Town hereby authorizes the Wireless Provider to use the Use Area of each right-of-way permit in conformance with this Telecom License Agreement and all applicable local, state, and federal laws and regulations.

3. *Use of Use Area*. Wireless Provider may use the Use Area for the installation of the particular Communications Equipment in the particular configuration all as described in the Boundary Plan and other

supporting materials submitted by the Wireless Provider for the right-of-way permit.

4. *Term; modification, termination, assignment, etc*. This Telecom License Agreement is issued for an initial term of ten years, and its term, modification, termination, assignment, and other terms, conditions, and provisions are set forth in the Standard Terms.

5. *Notices.* Any notice, request, demand, consent, approval, waiver or other communication, herein individually and collectively referred to as "notice", which may be or is required to be given by a Party under this License or by law to the other Party shall be in writing and shall be either personally delivered to the Party or shall be sent by: (i) registered or certified mail, postage paid by sender, return receipt requested; or (ii) overnight courier service (such as FedEx). Said notice shall be deemed received upon the earlier of: (i) personal delivery; (ii) if mailed, the date of posting by the United States Post Office or overnight courier service. Notices shall be sent to the other Parties at the following addresses:

TOWN:	TOWN OF MARANA 11555 W. Civic Center Drive Marana, Arizona 85653
WIRELESS PROVIDER:	[Insert name] [Address] [City/State/Zip]

6. *Change of address*. Notice of change of any Party's address shall be given promptly by written notice in any method described in paragraph 5 ("Notices") of this Telecom License Agreement. In the event any notice is rejected, refused, returned, or otherwise not received as a result of failure of a Party to give adequate notice of changed address, the notice shall nevertheless be deemed received.

7. *Recording*. The Town shall record this License in the office of the Pima County Recorder after it has been executed by the Parties.

8. *Conflicts*. This License is subject to A.R.S. § 38-511, which provides for cancelation in certain instances involving conflicts of interest.

IN WITNESS WHEREOF, the Parties have executed this License effective as of the last Party's signature date below.

The "Town":

TOWN OF MARANA, an Arizona municipal corporation

By:_____
Town Engineer

Date: _____

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

The "Wireless Provider":

[NAME OF ENTITY], a [type and state of entity]

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, the _____ of [WIRELESS PROVIDER'S NAME], a [Wireless Provider's entity type and state], on behalf of the [corporation/LLC].

(Seal)

_____
Notary Public

EXHIBIT A – LIST OF RIGHT-OF-WAY PERMITS/USE AREAS

1. Right-of-Way Permit Number RW_____, issued on _____, for the Use Area described as follows:_____
2. [Add as needed]

C. Form of letter of credit.

Date _____, 20__

Letter of credit no.:_____

Town Engineer
Town of Marana
11555 West Civic Center Drive
Marana, Arizona 85653

Dear Sir or Madam:

We hereby establish our clean, unconditional and irrevocable letter of credit in your favor at the request and for the account of _____ in the aggregate amount of _____ ($_____), available upon presentation of your draft in the form attached hereto as **Schedule 1**.

We will honor each draft presented to us in compliance with the terms of this letter of credit. Partial draws are permitted. Each draft must be accompanied by a copy of this letter of credit. Within ten days after we honor your draft, you must make the original of this letter of credit available to us in Pima County, Arizona upon which we may endorse our payment. Drafts may be presented by any of the following means:

1. By telefax to (_____) _____-_____.
2. By email to _____.
3. By hand or overnight courier service delivery to: [This address must be in Pima County, Arizona.]

   _____
   _____
   _____

4. By hand or overnight courier service delivery to: [This address need not be in Pima County, Arizona]

   _____
   _____
   _____

This letter of credit is valid until _____, 20____ and shall thereafter be automatically renewed for successive one year periods, unless at least 120 days prior to expiration we notify you in writing, by either registered or certified mail, that we elect not to renew the letter of credit for such additional period. In the event of such notification, any then unused portion of the letter of credit shall be available upon your presenting to us your draft on or before then current expiration date.

This letter of credit is subject to the UCP600. This letter of credit is not assignable.

[Bank name], a _____

By [Bank officer's signature]

[Bank officer's name printed]

Its [Bank officer's title]

Phone: [Bank officer's phone number]

D. Form of draft on letter of credit

To: _____
_____
_____

From: Town Engineer
Town of Marana
11555 West Civic Center Drive
Marana, Arizona 85653

Date: _____, 20_____

Ladies and Gentlemen:

Pursuant to your Credit No. _____, the Town of Marana hereby demands cash payment in the amount of _____ ($_____).

Please make your payment to the town of Marana in the form of a wire deposit to:

_____
_____
_____
_____

If the deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the Town Engineer of the Town of Marana.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at (520) 382-2600 so that I can correct it. Also, please immediately notify the town Attorney at (520) 382-1940.

Thank you.

_____
Town Engineer, Town of Marana

E. Form of assumption of telecom license agreement and antenna site right-of-way permit

ASSUMPTION OF TELECOM LICENSE AGREEMENT

This assumption is made pursuant to Marana Town Code section 12-8-22 (Assignment) incorporated by reference into of the telecom license agreement and right-of-way permit(s) issued by the Town of Marana, an Arizona municipal corporation ("the town") to

_____, a _____ ("wireless provider"), and particularly described as follows:

Telecom license agreement no._____ dated _____, 20____.

_____, a _____ ("Assignee"), having acquired the rights of the wireless provider under the telecom license agreement listed above, hereby assumes the telecom license agreement, agrees to be bound by it, and obligates itself to perform the terms and conditions of the telecom license agreement and all standard terms incorporated by reference in it, all in favor of the town. The person signing this document on behalf of Assignee warrants to the town his or her authority to do so.

Dated: _____, 20_____

ASSIGNEE: _____, a _____

By: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, _____ of _____, a _____.

_____
Notary Public

(Seal)

CHAPTER 12-9. OVERDIMENSIONAL VEHICLES

Ordinance 2018.008 added chapter 12-9

12-9-1 Definition

For purposes of this chapter, "overdimensional vehicle" means any vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the limits set forth in A.R.S. title 28, chapter 3, article 18, as amended.

12-9-2 Operation of overdimensional vehicles; permit required; non-transferable

A. It shall be unlawful to operate or move any overdimensional vehicle on a town street without a special permit issued by the town pursuant to this chapter.

B. A special permit issued under this chapter shall be issued pursuant to and in conformity with A.R.S. title 28, chapter 3, article 18, as amended, and Arizona administrative code title 17, chapter 6, as amended.

C. A special permit issued under this chapter must be carried in the overdimensional vehicle to which it refers and shall be open to inspection by any police officer or authorized agent of the town.

D. A person shall not violate any of the terms or conditions of a special permit.

E. All special permits issued pursuant to this chapter are non-transferable.

12-9-3 Application process; fees; non-refundable

A. The applicant or the applicant's authorized representative shall submit a written special permit application to the town manager or designee on the form provided by the town for that purpose.

B. The application for special permit shall specifically describe the vehicle or vehicles and load to be operated or moved, including the type of vehicle and the number of axles, and the maximum length, width, height, and weight of the vehicle or vehicles and load.

C. The application for special permit shall specifically describe the particular streets for which the permit to operate is requested.

D. The application for special permit shall specify whether the applicant is applying for a single trip permit, a 30-day permit, or a one-year permit. 30-day and one-year permits may be issued for the operation or movement of overdimensional vehicles when any load to be carried within the 30-day or one-year period does not exceed the permitted weight and dimensions and the same equipment will be used for the same type load during the permit period.

E. If the overdimensional vehicle is to be routed over a bridge, culvert, or similar type of structure under the jurisdiction of the town, the maximum weight load must be under the maximum load capacity for the particular bridge, culvert, or structure, as determined by the town engineer.

F. The applicant, at the applicant's own expense, may be required to submit an engineering analysis certifying that the applicant's overdimensional vehicle will not overstress or damage any element of the transport route or a structure on the route. The engineering analysis must be prepared by an engineer registered by the Arizona state board of technical registration in structural or civil engineering, as prescribed under A.R.S. title 32, chapter 1, according to industry standards. For purposes of this paragraph, an engineering analysis prepared according to the following publications complies with industry standards:

1. The most recently published edition of the American association of state highway transportation officials manual for bridge evaluation, including all interims, standards, or guidelines;
2. The most recently published edition of the American association of state highway transportation officials load and resistance factor design – bridge design specifications, including all interims, standards, or guidelines; and
3. The Arizona department of transportation bridge load rating guidelines and bridge design guidelines

G. The applicant shall certify to the town that all information provided on the application is true and correct.

H. The applicant shall pay any applicable fees as set forth in a fee schedule adopted by the council and amended from time to time, except that fees shall not be assessed in the following circumstances:

1. When the overdimensional vehicles is owned by the United States government, the state of Arizona, or an Arizona county, city, or town.
2. If a special permit is required by the state of Arizona and the town, the applicant shall pay a permit fee only to the state of Arizona.
3. If a special permit is required by more than one municipality or county, and is not required by the state of Arizona, the applicant shall pay a permit fee only to the municipality or county that has jurisdiction of the streets and highways where the movement of the overdimensional vehicle originates.

I. All fees collected pursuant to this section are non-refundable.

J. The town may require an undertaking or any other security as deemed necessary by the town manager or designee to compensate for damage to a roadway or road structure.

12-9-4 Permit issuance or denial

A. A special permit application under this chapter shall be approved unless the town manager or designee determines that any of the following conditions exist:

1. The proposed transport route or a structure on the route is:
   a. Unable to bear the size or weight of the overdimensional vehicle and load; or
   b. Under repair; or
   c. Temporarily closed due to a hazardous condition.
2. An applicant for a permit to transport a mobile home does not provide written proof of ad valorem tax payment or clearance as required under A.R.S. § 28-1104.

3. The applicant made a material misrepresentation or misstatement on the permit application or any other document submitted to the town in support of the permit application.

B. If the permit is denied, the town manager or designee 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.

12-9-5 Classification; enforcement; continuing violations

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.

CHAPTER 12-10. OTHER PENALTIES

Ordinances 2008.04, 2008.11, and 2018.008 renumbered this chapter, and Ordinance 2006.31 added "other" to the chapter title

12-10-1 Other violations

This section 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. For purposes of this subparagraph, aircraft does not include model aircraft as defined and regulated in section 13-1-4.

Ordinance 2017.006 added the last sentence to subparagraph 12

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 Model aircraft operation; definition; prohibitions; exceptions

Section 13-1-4 was added by Ordinance 2017.006.

A. For purposes of this section, "model aircraft" has the same meaning as prescribed in section 336 of the FAA modernization and reform act of 2012, as amended, and includes aircraft commonly known as drones.

B. It is unlawful to:

1. Operate a model aircraft to takeoff or land in a town park or preserve without a permit issued by the parks and recreation department.

2. Operate a model aircraft to takeoff or land in a town park or preserve where the parks and recreation director has prohibited such operations. The parks and recreation director shall ensure that a list of prohibited locations shall be on file with the town clerk.

3. Operate a model aircraft to takeoff or land in any town park or preserve located within five miles of the Marana regional airport

Ordinance 2018.013 amended subparagraph B.3.

unless the person operating the model aircraft is in compliance with all applicable requirements of section 15-2-18 of this code.

C. This section does not apply to model aircraft that are operated by town police personnel or other law enforcement officers, fire department personnel, and other town employees in the course of their official duties, and in compliance with all federal laws and regulations.

13-1-5 Violations; classification

This section was renumbered as 13-1-5 by Ordinance 2017.006. Ordinance 2015.006 revised the title of and rewrote this section. 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.

13-1-6 Town employees

This section was renumbered as 13-1-6 by Ordinance 2017.006.

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

CHAPTER 14-1. GENERAL PROVISIONS 14-1

CHAPTER 14-2. RESPONSIBILITIES 14-2

CHAPTER 14-3. UTILITY SERVICE 14-3

CHAPTER 14-4. CONSTRUCTION AND FINANCING OF UTILITY FACILITIES 14-5

CHAPTER 14-5. PROVISION OF UTILITY SERVICE 14-7

CHAPTER 14-6. RATES AND CHARGES 14-12

CHAPTER 14-7. EMERGENCY WATER CONSERVATION RESPONSE 14-16

CHAPTER 14-8. BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL 14-19

CHAPTER 14-9. VIOLATIONS 14-26

CHAPTER 14-10. INDUSTRIAL WASTEWATER ORDINANCE 14-28

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

The town water director shall be responsible for the day to day management of the town utilities including, but not limited to:

Ordinance 2015.015 modified the title and introductory paragraph of section 14-2-2 by changing "utilities director" to "water director"

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

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.

Ordinance 2015.015 modified section 14-3-1 by changing "utilities department" to "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, designate the facility as a "protected facility" and 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.

Ordinance 2018.022 modified paragraph C by adding the phrase about designating a protected facility

14-4-4 Refund of cost of facilities funded and installed by the town

Ordinance 2018.022 added section 14-4-4. The town attorney added "is" to the first sentence on January 15, 2019, as a scrivener's error correction, by authority of section 1-4-5

If a water or wastewater facility is installed and funded by the town to provide water or wastewater service to a property not participating in the construction cost, the water director may request that the council designate the facility as a "protected facility" and establish a "protected facility charge" to be charged proportionately to each subsequent connection by non-participating property owners made to or benefiting from the protected facility.

14-4-5 Notice of protected facility and associated charge

Ordinance 2018.022 added section 14-4-5

A. Not less than 30 days before the designation of a protected facility and the adoption of an oversizing recovery charge or protected facility charge, the water director shall notify owners of potentially affected property.

B. Potentially affected property consists of lands the water director reasonably believes are likely someday to be served by the protected facility, taking into consideration topography, proximity, and normal water and sewer facility service and extension factors.

C. Notice shall be given by electronic mail whose receipt is acknowledged by the recipient or by first class mail to the owner of the property as listed on the property tax roll.

D. All of the following shall be included with the notice:

1. A description of the protected facility.
2. The amount per equivalent demand unit of the oversizing recovery charge or protected facility charge.
3. An explanation of how the charge was calculated.
4. The date and time of the council meeting where the protected facility designation and charge are expected to be considered for adoption.

E. Failure to give or receive notice as provided in this section shall not affect the validity of the protected facility designation or the charge.

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:

Ordinance 2015.015 modified paragraph B by changing "utilities department" to "water department"

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.

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. After-hours new service establishment fee. 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. After-hours reconnect fee. An after-hours reconnect fee shall be charged for the cost of reconnecting service after hours, on weekends or on holidays.

C. Backflow permit fee. 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. Backflow permit replacement fee. A backflow permit replacement fee is charged when a device fails and must be replaced rather than repaired.

E. Customer-requested meter re-read fee. 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.

14-6-4 Bill adjustment for excessive water leak

Ordinance 2015.020 added section 14-6-4, retroactively effective to July 1, 2015

A. Purpose. This section is intended to provide financial relief for an abnormally high residential water bill caused by an unpredictable and accidental water leak.

B. Criteria. The relief authorized by this section is available only if all of the following elements are present:

1. The affected meter serves a residential customer for domestic use.
2. Relief authorized by this section has not been granted with respect to the affected meter within the 36-month period preceding the date of the bill in question.
3. The customer seeking relief is current on all Marana water payments except the bill in question.
4. The application for relief is submitted by the customer who is responsible for paying the bill in question.
5. The water director reasonably determines that:
   a. The bill in question was caused by an accidental water leak; and
   b. The water leak that caused the bill in question has been repaired; and
   c. Water use at the affected meter has returned to normal consumption.

6. The application for relief is submitted to the water director within 60 days of the date of the bill in question.

7. The bill in question shows water consumption no less than three times the affected meter's normal consumption.

C. Definitions. The following definitions apply to this section:

1. The "affected meter" is the meter that delivers water to the leak location.

2. The "bill in question" is the water bill for which relief is sought.

3. "Normal consumption" is the total water consumption measured by the affected meter over the 12 months preceding the date of the bill in question divided by 12. If for any reason the subject residence has been vacant at any time in the 12 months preceding the date of the bill in question, "normal consumption" shall be the higher of the following:

   a. The total water consumption measured by the affected meter during the months the subject residence was fully occupied and the applicant was the customer on the water account in the prior year, divided by the number of months so measured.

   b. The default average for all Marana water customers.

4. The "subject residence" is the residential property served by the affected water meter.

D. Adjustment calculation. If an application meets all requirements of this section, the water department shall adjust the bill in question as follows:

1. Normal tiered water rates shall apply to the quantity of water constituting three times the affected meter's normal consumption.

2. Any quantity of water exceeding three times the affected meter's normal consumption shall be charged based on the irrigation rate.

3. The ground water resource acquisition fee and superfund tax shall be charged for the full volume of water reported in the bill in question.

E. Payment and remedies.

1. A customer shall not be subject to late fees or in jeopardy of disconnection for non-payment of the bill in question during the period that the bill in question is under consideration for adjustment pursuant to this section.

2. A customer shall pay the adjusted water bill within 20 calendar days of its issuance.

3. All normal water department remedies shall apply after the 20-day period for payment of the adjusted water bill, including

without limitation delinquent fees and disconnection for non-payment.

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 changeover 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 resilient 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

Ordinance 2015.015 modified section 14-9-2 by changing "utilities department" to "water department"

It is unlawful for any unauthorized person to connect to the town water utility a water service that the water department has disconnected.

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

Ordinance 2015.015 modified the introductory paragraph of section 14-9-4 by changing "utilities department" to "water department"

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:

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.
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.

Ordinance 2015.015 modified paragraphs 11 and 12 to reflect the change from "utilities department" to "water department"

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 regulations): § 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, structures, 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 authority 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 operational 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
g.	Lead – total	0.5
h.	Manganese – total	83.0
i.	Mercury – total	0.05
j.	Nickel – total	3.98

	Substance	Limit (mg/l)
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 (chloro-methane)	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
n.	1,2-Dichloropropene	3.65
o.	1,3-Dichloropropene	0.09
p.	Ethylbenzene	1.59

	Compound	Limit (mg/l)
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 established 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

Ordinance 2015.015 modified paragraph S by changing "utilities department" to "water department"

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.

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.

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.

Ordinance 2015.015 modified subparagraphs a and b by changing "utilities department" to "water department"

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.

   Ordinance 2015.015 modified paragraph 3 by changing "utilities department" to "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.

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 extent 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 standards, 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 B. 3 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 infor-

mation, 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
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. GENERAL USE OF AIRPORT 15-9

CHAPTER 15-3. FUELING, FLAMMABLE FLUIDS, AND SAFETY 15-24

CHAPTER 15-4. AIRCRAFT OPERATIONS 15-28

CHAPTER 15-5. VEHICLES AND PEDESTRIANS 15-32

TITLE 15. MARANA REGIONAL AIRPORT

Ordinance 2017.015 comprehensively rewrote title 15. For prior history, see Ordinances 2004.10, 2004.13, and 2005.22.

CHAPTER 15-1. GENERAL

15-1-1 Short title

This title may be cited as the Marana regional airport rules and regulations.

15-1-2 Purpose and application of rules and regulations

A. The provisions of this title are intended for the safe, orderly and efficient operation of the airport and apply to all tenants, commercial aeronautical activity providers, and other persons using the airport for any reason.

B. Unless a particular regulation states otherwise, the regulations set forth in this title shall apply only on the airport property.

C. Violations of federal aviation regulations shall fall under the jurisdiction of the FAA.

15-1-3 Definitions

A. All definitions contained within the federal aviation regulations, 14 CFR part 1, shall be considered as included in this section.

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

1. "Air traffic" means aircraft operations anywhere in the airport traffic area and in the movement area.

2. "Air traffic control" means a service operated by a duly designated authority to direct air traffic movements and promote the safe, orderly, and expeditious flow of air traffic.

3. "Aircraft accident" or "aircraft incident" means a collision or other contact between a part of an aircraft and another aircraft, vehicle, person, stationary object or other thing that results in bodily injury, death or property damage; or an entry into or emerging from an aircraft or vehicle by a person that results in bodily injury or death of any person or property damage.

4. "Aircraft fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine or a jet or turbine engine.

5. "Aircraft maintenance" means all maintenance performed on an aircraft, including major aircraft alterations and repairs, and aircraft preventive maintenance.

6. "Aircraft operation" means an aircraft arrival at or departure from the airport.

7. "Aircraft owner" means any person holding legal title to an aircraft, as evidenced by an appropriate certificate of title if applicable, or any person authorized by the legal title holder to use or possess the aircraft.

8. "Aircraft parking area" means a hangar and apron location on the airport designated by the airport director for the parking and storage of aircraft.

9. "Aircraft preventive maintenance" means aircraft maintenance that is not a major aircraft alteration or repair, and does not involve complex assembly operations, and is similar to the types of work listed in 14 CFR part 43, appendix A, paragraph (c), except that for the purpose of this title, replacing prefabricated fuel lines shall be considered a major aircraft repair.

10. "Airport" means all of the town-owned or leased real and or personal property comprising the Marana regional airport as it now exists or as may hereafter be expanded and developed, including all of the facilities as shown on the most current FAA-approved airport layout plan (ALP).

11. "Airport director" means the person designated as the town of Marana's airport director, any person directed by the town manager to act as the airport director, or the airport director's authorized representative.

12. "Airport grant agreement" means an agreement between the FAA and an airport sponsor through which the airport sponsor received grant money from the FAA in exchange for committing to fulfill certain obligations related to the airport operated by the sponsor.

13. "Airport operations area" or "AOA" means all restricted ground areas of the airport, including taxiways, runways, loading ramps, and parking areas; the AOA is divided into two distinct areas: the "movement" area and the "non-movement" area.

14. "Airside" means the portion of an airport that contains the facilities necessary for the operation of aircraft.

15. "Apron" or "ramp" means an area designed for loading or unloading passengers and/or cargo, refueling, catering, parking or maintenance of aircraft.

16. "AWOS" means automated weather observation system.

17. "Based aircraft" means an aircraft that meets all of the following criteria:

    a. The owner physically locates the aircraft at the airport with the intent and purpose for the aircraft to remain for an undetermined period; and

    b. Whenever absent from the airport, including for a limited or seasonal duration, the aircraft's owner intends to return the aircraft to the airport for permanent storage; and

c. The aircraft's presence on the airport is not transitory in nature.

18. "Based commercial aeronautical activity provider" means a commercial aeronautical activity provider that has been given permission by the airport director to conduct its business using an airport hangar or other airport facility as the primary location for its business.

19. "Commercial activity" means the conduct of any aspect of a business, concession or service in order to provide goods or services to any person for compensation, including any such activity conducted by a charitable or non-profit organization.

20. "Commercial aeronautical activity" means any commercial activity that involves, makes possible, or is required for the operation of aircraft or an airport, or that contributes to or is required for the safety of such operations, including, but not limited to, the following activities:

    a. Aircraft sales and services
    b. Airframe and power plant repair services
    c. Aircraft rental services
    d. Flight training services
    e. Aircraft charter or on-demand air taxi services
    f. Air ambulance services
    g. Airborne mineral exploration
    h. Aircraft management services
    i. Radio, instrument or propeller repair services
    j. Aerial applications (e.g., crop-dusting, fire suppression)
    k. Aviation fuels and petroleum product sales
    l. Sale of aviation parts
    m. Lease, sublease, or rental permit of any aircraft hangar, shade, tie-down, or other parking space
    n. Banner towing and aerial advertising
    o. Aerial photography or survey
    p. Powerline or pipeline patrol
    q. Aircraft washing and cleaning services
    r. Any other commercial activity that is directly related to the operation, maintenance, repair, or storage of aircraft or the operation of the airport

21. "Commercial aeronautical activity provider" means any person that provides a commercial aeronautical activity on the airport.

22. "Commercial operating permit" means a permit that has been approved and issued by the airport director, prior to conducting any commercial business at the airport.
23. "Disabled aircraft" means an aircraft that remains in the movement area following an aircraft accident or incident or other event that renders it non-airworthy.
24. "FAA" means the federal aviation administration.
25. "FAA certificate of aircraft registration" means the FAA form that shows aircraft type and current ownership.
26. "FAR" means federal aviation regulations.
27. "Federal airport grant assurance obligations" means provisions within a federal airport grant agreement with which the recipient of federal airport development funding has agreed to comply in exchange for the assistance provided.
28. "Fixed base operator" or "FBO" means the company that conducts the servicing of general aviation within the airport restricted area.
29. "Foreign object debris" or "FOD" means any loose item (trash, metal, rocks, etc.) lying on the ground having the potential to cause significant damage to property or injury to aircraft and personnel in the AOA.
30. "Fuel handling" means the transportation, delivery, and draining of fuel or fuel waste products, and the fueling/defueling of aircraft.
31. "Fuel storage area" means any portion of the airport designated temporarily or permanently by the town as an area in which fuel may be stored or loaded.
32. "General aviation" means all types of civil aviation operations other than those conducted as a commercial aeronautical activity.
33. "Ground support equipment" or "GSE" means the support equipment at an airport used to service or support the operation of aircraft on the ground.
34. "Hangar" means an aircraft hangar used primarily for aircraft storage or aircraft maintenance.
35. "Hazardous materials" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive, or as a contaminate or pollutant, or other similar term, by, and/or that is subject to regulation under, any federal, state or local environmental or hazardous materials statute, regulation, or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

36. "Helipad" means an apron that is designated solely for rotorcraft operations; the helipad is part of the airport movement area.
37. "Hold short line" means a pavement marking consisting of two solid yellow stripes followed by two dashed stripes extending across the width of the taxiway or runway indicating where an aircraft is required to stop as the marking indicates the close proximity of an active runway.
38. "Landside" means the portion of an airport that provides the facilities necessary for the processing of passengers, cargo, freight, vehicle parking, and ground transportation vehicles.
39. "Lease" means an agreement granting the right to occupy or use property during a certain period in exchange for a specified rent.
40. "Major aircraft alterations and repairs" means major aircraft alterations and/or repairs of the types listed in 14 CFR part 43 appendix A, paragraphs (a) and (b).
41. "Minimum operating standards" means those standards adopted by the town as the minimum requirements to be met as a condition for the privilege of conducting commercial activities at the airport, as such standards may be amended from time to time, and containing detailed provisions outlining the minimum building size and other standards acceptable by the airport for a business operating on the airport.
42. "Movement area" means the runways, taxiways, helipad, and other areas of an airport that are used for taxiing, takeoff, and landing of aircraft.
43. "Non-movement area" means all parking areas, tie-down areas, perimeter roads, aprons/ramps and other areas within the AOA that are not specifically designated as within the movement area.
44. "Non-tenant operator" means a person with no established office, station, or location on airport property and not having a lease agreement with the airport.
45. "NOTAM" means notice to airmen.
46. "NTSB" means the national transportation safety board.
47. "Perimeter roads" means gravel or paved roadways that circumnavigate the AOA.
48. "Permit" means a written document issued by the airport director, authorizing the recipient to conduct one or more commercial activities at the airport that the recipient would not otherwise be authorized (e.g., by a commercial lease) to conduct.
49. "Road" or "roadway" means any roadway within the boundaries of the airport and designated for use by vehicles, whether improved or unimproved and whether dedicated or not.

50. "Rules and regulations" means the version of this title in effect at any given time.

51. "Runway" means a defined rectangular surface on an airport prepared and suitable for the landing and takeoff of aircraft; runways have markings in white with white lights.

52. "Safety area" means a defined area comprised of either a runway or taxiway and the surrounding surfaces that is prepared or suitable for reducing the risk of damage to aircraft in the event of an undershoot, overshoot, or excursion from a runway or the unintentional departure from a taxiway.

53. "Shade port" means an area used for the storage of aircraft or other items permitted by the airport director or for activities permitted by the airport director that is covered by a roof but no sides.

54. "Specialized aviation service operator" or "SASO" means a person that conducts one or more of the types of commercial aeronautical activities described in the airport minimum operating standards.

55. "Taxilane" means the portion of the aircraft parking areas used for access between taxiways and aircraft parking areas.

56. "Taxiway" means a paved and marked area established for taxiing of aircraft from one place on an airport to another; taxiways have markings in yellow with blue lights.

57. "Tenant" means any person authorized to occupy or use any portion of the airport on the basis of either a written lease or permit directly with or from the town, or a sublease with an entity that has a lease directly with the town; includes any entity that has an ownership interest in a hangar located on airport property, since that ownership interest is subject to both the lease under which the underlying land was leased from the town, and the sublease under which that land was subleased from the entity (such as the FBO) that leased the land directly from the town.

58. "Tie-down" means an area used for the storage of aircraft or other items permitted by the airport director or for activities permitted by the airport director that is not covered by a roof.

59. "Traffic pattern" means the traffic flow that is established for aircraft landing at, taxiing on, or taking off from the airport.

60. "UAS" means unmanned aircraft system, commonly referred to as a drone.

61. "UNICOM" means a universal communication radio frequency used at uncontrolled airports for pilot communication, and to communicate with the FBO to arrange services such as parking, fuel, and general information.

62. "Vehicle" means a device other than an aircraft in, upon, or by which any person or property is or may be propelled, moved or drawn upon a roadway.

63. "Vehicle parking area" means any portion of the airport designated and made available temporary or permanently by the town for the parking of vehicles.

64. "Vehicular accident" means a collision or other contact between a part of one vehicle and another vehicle, or a person, stationary object or other thing that results in bodily injury, death or property damage; or an entry into or emerging from any vehicle by a person that results in bodily injury or death of any person or property damage.

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. Marana regional airport minimum operating standards

B. Marana regional airport rates and fees, as established by a fee schedule adopted by the town council and amended from time to time

C. Marana regional airport ultra-light aircraft operating rules

D. Marana regional airport architecture and landscape design standards

E. Marana regional airport commercial leasing policy and application

15-1-5 Conflicting laws, ordinances, regulations, and contracts

A. In any case where a provision of this title is in conflict with any other provision of this title, or in conflict with a provision of any zoning, building, fire, safety, health or other ordinance, code, rule, or regulation of the town, the provision that establishes the higher standard for the promotion and protection of the health and safety of people shall apply.

B. No existing or future town contract, lease agreement or other contractual arrangement, or any payment or performance thereunder, shall excuse any failure of full and complete compliance with this title.

C. Compliance with this title shall not excuse any failure of full and complete compliance with any obligations to the town under any existing or future town contract, lease agreement, or other contractual arrangement.

D. If any part of this title conflicts with federal or state law or regulation, then such federal or state authority shall take precedence.

15-1-6 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 for up to 30 days to ensure public safety or the efficient use of the airport.

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.

D. To inspect all areas under lease to or occupied by tenants, including all hangars, at all reasonable times.

15-1-7 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.

15-1-8 Classification; enforcement; continuing violations; effect of revocation or suspension on prosecution

A. Whenever in this title 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. The provisions of this title and any resolutions, minimum standards or other rules and regulations promulgated under this title, and the provisions of any other ordinance or law related to the airport, may be enforced in any manner provided for by town ordinances and state or federal laws.

C. No delay or failure on the part of the town in enforcing any aspect of this title shall impair the t own's enforcement action, nor shall any delay be construed as a waiver of such enforcement action.

D. No single or partial exercise of an enforcement action shall preclude any further exercise of enforcement right, or privilege of the town.

E. No waiver of any aspect of this title shall be valid unless made in writing and signed and dated by the airport director, and then only to the extent expressly specified in such writing and expressly permitted by this title.

F. Each day any violation continues shall constitute a separate offense.

G. Revocation or suspension of any license or permit required by this title or any state or federal law shall not be a defense against prosecution.

15-1-9 Administrative 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 and/or loss of unescorted AOA access privileges.

CHAPTER 15-2. GENERAL USE OF AIRPORT

15-2-1 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 standards promulgated under this title, this code, and all other applicable state and federal laws, rules and regulations.

C. Entry upon the airport property by any 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 town or 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 and dated 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. The town assumes no responsibility for injury or damage to persons or property of persons, stored on, or using the airport facilities, by reason of fire, theft, vandalism, weather, storm, flood, earthquake, or collision, nor does the town assume any liability for injury to persons while on the airport or while using airport facilities. 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. Any person accessing the airport shall be responsible for their actions and the actions of any person to whom they provide access, whether directly or indirectly.

I. No person other than those in an aircraft operating on the airport or in vehicles authorized to service or support such aircraft shall enter the AOA except with written approval of the airport director or other authorized representative. All persons authorized access to the AOA shall have suitable identification on their person when in the area.

J. No person may use the airport or its facilities, or engage in any conduct on or related to the airport, in any way that would cause the town to be in non-compliance with any of the town's federal and/or state airport grant assurance obligations.

K. All children under the age of 13 years must be accompanied by an adult 18 years of age or older at all times.

15-2-2 Commercial business operations

A. No person shall use any portion of the airport for any commercial activities unless the commercial activities are conducted by the person pursuant to a business license issued by the town and either a written commercial lease or sublease authorizing the commercial activity or a permit issued by the airport director authorizing the commercial activity.

B. The airport director may issue permits for commercial activities at the airport to persons whose commercial activities do not require a formal lease or sublease, provided that such permits are effective for no more than 30 days or are terminable by the town without cause upon no less than 30 days' notice, or are immediately terminable by the town for cause.

C. No commercial business operations shall be permitted in storage hangars.

D. No person shall engage in any commercial aeronautical activity at the airport except in conformity with all federal aviation regulations, the applicable provisions of title 28, chapter 25, Arizona revised statutes, the applicable provisions of this code, and this title.

E. Prior to commencing any commercial activity at the airport a person must present to the airport director satisfactory information and proof that he or she meets the minimum operating standards established by the town for engaging in such commercial activity.

F. All commercial business operations shall be performed in accordance with the provisions of the certificate of occupancy issued to the

business and in compliance with all applicable local building and fire codes.

15-2-3 Closing the airport during emergencies

During an emergency at the airport, the airport director shall have absolute control of the airport. If the airport director believes conditions at the airport are unsafe for aircraft operations, the airport director shall have the authority to close the entire airport or any part of the airport, and issue a NOTAM describing the closure.

15-2-4 Aircraft parking

A. Transient aircraft parking overnight or longer shall be on the open tie-down parking ramp, in a designated parking space, and subject to applicable parking fees.

B. Transient aircraft parking short term (no overnight) shall be on the FBO/terminal ramp or the open tie-down ramp, in a designated parking space.

C. Overnight parking on the FBO/terminal ramp is prohibited unless authorized by the airport director or an authorized representative of the FBO.

D. No person shall park or allow to remain stationary any aircraft at the airport except within a designated aircraft parking area.

E. No person shall park an aircraft in a reserved aircraft parking area without prior permission from the town or a tenant authorized to provide an aircraft parking area to other persons.

F. No person shall leave an aircraft parked in a shade port or tie-down without first having ensured that the aircraft is adequately secured to the pavement.

G. Aircraft must not be parked so as to block or obstruct any of the following:

1. Fire, police, or other emergency vehicle access
2. Taxi lanes
3. Hangars

H. Inoperable, abandoned or junked aircraft, and aircraft awaiting major repair and/or missing external parts (e.g., propeller), shall be temporarily stored in a fully enclosed hangar, subject to aircraft hangar rules that prohibit the indefinite storage of nonoperational aircraft, or will be removed from the airport property by the airport director at the aircraft owner's expense.

I. If any aircraft is parked in violation of this section, or, in the determination of the airport director, presents an operational or safety hazard in any area of the airport, the airport director may cause the aircraft, at the owner's/operator's expense, and without liability for damage that may result in the course of such moving, to be moved

and delivered into the care of a representative of an FBO or SASO authorized to do business on the airport.

J. To avoid being considered abandoned and being removed from the airport property by the airport director at the aircraft owner's expense, aircraft parked or 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.

K. Aircraft parked or stored outside shall not leak fuel, oil, or other materials on the ground or aprons.

15-2-5 Parking permits and payments

A. All persons parking aircraft at the airport overnight or longer shall register the aircraft with the office of the airport director as soon as possible after landing.

B. All persons parking aircraft at the airport for 30 days or less shall pay the daily transient parking fees, as established in a fee schedule adopted by the town council and amended from time to time.

C. All persons parking aircraft at the airport for 30 days or longer shall enter into a parking agreement and obtain a monthly parking permit from the town and shall pay all applicable monthly parking fees, as established in a fee schedule adopted by the town council and amended from time to time. All applicable daily parking fees shall be paid until such time as the person obtains the monthly parking permit.

D. All persons parking aircraft at the airport shall comply with the terms and conditions of any parking permit or parking agreement.

E. Failure to comply with the provisions of this section or the terms and conditions of any parking permit or parking agreement may result in cancellation of any parking permits and agreements.

F. Upon receiving notice of cancellation of a parking permit or agreement, an aircraft owner shall have 60 days to remove the aircraft in question from the airport. If the aircraft is not removed within 60 days, or other arrangements made with the airport director, a peace officer may seize the aircraft and notify the state of the seizure pursuant to A.R.S. § 28-8243 or the town may sell the aircraft pursuant to A.R.S. § 33-1023.

G. Non-payment of any hangar rent, lease payments, or parking fees owed to the airport or FBO will result in the deactivation of user's gate access card or and/or access code.

15-2-6 Aircraft owner's performance of maintenance and use of commercial aeronautical activities providers

A. An aircraft owner is permitted to fuel, wash, apply limited touch up small-scale paint or finish, and provide aircraft preventive maintenance only to the owner's own aircraft, and only if the aircraft is based at the airport, provided that the owner complies with this title and all applicable laws, federal aviation regulations, and town code provisions.

1. Limited touch-up, small-scale painting, or refinishing is permitted only in areas designated for such activities and supplied with appropriate fire protection equipment such as the aircraft maintenance hangars.

2. Any spray apparatus application of any size and brush/roll applications exceeding one gallon are prohibited outside of dedicated approved flammable finish application areas, except when utilizing water-miscible solutions in accordance with the international fire code.

3. Large-scale painting is prohibited unless approved by the airport director.

4. Fueling may only be conducted outside of the hangar and in compliance with all applicable fire codes, FAA guidance regarding aircraft fuel storage, handling and dispensing on airports, the requirements of this title, and all other applicable laws and standards.

5. Any person applying any finish shall ensure compliance with all applicable environmental regulations and shall not cause damage to hangars or nearby aircraft.

B. An owner of a based aircraft may hire or allow a person who is not a based commercial aeronautical activity provider to provide any of the services described in this section, or major aircraft alterations and repairs.

1. The person providing the services must obtain a SASO permit from the airport director prior to engaging in the services.

2. The services shall be provided:

a. In the presence and under the direct supervision of the aircraft owner, unless the service provider has his or her own airport security gate access identification badge

b. At the based location of the aircraft at the airport

c. In conformance with this title and all applicable laws, federal aviation regulations, and town code provisions.

C. Where the services are provided as a commercial aeronautical activity for the benefit of the aircraft owner, the provider must be a direct employee or authorized independent contractor of the aircraft

owner, or for certificated aircraft, an FAA-certified technical specialist or a mechanic. All such providers must hold a permit to conduct commercial activities and a town business license, and pay all applicable fees for performing such activity.

15-2-7 Major aircraft alterations and repairs

Major aircraft alterations and repairs may be conducted on the airport only:

A. By a based commercial aeronautical activity provider authorized by the airport to perform major aircraft alterations or repairs; or

B. By the owner of the aircraft being altered or repaired, and in accordance with applicable provisions of this title.

C. In areas of the airport designated and designed for major alterations and repairs in accordance with applicable building and fire codes.

15-2-8 Aircraft hangars

A. This section applies to all aircraft hangars regardless of whether the hangar occupant leases the hangar or the hangar occupant constructed the hangar at the occupant's own expense while holding a ground lease with the town.

B. When land designated for aeronautical use is made available for construction of hangars, the hangars built on the land are subject to the airport's obligations to use aeronautical facilities for aeronautical use.

C. Aircraft hangars shall be used for aeronautical purposes, or shall be available for use for aeronautical purposes, except as otherwise approved by the FAA. Non-aeronautical use of hangars shall be the exception and must be approved by the airport director.

D. Notwithstanding the general rule that aircraft hangars shall be used for aeronautical purposes, in accordance with FAA policy, the airport director may request FAA approval of non-aeronautical uses of aircraft hangars when there are vacant hangars and no current aviation demand for the hangars. This paragraph does not create nor constitute a right to use aircraft hangars for non-aeronautical purposes.

E. For purposes of this section, aeronautical uses of aircraft hangars include:

1. Storage and parking of active aircraft
2. Minor maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational or derelict aircraft or parts
3. Storage of aircraft handling equipment, workbenches, and tools and materials used in the servicing, maintenance, repair, or outfitting of aircraft
4. Final assembly of aircraft under construction

5. Non-commercial construction of amateur-built or kit-built aircraft

F. Non-aeronautical items may be stored in aircraft hangars provided that the hangar is used primarily for aeronautical purposes and the non-aeronautical items do not interfere with the aeronautical use of the hangar. Items will not be considered to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar
2. Impede access to aircraft or other aeronautical contents of the hangar
3. Displace the aeronautical contents of the hangar
4. Are used for the conduct of a non-aeronautical business from the hangar, including storage of inventory
5. Are stored in violation of this title, lease provisions, building codes, or other local ordinances

G. The following items may be stored in aircraft storage hangars:

1. Any aircraft assigned to the hangar on the airport director's list of based aircraft, including any aircraft that are being restored or assembled
2. Aeronautical items associated with an aircraft in the hangar, including the parts, tools, equipment and support items necessary to maintain and operate an aircraft
3. Items associated with an aeronautical activity, including balloon and skydiving equipment and teaching tools
4. Vehicles operated by gate access card permittees and their authorized guests, only when the hangar lessee is either present on the airport, or using the aircraft normally stored in the hangar
5. Prefabricated metal shelving, workbenches, and cabinets
6. A reasonable amount of functional furniture only for use in the hangar such as a table and chairs
7. Spare aircraft tires, batteries, and battery chargers stored and maintained in accordance with fire codes
8. Refrigerators, air conditioners, fans and similar devices, as long as they are elevated 18 inches above the hangar floor and use no extension cords
9. Non-aeronautical items that comply with paragraph F above
10. Other items determined by the airport director to be allowable, based on their function and the personal needs of the occupant

H. Use of aircraft storage hangars shall be subject to the following restrictions:

1. Hangars shall not be used as a residence.

2. Hangars shall not be used for the operation of a business or a business office, whether the business is aeronautical or non-aeronautical in nature.
3. Hangars shall not be used for storage of household items that can be stored in commercial storage facilities.
4. Welding, cutting and all other hot work operations must comply with applicable fire codes. Doping work involving a flammable coating/finish process cannot be applied via spray apparatus, and if being applied by brush or roller, the agent cannot exceed one gallon unless being applied in an area compliant with the requirements of chapter 24 of the international fire code. Welding, or any repair requiring the use of open flames, spark-producing devices, or the heating of parts above 500° F shall only be done outdoors.
5. No equipment or materials may be stored in hangars unless used for the operation and maintenance either of the based aircraft or of the hangar.
6. There shall be room for the aircraft in the aircraft hangar for the based aircraft at all times, even when the aircraft is temporarily not located in the hangar.
7. Oily rags, oil waste, rags and other rubbish and trash may only be stored in hangars in metal containers with self-closing, tight-fitting lids as approved by the airport director.
8. Fueling, defueling and fuel system maintenance shall comply with all applicable fire codes and with the following:
    a. Fueling or defueling within an aircraft storage hangar or within 25 feet thereof is prohibited.
    b. Major fuel system maintenance within an aircraft storage hangar is prohibited.
    c. Open fuel cells are allowed within the hangars if they are new and have never held fuel, or existing tanks have been purged of flammable vapors so there are no hazardous vapors off-gassing in the space.
    d. No flammable or combustible liquids shall be dispensed into or removed from a container, tank, vehicle or aircraft except in a location approved by the fire department.
9. Flammable and combustible liquids stored inside hangars must comply with the following:
    a. Flammable liquids with flash points less than 100° F are prohibited. This includes aviation fuel and most volatile solvents.
    b. Combustible liquids with flash points greater than 100° F are limited to two gallons maximum. This includes diesel fuel, hydraulic fluid, motor oil and most lubricating oil.

c. Fuel in the tanks of aircraft or aircraft related equipment (tugs, etc.) are exempt from these limitations.

d. All combustible liquids must be stored within safety containers designed for such use, or in the original manufacturers' containers.

10. Oxygen or any combustible or non-combustible compressed gas in a cylinder or portable tank shall be secured. Compressed gas cylinders or tanks shall have pressure relief devices installed and maintained. Cylinders or tanks not in use shall have a transportation safety cap installed. Compressed gas cylinders are subject to maximum allowable quantities per control area depending on their contents.

11. Portable aircraft and vehicle batteries may only be charged within an aircraft hangar while the aircraft owner or occupant is present, except for trickle type chargers with an automatic shutoff. Stationary storage battery systems must be installed and maintained in accordance with applicable fire codes.

I. Hangars shall be subject to annual and periodic inspections by the airport director, the fire department, building officials, and code compliance officers to ensure compliance with all laws, ordinances, and this title. Each occupant shall take reasonable steps to make the hangar available for inspections.

J. 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.

K. No tenant or lessee shall knowingly allow leased or sub-leased property or hangars to be used or occupied for any purpose prohibited by this title or by any applicable lease agreement.

15-2-9 Aircraft shade ports and tie-downs

A. Aircraft shade ports and tie-downs may only be used for the following purposes:

1. Storing and parking of a based aircraft assigned to the shade or tie-down and listed on the airport director's list of based aircraft, and storing of aeronautical items that are approved by the airport director. Aircraft parked in a shade or tie-down shall be parked so as to be completely contained within the aircraft parking space and to not obstruct adjacent aircraft parking area, taxi lanes, or fire department or other emergency vehicle access, except for the purpose of immediate and temporary staging and fueling of such aircraft.

2. Parking of vehicles operated by gate card permittees and their authorized guests.

B. Use of aircraft shade ports and tie-downs shall be subject to the following restrictions:

1. No aircraft maintenance shall be performed in the open tie-downs, shade ports, or any aprons without the approval of the airport director. This subparagraph does not apply to minor maintenance activities, such as air filter replacement, and emergency repairs.
2. No equipment or materials may be stored in shade ports or tie-downs unless used for the operation and maintenance of the based aircraft assigned to the shade port or tie-down. The airport director may approve the storage of additional items on a case-by-case basis.
3. Oily rags, oil waste, rags and other rubbish and trash may only be stored in shade ports or tie-downs in metal containers with self-closing, tight-fitting lids that are approved by the airport director or the fire department and must be secured to prevent spillage.
4. Disabled or otherwise non-airworthy aircraft may not be parked in the shade ports or on open tie-down parking ramp. This includes but is not limited to aircraft with deflated tires, missing external parts (e.g., propeller, cowling), and expired registration. Aircraft in this condition must be removed from the airport or temporarily relocated to a hangar, subject to aircraft hangar rules that prohibit the indefinite storage of nonoperational and derelict aircraft.
5. Portable aircraft and vehicle batteries may be charged in shade ports or tie-downs only while the based aircraft owner, operator, or occupant is present, except for trickle type chargers with an automatic shutoff. Stationary storage battery systems must be installed and maintained in accordance with applicable fire codes.
6. Tenants may have a tool box, ladder or container adjacent to their aircraft. These items must be secured by chain and lock under the aircraft.
7. Oxygen or any combustible or non-combustible compressed gas in a cylinder or portable tank may be stored in shade ports or tie-downs only if the cylinder or tank is secured and has pressure relief devices installed and properly maintained. Compressed gas cylinders or tanks not in use shall have a transportation safety cap installed. Compressed gas cylinders are subject to maximum allowable quantities per control area depending on their contents.

C. Aircraft shade ports and tie-downs shall be subject to annual and periodic inspections by the airport director, the fire department, building officials, and code compliance officers to ensure compliance with all laws, ordinances, and this title.

15-2-10 Airport perimeter roads

A. The use of airport perimeter roads is restricted to airport management, operations, and maintenance employees, authorized FBO personnel, fuel trucks or other vehicles, police and fire personnel, and authorized town staff, town vendors and town contractors.

B. Airport perimeter roads shall not be used as a shortcut between ramps on the airport.

C. Perimeter roads shall remain clear and unobstructed at all times.

15-2-11 Operational and restricted areas

A. No person may enter upon the movement area without the permission of the airport director, except persons assigned duty in the movement area, authorized employees or contractors of the town, and fire, police, and other emergency personnel and vehicles.

B. No person may enter the airside area, except as necessary for the lawful operation or maintenance of an aircraft, or to conduct a commercial activity, or to conduct any other activity authorized by the airport director.

C. No person may enter any area posted as being restricted except as authorized by the airport director.

D. No person may enter into, remain in, place in, or remove any object from, any hangar, shade port or other building or facility at the airport without consent of the town or the person with the legal right of possession of such space, building, or facility.

15-2-12 Airport smoking areas

Smoking is not permitted:

A. Within 50 feet of an aircraft, fuel truck and/or fuel storage area

B. On any apron, taxiway, taxilane, or runway

C. Where specifically prohibited by the town and/or state law

D. Inside any aircraft storage or maintenance hangar.

15-2-13 Use of shop areas

All of a tenant's shops, garages, equipment and facilities are solely for the conduct of that tenant's authorized aeronautical or commercial activities. No person other than employees or agents of that tenant shall make use of such facilities without individual and specific permission of that tenant.

15-2-14 Maintenance of premises

A. All tenants at the airport shall at all times maintain their premises in serviceable, safe and operable condition and repair, and in a condition of repair, cleanliness and general maintenance.

B. All tenants at the airport shall keep the floors of hangars, shade ports and tie-downs leased by them, or used in their operations, clean and clear of fuel, oil, grease and other similar materials.

15-2-15 Waste containers and disposal

A. All airport tenants, users, or visitors shall dispose of all waste in waste containers appropriate for that purpose, and in appropriate locations, as designated by the airport director, and no other containers or areas shall be used.

B. Containers for recyclable materials shall be used in strict compliance with any rules for use posted by the airport director.

C. No household waste shall be disposed of in any airport waste container.

D. No petroleum products, industrial waste matter or other hazardous materials shall be dumped or otherwise disposed of except in accordance with local, county, state and federal law. Hazardous materials shall be the responsibility of the originator under all applicable laws.

15-2-16 Storage

A. No person shall store or stock materials or equipment in such a manner as to be unsightly or constitute a hazard to personnel or property, as determined by the airport director.

B. Individual containers, cartons or packages shall be conspicuously marked or labeled in an approved manner.

C. Rooms or cabinets containing compressed gases shall be conspicuously labeled: "COMPRESSED GAS."

15-2-17 Storage, transfer and cleanup charges

A. The town may remove and impose storage, removal and transfer charges upon any property or material unlawfully placed or otherwise deposited at the airport.

B. The town or the fire department may clean up any material unlawfully spilled, placed or otherwise deposited at the airport, and may charge the responsible person(s) for the cost of the cleanup, any required environmental remediation, and any expenses, fines, or damages incurred by the town as a result thereof.

15-2-18 Unmanned aircraft systems (UAS)

A. All persons operating unmanned aircraft systems or drones at or near the airport for commercial, non-recreational purposes shall comply with FAA all rules regarding such use.

B. All persons operating unmanned aircraft systems or drones for recreational purposes within five miles of the airport shall notify the airport director prior to operation.

1. If the airport director objects to the operation, it is expected that the operator will not conduct the proposed flight.
2. Flying model aircraft over the objections of the airport director may be considered to be endangering the safety of the national airspace system (NAS).

15-2-19 Model airplanes, model helicopters, kites, and fireworks

No person shall fly or release a model airplane, model helicopter, rocket, kite, fireworks, balloon, parachute, or the like within two miles of the airport if such activity would create a hazard to aircraft operations or as otherwise determined by the airport director.

15-2-20 Commercial photography or filming

Section 15-2-20 was amended by Ordinance 2019.002 to reference town code chapter 9-12

No person may engage in filming activity, as defined in chapter 9-12 of this code, at the airport, for commercial purposes, without first applying for a film permit pursuant to chapter 9-12 and paying applicable fees for the activity.

15-2-21 Signs, advertisements, printed or written materials

No person may post, distribute or display signs, advertisements, circulars, or other printed or written materials at the airport except in locations designated by the airport director.

15-2-22 Weapons, explosives, and radioactive substances

A. No person shall carry, possess or exercise control over any unauthorized firearms or explosives on the airport premises in violation of town code, state statute, federal law, or federal aviation regulations.

B. No person, except an authorized law enforcement officer or member of the armed forces of the United States on official duty, may possess any explosives on the airport.

C. No person, except an authorized law enforcement officer or member of the armed forces of the United States on official duty, may store, handle, use, dispense or transport at, in, or upon the airport, any radioactive substance or material, except for materials with a minimum of radioactive substances, such as radioactive paint illuminating instrument dials, without prior written permission from the airport director.

15-2-23 Disorderly conduct and intoxicating liquors

No person may:

A. Commit any disorderly, obscene or unlawful act, or create a nuisance, on the airport.

B. Consume any alcoholic beverage upon any portion of the airport open to the public, except in lawfully established restaurant facilities and in accordance with all applicable laws, or in some other place

authorized by a special event permit from the airport director authorizing the consumption of such alcoholic beverages.

C. Become intoxicated on any portion of the airport.

D. Enter upon or loiter on or about the airport without the airport director's or designee's permission.

15-2-24 Property damage; injurious, or detrimental activities

A. No person shall destroy, injure, deface, or disturb any building, sign, equipment, marker or other structure, or any tree, flower, or lawn, or any other public property.

B. No person may conduct activities at the airport that are injurious, detrimental or damaging to the airport or to airport property or to commercial activities at the airport.

C. Any person causing, or responsible for causing, any such injury, detriment, or damage shall pay the airport, upon the airport's demand, the full cost of repairs.

D. Any person who fails to comply with this section shall be in violation of this title, and the airport director may prohibit the person from any or all of the airport facilities until the airport has been fully reimbursed for the damage caused.

15-2-25 General rules of conduct

No person shall do any of the following on any portion of the airport:

A. Camp.

B. Ignite a fire.

C. Maintain a temporary or permanent residence.

D. Hunt, pursue, trap, catch, injure, or kill any bird or animal, except in connection with pest control activities authorized by the airport director.

E. Solicit fares or funds for any purpose without the written permission of the airport director.

F. 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.

15-2-26 Alteration of airport property

A. No person may make any alterations to any signs, buildings, aircraft parking areas, leased areas or other airport property, or erect or construct any buildings or other structures at the airport without first receiving written permission of the airport director.

B. Persons undertaking such alterations or construction shall comply with all building codes and permit procedures of the town, and shall deliver to the airport director as-built plans upon completion.

15-2-27 Lost articles

A. Any person finding lost articles in public areas of the airport shall immediately deposit them at the office of the airport director or, if after hours, with an airport staff member or FBO employee on duty at the airport, if available.

B. Articles unclaimed after 90 days will be disposed of in a lawful manner.

15-2-28 Abandoned property

No person may abandon any personal property on airport property or in any building on the airport.

15-2-29 Flying clubs

A flying club shall comply with this title and the minimum operating standards.

15-2-30 Payment of fees

All billings by the town are due and payable upon presentation unless otherwise noted on the bill, or otherwise provided by the terms of a written lease, license, permit or agreement from or with the town.

15-2-31 Dogs and other animals

A. No person may enter the airport with a dog or other animal unless the animal is restrained by a leash or properly confined as determined by the airport director.

B. No person in charge of a dog or other animal may permit the animal to wander unrestrained on any portion of the airport.

C. No person may ride a horse at the airport without the written permission of the airport director.

D. Animal owners are responsible for cleaning up after their pets on the airport.

15-2-32 Based aircraft information

A. All based aircraft must be registered with the airport director.

B. Tenants shall provide to the airport director their name, address and phone number along with the aircraft owner's aircraft make, model and FAA certificate of aircraft registration number or other proof of ownership.

C. All tenants are required to update changes of based aircraft within 30 days of change.

D. The airport director may request confirmation of based aircraft on an as-needed basis. This information will be provided to the Arizona department of transportation on a quarterly basis.

CHAPTER 15-3. FUELING, FLAMMABLE FLUIDS, AND SAFETY

15-3-1 Fuel safety

A. All transportation, storage and other handling of aircraft and vehicle fuel shall comply with applicable fire codes, FAA guidance regarding aircraft fuel storage, handling and dispensing on airports, the requirements of this title, and all other applicable laws and standards.

B. Aircraft fueling vehicles shall be provided and maintained with a substantial heavy duty electrical cable of sufficient length to be bonded to the aircraft to be serviced. Such cable shall be metallically connected to the transfer apparatus or chassis of the aircraft-fueling vehicle on one end and shall be provided with a suitable metal clamp on the other end, to be fixed to the aircraft.

C. The bonding cable shall be bare or have a transparent protective sleeve and be stored on a reel or in a compartment provided for no other purpose. It shall be carried in such a manner that it will not be subjected to sharp kinks or accidental breakage under conditions of general use.

D. Transfer apparatus shall be metallically interconnected with tanks, chassis, axles and springs of aircraft-fueling vehicle.

E. Employees of fuel agents who fuel aircraft, accept fuel shipments, or otherwise handle fuel shall receive fire safety training approved by the fire department.

F. Personnel assigned to and engaged in fuel-servicing operations shall not carry matches or lighters on or about their person. Matches or lighters shall be prohibited in, on, or about aircraft fueling equipment.

15-3-2 Restrictions on commercial fueling activities

No person or company may conduct any commercial fueling activities for aircraft at the airport, except for a tenant operating as a fixed base operator and in accordance with the express terms of such tenant's lease with the town.

15-3-3 Storage of aircraft fuel trucks, trailers and other aircraft refueling devices

A. Aircraft refueling vehicles and other movable aircraft fuel containers and refueling devices shall be stored outside, and not less than 25 feet from an occupied structure, or such other distance from any occupied structures as may be approved by the airport director.

B. Aircraft refueling vehicles shall be parked in a manner that provides a minimum of ten feet of separation between each aircraft refueling vehicle and any other vehicle or aircraft refueling device.

C. No aircraft refueling vehicle, other movable aircraft fuel container, or other aircraft refueling device, empty or otherwise, may be

brought into, kept or stored within any building at the airport unless the building is used exclusively for that purpose.

D. This section does not apply to vehicle fuel approved containers with a capacity of not more than five gallons, provided no more than five such containers may be located within a single vehicle.

15-3-4 Aircraft refueling and defueling locations

All aircraft fueling shall be performed outdoors. Aircraft being fueled shall be positioned so that aircraft fuel system vents or fuel tank openings are not closer than 25 feet from any building or structure.

15-3-5 Maintenance of fuel servicing vehicles

A. Maintenance and servicing of aircraft fuel servicing vehicles shall be performed outdoors or in a building approved for that purpose by the airport director.

B. Aircraft fueling vehicles and all related equipment shall be properly maintained and kept in good repair. Accumulations of oil, grease, fuel and other flammable or combustible materials is prohibited. Maintenance and service of such equipment shall be accomplished in areas approved by the fire department.

C. Tanks, pipes, hoses, valves and other fuel delivery equipment shall be maintained leak free at all times.

15-3-6 Open flames

A. There shall be no open flames or lighted open-flame devices in any of the following locations:

1. The airside area
2. Within 50 feet of any aircraft, fuel truck, and/or fuel storage area
3. In any other area where open flames are specifically prohibited by the town

B. Lighted open-flame devices shall include, but shall not be limited to, the following:

1. Exposed flame heaters
2. Liquid, solid or gaseous devices, including portable and wheeled gasoline or kerosene heaters
3. Gas or charcoal cooking grills
4. Heat producing, welding, or cutting devices, and blowtorches
5. Flare pots or other open-flame lights

15-3-7 Removal of gasoline, oil, and grease

A. If there is spillage of gasoline, oil, grease or any material that may be unsightly or detrimental to the airport, the spilled material shall be removed immediately, either by the operator or owner of the

equipment causing the spillage, or by the tenant, commercial aeronautical service provider, or other person responsible for the spillage.

B. If the equipment operator or other responsible person fails to restore the area to its original, safe, and environmentally sound status, the town may clean up any material spilled, placed or otherwise deposited at the airport, and may charge the responsible person(s) for the cost of the cleanup, any required environmental remediation, and any expenses, fines, or damages incurred by the town as a result thereof.

C. Spillage events may constitute grounds for the equipment operator or responsible person being denied access to the airport.

D. Activities in the affected area not related to the mitigation of the spill shall cease until the spilled material has been removed or the hazard has been mitigated. Aircraft or other vehicles shall not be moved through the spill area until the spilled material has been removed or the hazard has been mitigated.

E. All spills shall be reported to airport management, documented, and mitigated.

F. The fire department shall be notified of any fuel spill which is considered a hazard to people or property, or which meets one or more of the following criteria:

1. Any dimension of the spill is greater than ten feet.
2. The spill area is greater than 50 square feet.
3. The fuel flow is continuous in nature.

G. The fueling-system operator shall conduct an investigation of all spills that require notification to the fire department.

15-3-8 Lubricating oils

A. Lubricating oils that are necessary for minor aircraft maintenance and have a flash point at or above 100° F, may be stored in hangars or suitable storage devices as approved by the airport director, provided they are stored in their original container and have the original manufacturer's labeling.

B. No more than 30 gallons of such lubricating oils may be stored by any person, except that an aircraft maintenance shop authorized by the airport director to operate on the airport may store more than 30 gallons of lubricating oils, in accordance with applicable fire code provisions.

15-3-9 Fire extinguishers

A. All airport tenants shall supply and maintain adequate and readily accessible fire extinguishers as required by the fire department. Each fire extinguisher shall carry a placard showing the date of the most recent inspection.

B. Any discharge of any fire extinguisher equipment on airport property, regardless of the circumstances, shall be reported to the airport director immediately after use, in accordance with state statutory requirements.

C. At least two fire extinguishers, each having a rating of 20-BC, shall be readily available for use in connection with any aircraft fueling operations.

D. Aircraft fuel-servicing tank vehicles shall be equipped with a minimum of two listed portable fire extinguishers, each having a rating of 20-BC. A portable fire extinguisher shall be readily accessible from either side of the vehicle.

E. Aircraft towing vehicles shall have a minimum of one listed 20-BC fire extinguisher.

F. All welding apparatus shall be equipped with a minimum of one listed 2-A: 20-BC fire extinguisher.

G. Use of a fire extinguisher shall be immediately reported to the fire department.

15-3-10 Movable aircraft fuel storage tanks or containers

Unless otherwise approved by the airport director and the fire department, movable aircraft fuel storage tanks or containers are prohibited at the airport except for:

A. Aircraft fuel trucks and trailers constructed, operated and maintained in all respects as required by local, state or federal law.

B. Permanent fuel tanks in an operable aircraft.

C. Containers not exceeding one-gallon capacity used solely for sampling and testing of fuel, engines, and fuel handling apparatus.

D. No more than one tank per person, with a capacity of not more than 55 gallons, used by that person to fuel their own aircraft pursuant to a self-fueling permit.

E. Fuel transport vehicles authorized by the town, and lawfully transporting fuel for immediate dispensing into a fuel storage tank. Such vehicles shall access the airport at a point approved by the airport director and remain under escort by the representative of the person on the airport receiving the fuel.

15-3-11 Self-fueling

A. Except as may be prohibited by other provisions of this title and any other applicable law, owners of a based aircraft who desire to self-fuel their aircraft, shall apply for a self-fueling permit from the airport director.

B. Paragraph A above does not apply to the use of a self-service fuel facility provided by a fixed base operator.

C. Self-fueling of vehicles other than aircraft is strictly prohibited.

D. Rotorcraft may not use the self-fuel facilities.

15-3-12 Fueling of fuel vehicles

Transferring fuel from vehicle to vehicle on airport property is prohibited unless the fuel is transferred from an approved fuel loading device.

15-3-13 Vehicle fuel

No person shall possess vehicle fuel on the airport except:

A. Within the permanently installed fuel tank of a vehicle for use by that vehicle

B. Within movable containers designed for storage of vehicle fuel, subject to the following conditions:

   1. The containers have a maximum capacity of five gallons.

   2. No more than five such containers are located in a single vehicle.

C. Within underground or above-ground vehicle fuel storage tanks that have a capacity of not more than 2,000 gallons, and are lawfully installed and maintained in accordance with this title.

15-3-14 Fuel farms

Only full-service fixed base operator(s) who have a lease with express terms authorizing them to conduct commercial fueling activities on the airport will be permitted to install a permanent fuel farm. Any such installation must be approved by the airport director and the fire department.

CHAPTER 15-4. AIRCRAFT OPERATIONS

15-4-1 Restricted runway operations

A. Except in an emergency, all fixed wing aircraft landings and takeoffs shall be made on a paved runway.

B. Landings and/or takeoffs from dirt surfaces are strictly prohibited.

C. Except in an emergency, no rotorcraft equipped with skid type landing gear shall perform run-on landings, or any other maneuvers that would cause the skids to slide upon the runway surface.

D. Landing aircraft shall clear the runway as soon as practical, consistent with safety, and taxi ahead to the nearest turn-off.

15-4-2 Aircraft wingspan and weight restrictions

Aircraft shall not be placed in a hangar, shade port or tie-down, nor shall aircraft be operated in areas of the airport:

A. Where the aircraft's wingspan exceeds the maximum wingspan designated for that area by the airport director.

B. Where the aircraft's weight exceeds the maximum weight designated for that area by the airport director

15-4-3 Traffic pattern/pattern altitudes

The recommended minimum traffic pattern altitude above ground level (AGL) for aircraft operations at the airport is 800 feet (2,800 feet MSL). All traffic shall be left for runways 12 and 21 and right for runways 30 and 3. The calm wind (four knots or less) runway is Runway 12.

15-4-4 Disabled aircraft

A. Unless otherwise permitted by the airport director, aircraft owners/operators and pilots shall be responsible for the prompt removal of their disabled aircraft and parts thereof from the movement area, unless such aircraft owners or pilots are required or directed by the airport director, the FAA, or the NTSB to delay removal pending an investigation of an aircraft accident or incident.

B. Aircraft owners/operators and pilots shall remain with a disabled aircraft until the aircraft is removed from the movement area.

C. If the aircraft owner/operator or pilot fails to promptly remove a disabled aircraft, the airport director may cause the aircraft to be removed, and bill the aircraft owner for all charges incurred in the removal of the aircraft.

D. The town, the FBO, and other airport businesses and personnel shall not be responsible for any damage to disabled aircraft removed or towed from any airport surface.

15-4-5 Negligent and reckless operation of aircraft

No aircraft shall be operated in any of the following ways:

A. In a careless, negligent or reckless manner

B. In disregard of the rights and safety of others

C. In an improperly maintained, or otherwise hazardous, condition

D. At a speed or in a manner that endangers, or is likely to endanger persons, or property.

15-4-6 Required aircraft radio

No aircraft shall land or take off at the airport unless the aircraft is equipped with a functioning radio capable of direct two-way communications, except in the case of a radio failure or an emergency.

15-4-7 Hang gliders, paragliders, gliders, powered parachutes, and ultra-light aircraft; hot air balloons

A. No person shall operate a hang glider, powered paraglider, glider, ultra-light aircraft, powered parachutes, or any other device falling under 14 CFR part 103 at, onto or from the airport without the prior written approval of the airport director except in an emergency.

B. Hot air balloons shall not be operated at the airport without the prior written approval of the airport director except in an emergency.

15-4-8 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 taxi lanes between the hangars, aircraft shades, or open tie-down areas.

C. Rotorcraft shall only take off and land on an approved helipad or the helicopter ramp unless otherwise authorized by the airport director or authorized FBO staff.

D. Rotorcraft stored in hangars or tie-downs must be towed to an approved helipad or helicopter ramp before starting the engine.

E. Rotorcraft shall not be operated in a manner that will produce dirt, rocks or debris on any runway, taxiway, taxi lane, or apron.

F. Rotorcraft are prohibited from utilizing the self-fuel facility.

15-4-9 Running of aircraft engines, exhaust, propeller blast or rotor wash

A. Aircraft engines shall be run at idle except as may be necessary for safe taxiing operations, taking off, landing, preflight testing, and maintenance testing.

B. All aircraft engine run-ups shall be conducted in areas designated by the airport director for such run-ups. Except in an emergency, all aircraft engine run-ups for maintenance testing purposes shall be conducted between the hours of 7:00 a.m. and 10:00 p.m.

C. At no time shall an aircraft's engine(s) be operated while the aircraft is in a hangar or shade port.

D. No aircraft engine shall be started or aircraft taxied where the exhaust, propeller blast, or rotor wash may cause injury to persons or do damage to property or spread debris.

E. No high power maintenance run-ups are allowed between aircraft hangars, between shade ports, near tie-downs, in taxi lanes, or on taxiways (other than the portions of taxiways that act as run-up aprons), except at areas designated for high power maintenance run-ups by the airport director.

15-4-10 Taxiing of aircraft

A. No person shall taxi an aircraft except on areas designated for taxiing.

B. No person shall taxi an aircraft without first taking all necessary precautions to prevent a collision with other aircraft, persons, or objects.

C. Aircraft shall not be taxied into or out of a hangar, shade port, or other covered area.

D. If it is impossible to taxi aircraft in compliance with this section, then the engine must be shut off and the aircraft towed to the new location.

15-4-11 Aircraft incident/accident reports and procedures

A. Any person involved in an aircraft operation on the airport, within the town, or in the airspace around the airport that results in personal injury or damage to property shall provide all pertinent information to the airport director as soon as possible and in no event later than 24 hours after the accident.

B. The information shall include the names, addresses and phone numbers of the persons involved, a description of the accident, and its cause, if known.

C. If a federal or state law, regulation, or agency requires filing of a written copy of an accident report, a copy of such report shall also be submitted to the airport director.

D. The airport director or designee shall serve as the initial incident commander for all accidents on the airport property and shall secure the accident area with assistance from the police and fire departments.

15-4-12 Compliance with FAA regulations

No person may conduct any aircraft operations in violation of any FAA regulations.

15-4-13 Interfering or tampering with aircraft

No person may interfere or tamper with any aircraft, aircraft parts, instruments, fuel, or tools without prior approval of the aircraft owner, or in the event of an emergency, as specifically directed by the airport director.

15-4-14 Aircraft demonstrations and public events

A. No aircraft flight or ground demonstrations may be conducted at the airport without prior permission of the airport director.

B. The town reserves the right to temporarily restrict or control activities on the movement area and public areas of the airport for purposes of aerial and ground demonstrations or for any other public purpose.

C. To the extent practicable, such public events will be conducted in such a manner as to minimize the impact upon normal airport operations.

15-4-15 NOTAMs and airport advisories

The airport director is responsible for the dissemination of NOTAM information pertaining to airfield conditions and airfield lighting. The air-

port director is authorized to relay airfield conditions, advisories or information concerning outages of airfield lighting to the appropriate FAA flight service station for dissemination as a NOTAM or advisory on the AWOS.

15-4-16 Tie-down or storage of damaged or dismantled aircraft

A damaged or dismantled aircraft shall be repaired, re-assembled, or moved to a location acceptable to the airport director within 30 days unless the airport director permits an alternative arrangement.

15-4-17 Airport movement areas

A. No ground vehicles, except for emergency vehicles, may enter upon the movement area without the express permission of the airport director.

B. Aircraft and vehicles shall not be left unattended within the movement area.

15-4-18 Noise abatement procedures

Aircraft pilots shall operate all aircraft in compliance with the airport's written noise abatement procedures to the maximum extent possible.

CHAPTER 15-5. VEHICLES AND PEDESTRIANS

15-5-1 General requirements

A. No person may operate a vehicle on the airport except in accordance with this title and all federal, state and local laws.

B. Vehicles shall access all airport facilities and businesses from the landside public parking or appropriate gate areas for the facility or business.

C. All vehicles shall yield the right of way to aircraft in motion and emergency vehicles.

D. All vehicles, except for ground service and emergency vehicles, shall remain a safe distance from any aircraft whose engines are running.

E. No person may 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.

F. Trailers and storage containers shall not be parked anywhere within the AOA without the airport director's permission.

15-5-2 Vehicle gates, access codes, and gate access cards

A. Persons who have been provided either a code or a gate access card for the purpose of obtaining access to the airport may use only airport-issued codes/cards, and shall not divulge, duplicate, or otherwise distribute the same to any person, unless otherwise approved in writing by the airport director. Violation of this requirement may

result in the loss of airport access privileges and/or criminal penalties and fines.

B. Vehicle access to the AOA is obtained through automated gates, subject to the following provisions.

1. Upon entering the AOA through an automated gate, the driver must wait until the gate is fully closed before departing the area in order to ensure gate functionality and prevent unauthorized access. Notwithstanding this rule, if another vehicle uses its access badge or access code and the gate reverses direction, the driver may proceed to the driver's destination.

2. Only one vehicle entry per gate operation is permitted. Follow through by a second vehicle is prohibited unless being escorted by an authorized user, in which case the authorized user must remain with the vehicle under escort at all times.

3. Upon exiting the AOA, multiple vehicles may exit in one gate operation in which case the last vehicle to exit must wait for the gate to close before proceeding.

C. Vehicles shall obtain access to, and depart from, aircraft parking and storage areas via the gate located nearest to the person's aircraft parking or storage area. Notwithstanding this provision, if there is an inoperative gate, vehicles may enter at an alternate gate and use airport perimeter roads and/or taxiways to access their destination with the airport director's approval or a posted sign authorizing vehicles to do so.

15-5-3 Licensing, registration and insurance

A. No person may operate a motorized vehicle of any kind on the airport without a valid state motor vehicle operator's license.

B. All motorized vehicles operated on the airport shall have a current registration as required by state law and shall be covered by the type and amount of vehicle liability insurance coverage required by state law.

15-5-4 Control of vehicles

A. No person may operate or park a vehicle at the airport in a manner prohibited by this title, or by signs, pavement markings, or other signals posted by the town or by the airport director.

B. No person may operate or park a vehicle in the airside area unless that person has valid access privileges.

C. The airport director has the authority to regulate or prohibit any class or type of vehicle or other form of transport that operates in the AOA.

15-5-5 Speed limits

A. All vehicles shall be operated on the airport in strict compliance with all posted speed limits.

B. The maximum speed limit in the AOA for all vehicles, with the exception of authorized municipal and emergency services vehicles operated by duly authorized officials in the performance of their official duties, is 15 miles per hour, or less, if conditions require a lower speed to ensure safe operation.

15-5-6 Vehicles operating on runway and taxiways

A. Only vehicles authorized by the airport director may operate in the movement area.

B. No vehicles may be operated on the runways and taxiways unless authorized by the airport director.

C. Any vehicle authorized to operate on the airport runways or taxiways shall display an amber rotating beacon or a three-foot by three-foot white and orange-checkered flag that complies with FAA advisory circular 150/5210-5D, as amended, and shall be equipped with a two-way radio, or an approved escort with a two-way radio, capable of transmitting and receiving communications on the UNICOM frequency (123.00 MHz). Exceptions to this rule must be authorized by the airport director.

D. The fact that a vehicle has a two-way radio or that the driver has a pilot's license does not constitute an authorization or clearance for the vehicle to operate on runways or taxiways.

E. If a gate is inoperable, airport staff may authorize entry into the airport movement area in order for an airport user to access his/her hangar or other destination. The user must call the phone number listed on the gate and advise airport staff of the inoperability.

15-5-7 Airport perimeter security

Persons owning, operating or otherwise responsible for airport buildings or other structures that contain any portion of the airport security perimeter, as defined by the airport director, shall operate and maintain all vehicular and pedestrian access points and airport security perimeter on their property in a manner that is acceptable to the airport director and limits access from their property to the airport to only those persons authorized by the airport director to have access.

15-5-8 Authority to remove vehicles and trailers

A. The airport director may cause to be removed from any area of the airport any vehicle or trailer that is disabled, abandoned, or parked in violation of this title, or that presents an operational hazard to any area of the airport, as determined by the airport director in his or her sole discretion.

B. The vehicle operator shall bear any expense of removal and the risk of any damage from such removal.

15-5-9 Bicycles and miscellaneous vehicles

A. Bicycles may be operated on the airport, provided that such operation is in accordance with this title, including those sections pertaining to vehicles.

B. Any bicycles equipped with reflectors and a light may be operated on the airport after sunset.

C. No person may operate at the airport any go-cart, go-ped, skateboard, rollerblade, or other vehicles not licensed, or otherwise permitted by state law, for operation on a public street or highway, except for town vehicles or small vehicles (golf carts, UTV's, ATV's, etc.) used for servicing aircraft or on airport transportation.

15-5-10 Vehicular accidents

A. The driver of any vehicle involved in an accident on the airport that results in injury or death to any person, or damage to any property, shall do all of the following:

1. Immediately stop the vehicle at the scene of the accident.
2. Render reasonable assistance to each person injured in the accident, including making arrangements for the transportation of the person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that treatment is necessary or if transport is requested by the injured person.
3. Give the driver's name, address and operator's license and registration number to the person injured, the airport director, and to any investigating police officer.

B. The driver shall also make and file a report of the accident as required by state law, and provide a copy of that report to the airport director.

15-5-11 Careless or intoxicated vehicle operation

No vehicle of any kind may be operated at the airport:

A. In a careless, negligent or reckless manner

B. In disregard of the rights and safety of others

C. While the driver would be prohibited by law from operating a vehicle upon the public streets of the town due to drug or alcohol impairment or influence

D. At a speed or in a manner that endangers, or is likely to endanger, persons or property

E. If the vehicle is constructed, equipped or loaded so as to endanger, or be likely to endanger, persons or property, or to result in the load or other materials becoming separated from the vehicle

F. If the vehicle is not lighted or otherwise clearly visible during hours of darkness, or during inclement weather

15-5-12 Motor vehicle parking and storage

A. No person may park or leave standing any vehicle, whether occupied or not, except within a designated vehicle parking area, except that a vehicle may be parked next to, or in front of, a hangar as long as the vehicle does not obstruct aircraft movement or hangar access.

B. Aircraft owners and operators may park their vehicles only in the aircraft parking space designated for their aircraft.

C. Vehicles parked in an aircraft parking area shall be parked in a manner so as to be completely contained in an aircraft parking area and to not obstruct adjacent aircraft parking areas or taxi lanes unless for the purposes of immediate and temporary loading, unloading, or staging of an aircraft.

D. A vehicle parked in an aircraft parking area shall be parked in a manner that allows the vehicle to be immediately driven or towed away from any nearby aircraft in case of an emergency.

E. Vehicles are prohibited from parking in a manner that causes the vehicle to occupy more than one marked space.

F. Parking is limited to three days unless the vehicle is parked in an area designated for long-term parking.

G. Vehicles shall not park or stand within 15 feet of a fire hydrant.

15-5-13 Airport access during an accident or incident

Only persons authorized by law or persons having the permission of the airport director may enter the AOA of the airport for the purposes of attending, observing, or assisting at the scene of an aircraft accident or incident or vehicular accident.

15-5-14 Pedestrians in the airside area

Walking, standing, and loitering in the AOA are permitted only if determined by the airport director not to be an operational or safety concern.

15-5-15 Vehicle repair

A. No person may clean or make any repairs to vehicles, other than ground support equipment, anywhere on the airport, except for minor repairs that enable such vehicles to be removed from the airport.

B. No person may move, or interfere or tamper with, any vehicle, or take or use any vehicle part or tool without the written approval of the vehicle owner, or other evidence of the right to do so satisfactorily presented to the airport director.

15-5-16 Pedestrians soliciting rides

No person may stand or walk in, upon, or adjacent to, a roadway at the airport for the purpose of soliciting a ride from a vehicle, nor may any person solicit aircraft rides from within the airport operations area.

15-5-17 Motor homes, boats, jet skis, trailers, and recreational vehicles

Motor homes, boats, jet skis, trailers, and other recreational vehicles shall not be stored anywhere on the airport except with the prior written permission of the airport director.

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. TITLE, INTENT, PURPOSE AND DEFINITIONS 17-1

CHAPTER 17-2. ADMINISTRATIVE BODIES AND OFFICERS 17-16

CHAPTER 17-3. ADMINISTRATION AND ENFORCEMENT 17-20

CHAPTER 17-4. ZONING 17-26

CHAPTER 17-5. SUBDIVISIONS 17-56

CHAPTER 17-6. GENERAL DEVELOPMENT REGULATIONS 17-79

CHAPTER 17-7. – CHAPTER 17-8. [RESERVED] 17-94

CHAPTER 17-9. PARKING 17-94

CHAPTER 17-10. SIGNS 17-94

CHAPTER 17-11. – CHAPTER 17-14. [RESERVED] 17-94

CHAPTER 17-15. FLOODPLAIN AND EROSION HAZARD MANAGEMENT CODE 17-126

CHAPTER 17-16. STORMWATER MANAGEMENT 17-161

CHAPTER 17-17. DEVELOPMENT IMPACT FEE ORDINANCE 17-177

CHAPTER 17-18. WIRELESS COMMUNICATION FACILITIES 17-204

TITLE 17. LAND DEVELOPMENT

CHAPTER 17-1. TITLE, INTENT, PURPOSE AND DEFINITIONS

Sections:

17-1-1 Title 17-1
17-1-2 Intent and purpose 17-1
17-1-3 Interpretation 17-1
17-1-4 Definitions 17-1

Chapter 17-1 was inserted into the town code by Ordinance 2015.021.

17-1-1 Title

This title shall be known as the Marana land development code.

17-1-2 Intent and purpose

The intent and purpose of this title is to promote the health, safety, order, and general welfare of the present and future inhabitants of the town, and specifically to accomplish the following:

A. Encourage and facilitate orderly growth and development within the town.

B. Secure economy in municipal expenditures and facilitate adequate provision for transportation, water, sewerage, parks, schools, and other public requirements.

C. Lessen congestion in the streets, prevent the overcrowding of land, and provide adequate light and air.

D. Secure safety from fires, floods, traffic hazards, and other dangers.

E. Stabilize and improve property values.

F. Promote the development of a more attractive, wholesome, and serviceable town.

G. Create conditions favorable to prosperity, civic activities, and recreational, educational, and cultural opportunities.

17-1-3 Interpretation

In interpreting and applying this title, the provisions of this title shall be held to be the minimum requirements needed to promote the public health, safety, order, and general welfare of the present and future inhabitants of the town. This title is not intended to interfere with or abrogate or annul any easement, covenant, or other agreement between parties. However, where this title imposes a greater restriction than is required by any other provision of law or by any easement, covenant, or private agreement, the provisions of this title shall govern.

17-1-4 Definitions

A. The following definitions shall be used in this title, unless a different meaning is clearly indicated by the context or a more specific definition:

1. Abutting: Two adjoining properties having a common property line or boundary.
2. Access: The place, means, or way by which pedestrians and vehicles shall have safe and usable ingress and egress to a property.
3. Accessory building: A subordinate building or portion of a main building on the same lot or building site, incidental to that permitted in the main building, or to the land upon which the main building is located.
4. Accessory use: A use incidental or subordinate to the principal use of a lot or building and devoted exclusively to the main use of the lot or building thereon.
5. Acre: 43,560 square feet of land area.
6. Apiary: Where bees are kept for their honey, generally consisting of a number of hives.
7. Articulated: Divided into joints or segments.
8. Aviary: Large cage or building specifically designed for keeping birds.
9. Berm: An earthen mound designed to provide visual interest, screen undesirable views, decrease noise, and/or control or manage surface drainage.
10. Board of adjustment: The town board of adjustment.
11. Buffer: Open spaces, landscaped areas, fences, walls, berms, or any combination of them, used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, buildings, other nuisances, or provide privacy.
12. Buildable area: The lot area where a building can be placed after yard setbacks and easements are deducted.
13. Builder: The builder is the purchaser of a development area, or portions of a development area who will build or provide for building within their areas of ownership. The builder is responsible for implementation of those facilities within each of the development areas, and ancillary facilities within the spine infrastructure system.
14. Building: Any structure having a roof and walls built and maintained for the support, shelter, or enclosure of persons, animals, chattel, or property of any kind including an apartment house, hotel or dwelling, single or in combination. Includes the word "structure".
15. Building height: The vertical distance between the finished floor elevation and the highest point of the building, excluding chimneys, vents and antennae, provided the finished floor elevation is no higher than two feet above any adjacent grade within four feet of the building.

16. Building, main: A building within which is conducted the principal use permitted on the lot.
17. Building mass: The three-dimensional bulk of a building—height, width, and depth.
18. Building setback: The distance a building must be set back from a specified point.
19. Building site: The ground area of a building or buildings together with all adjacent open spaces.
20. Business or commercial: The purchase, sale or other transaction involving the handling or disposition, other than that included in the term "industry" as defined in this section, of any article, substance or commodity for profit or gain.
21. Camp, farm labor: A building or complex of buildings located on an operating farm that is intended to house farm workers and/or their families on a seasonal basis.
22. Character: Those attributes, qualities, and features that make up and distinguish a development project and give such project a sense of purpose, function, definition, and uniqueness
23. Child care center: A facility providing compensated nonresidential care and supervision to more than ten children.
24. Church: A building or group of buildings used primarily as a place of communion or worship. "Church" includes convents, religious educational buildings and parish houses, but not parochial schools.
25. Colony: A controlled honey bee brood including a single queen bee, drones, and workers.
26. Commercial center: A development containing one or more retail stores, restaurants, hotels, motels, and similar businesses within a single building or multiple buildings.
27. Common area: An area of common access designed to serve two or more separate dwelling units which may or may not be under separate ownership.
28. Condominium: A form of real estate ownership as defined by Arizona law.
29. Condominium project: A project that includes a condominium.
30. County: Pima County, Arizona, or Pinal County, Arizona, as applicable to the particular geographic area.
31. Crop, agricultural: The growing of crops in the soil in the customary manner in the open; including the processing, wholesaling, and retailing of such grown agricultural products when such activities are performed on the premises on which the crops are raised. The term does not include the raising of livestock.

A.R.S. § 33-1202 paragraph 10 provides: "'Condominium' means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the individual interests in the common elements are vested in the unit owners."

32. Cul-de-sac: A local street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.
33. Dairy farm: Area where dairy animals are kept for milking and from which a part or all of the milk is sold, offered for sale or supplied for human consumption, and includes all buildings, yards and premises occupied or used in connection with the production of milk.
34. Density: The number of dwelling units that may be constructed per a unit of measure of land area. Usually expressed using the acre as the unit of measure.
35. Designated commercial area: A lot in zone A where the only building or buildings were originally designed and constructed to accommodate business, commercial, office, industrial, or warehousing uses and not residential uses.
36. Developer: Any person, group or entity proposing or constructing a development.
37. Development code: The zoning code of the town and overlay regulations including those which might deal with floodplains, hillside or slope protection, and related regulations; subdivision regulations, sign regulations, and all other land use regulations contained within this division of the town municipal code.
38. Driveway: A private method of vehicular access contained fully within a lot.
39. Drought tolerant vegetation: Low water use plants, which after established, survive within the Sonoran desert climate with little or no supplemental watering.
40. Duplex: A residential building containing two dwelling units.
41. Dwelling: A building or portion thereof, designed and used exclusively for residential occupancy, including one-family, two-family, and multiple dwellings, but not including hotels, boarding or lodging houses.
42. Dwelling, single family: A building designed for occupancy by one family as a residence and contains only one kitchen.
43. Dwelling, multiple-family: A residential building containing two or more dwelling units, each designed for occupancy by an individual or one family as a residence.
44. Easement: A space on a lot or parcel of land defined on a subdivision map or in a deed restriction, deed of easement, or separate document, reserved for and/or used for public utilities, ingress and egress, drainage or other special purposes.
45. Enterprise: An individual or organization engaged in a single type of business, industry, or governmental activity as classified and defined by the two-digit sector number of the most recently

published north American industry classification system (NAICS) as established by the United States census bureau.

46. Enterprise density: A measure of the intensity of the enterprise on the parcel of property approved for the significant land use change; for example:
    a. The square footage of building space for retail, transient lodging, or office uses.
    b. The number of occupants for occupancy-based enterprises, such as prisons, group homes, day care, and kennels.
    c. The square footage of land area used for an industrial use.
47. Façade: Any side of a building that faces a street or other open space. The "front façade" is the front or principal face of a building.
48. Family: One or more individuals occupying a dwelling unit and living as a single housekeeping unit.
49. Feedlot: Any fenced area used commercially for the express purpose of fattening livestock for slaughter or sale.
50. Final plat: A map of all or part of a subdivision essentially conforming to an approved preliminary plat, and prepared in accordance with the provisions of the town subdivision regulations.
51. Floor area ratio (FAR): A ratio expressing the amount of square feet of floor area permitted for every square foot of land area within a site. The FAR is usually expressed as a single number.
52. Fowl: A bird of a type that is used to produce meat or eggs, including, but not limited to, chickens, ducks, turkeys, and peacocks.
53. Frontage: All property fronting on one side of a street between a street and a right-of-way, or between intersecting or intercepting streets, or to the end of a dead-end street. An intercepting street shall determine the boundary of the frontage on the side of the street that it intercepts.
54. Garage, private: An accessory building or portion of the main building, designed or used for the shelter or storage of self-propelled vehicles owned or operated by the occupants of the main building.
55. Gasoline service station: A retail establishment primarily engaged in selling petroleum products, but not including auto repair shops, body and fender works, similar repairing and painting uses, or mechanical or stream wash racks.
56. General plan: The town general plan.
57. Gross floor area: The sum of the areas of all horizontal surfaces of a building, measured from outside surface to outside surface.

58. Grade: The average of the finished ground level at the center of all of the exterior walls of a building. In case the front wall is parallel to and within five feet of a sidewalk, the grade shall be measured at the sidewalk at the centerline of the front of the lot.

59. Guest house: Living quarters for guests, relatives, or servants on the premises in an accessory building or attached to the principal residence.

60. Hive: A movable-frame receptacle used for keeping bees which may consist of one or more frames on a single box stand.

61. Home child care center: Any single residence dwelling in which child care is regularly provided for compensation for five or more, but not more than ten, children not related to the proprietor. The proposed child care center shall meet all requirements for certification by the state department of health.

62. Home occupation: Any activity carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit.

63. Hospital: Any building or portion thereof used for the accommodation and medical care of sick, injured or infirm persons and including sanitariums, institutions for the cure of chronic drug addicts and mental patients.

64. Hotel: A building containing six or more guest rooms, in which lodging is provided and offered to the public for compensation and which is open to transient guests, together with commercial accessory uses operated primarily for the convenience of the guests thereof.

65. Household pet: Any animal commonly accepted as a domesticated pet and housed within the primary residential structure.

66. Improvement: Any man-made immovable item which becomes part of, places upon, or is affixed to real estate. Improvements are typically required to be installed as a condition of approval or acceptance of a development. They may include, but are not limited to, roads, water facilities, easements, traffic control devices, utility lines, and other similar facilities.

67. Industry: The manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof.

68. Ingress: Access or entry.

69. Intervening property: Property located between an existing public right-of-way or existing public utility easement and the land within a subdivision or other large scale development.

70. Junk (salvage) yard: A place where scrap, waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, handled, or stored in the open, including, but not

limited to, automobile wrecking yards, used lumber yards, and places or yards for the storage of salvaged house wrecking and structural steel materials, and equipment. This excepts farming operations, or where such activities are conducted entirely within a completely enclosed building and where salvaged materials are kept incidental to manufacturing or other industrial or agricultural operations conducted on the premises.

71. Kennel: Any enclosure, premises, building, structure, lot or area where dogs, cats, or other animals are kept, raised, sold, boarded, bred, shown, treated or groomed for economic gain.

72. Landscaping: Making an area attractive through the use and arrangement of living vegetation, such as trees, bushes, and groundcovers, together with inert materials such as wood, rocks, brick, and decomposed granite.

73. Land splits: The division of improved or unimproved land whose area is two and one-half acres or less into two or three tracts or parcels of land for the purpose of sale or lease.

74. Land use: A description of how land is occupied or utilized.

75. Large livestock: Includes cattle, horses, oxen, donkeys, mules, llamas, and other similar animals.

76. Livestock auction yard: A parcel of land and accompanying buildings used for the sale by auction of livestock offered on consignment.

77. Local street: A street whose purpose is to provide access to property, provide vehicular linkage within a residential or nonresidential neighborhood, but not necessarily through movements.

78. Lot: A tract of land bounded on all sides by property lines, of sufficient size to meet minimum zoning requirements, of use, coverage, area, setbacks, and other areas as required by these regulations with legal access to a public street.

79. Lot area: The total land area, measured in a horizontal plane, included within the lot property lines.

80. Lot, corner: A lot located at the intersection of two or more streets.

81. Lot coverage: The area of a site occupied by structures and storage areas, and areas allocated to vehicular parking, maneuvering, and service.

82. Lot depth: The horizontal distance between the front and rear lot lines.

83. Lot frontage: The length of the lot line abutting a street.

84. Lot improvement: Any building, structure, place, work of art, or other object or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment.

85. Lot, interior: A lot other than a corner or key lot.
86. Lot, key: Any lot where the side lot line abuts the rear lot line of other lots.
87. Lot line: A line of record bounding a lot.
88. Lot line, common: Any side or rear property line which adjoins or abuts another side or rear property line, not including side or rear property lines abutting a street or alley.
89. Lot line, front: The lot line separating a lot from a street.
90. Lot line, rear:
    a. The lot line which is opposite and most distant from the front lot line.
    b. The rear lot line of an irregular, triangular or gore lot shall, for the purpose of this code, be a line entirely within the lot at least ten feet along and parallel to and most distant from the front lot line.
91. Lot line, side:
    a. Any lot line not a front lot line or a rear lot line.
    b. A side lot line separating a lot from a street is a street lot line.
    c. A side lot line separating a lot from another lot is an interior side lot line.
92. Lot width: The mean horizontal width of the lot measured at right angles to the lot depth.
93. Major street: A street so designated on the adopted Marana transportation plan.
94. Manufactured home: A single-family dwelling structure transportable in one or more sections manufactured after June 15, 1976, to standards established by the U.S. department of housing and urban development. The structure is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."
95. Manufactured home park: A residential use in which more than two manufactured home spaces are located on a single site area. The spaces may be leased, rented or sold. If the individual spaces are sold, the remainder of the use must be in the common ownership of all unit owners.
96. Medical marijuana dispensary: A nonprofit medical marijuana dispensary duly registered and certified pursuant to A.R.S. § 36-2804.
97. Medical marijuana dispensary offsite cultivation location: The one additional location, if any, duly identified pursuant to A.R.S.

§ 36-2806 (E) during the process of registering a nonprofit medical marijuana dispensary, where marijuana will be cultivated for sale at a nonprofit medical marijuana dispensary duly registered and certified pursuant to A.R.S. § 36-2804.

98. Micro-hospital: A medical facility providing services offered by a traditional full-service hospital but located in a smaller-scale facility of 15,000 to 50,000 square feet.

Ordinance 2017.027 added the micro-hospital definition

99. Model home: A dwelling unit used initially for display purposes which typified the type of units that will be constructed in the subdivision.

100. Motel: A facility offering transient lodging accommodations of six or more rental units. A majority of all rental units have direct access to the outside without the necessity of passing through the main lobby of the building. Guests are generally traveling by automobile and parking is located convenient to each unit.

101. Multiple family structure: A building, located on one lot, containing two or more dwelling units. Also known as multifamily structure.

102. Native vegetation: Plants indigenous to an area.

103. Natural features: Include but are not limited to floodplains and surface drainage channels, washes, stream corridors and other bodies of water, steep slopes, prominent ridges, bluffs, or valleys, and existing trees and vegetation.

104. Nearby land: For purposes of significant land use change notice and protest requirements applicable in zones A-E, land lying within (a) one-quarter of a mile of a proposed significant land use change on a lot containing 2.5 acres or less, (b) one-half mile of a proposed significant land use change on a lot containing more than 2.5 acres but less than 25 acres, or (c) one mile of a proposed significant land use change on a lot containing 25 acres or more.

105. Nonconforming: A parcel or land, or a building or structure, or portion thereof, or a use, which does not conform to the provisions of this land development code, and which existed prior to the effective date of the provision of this land development code to which it does not conform.

106. Nuisance: Annoying, unpleasant or obnoxious and out of character with the neighboring area.

107. Nursery:

    a. A place where young trees or other plants are raised for transplanting or for sale.

    b. Does not include commercial fertilizer yard or processing plant.

108. Off-site: Any premises not located within the area of the property to be subdivided or developed whether or not in the same ownership of the applicant to subdivision or development approval.

109. Off-street parking: Parking of motor vehicles in a location other than a street or public way.

110. On-site: Of or pertaining to a space within the boundaries of a subdivision lot or parcel.

111. Open space: Any area to be kept in open uses including active and passive recreational lands, desert, floodways, floodplains, parks, and greenbelts.

112. Orient: To bring in relation to, or adjust to, the surroundings, situation, or environment; to place with the most important parts (for example, the primary building entrance and the designated "front" of a building) facing in certain directions; or to set or arrange in a determinate position, as in "to orient a building."

113. Parcel of land: Any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit. Parcel includes an easement supporting or related to a primary parcel, and a condominium unit.

114. Parking lot: Any area of a site or structure used as a parking area for more than four motor vehicles.

115. Parking space, standard: A space not less than 20 feet in length and not less than nine feet in width for the parking of a motor vehicle, exclusive of driveways and ramps.

116. Permitted use: A land use allowed as a property right within a zoning category subject only to the requirements listed for that use.

117. Phase: A portion of a development project scheduled for construction and occupancy as an entity apart from other phases of the development.

118. Planning commission: The town planning commission.

119. Planning director: The town planning director.

120. Plat: A map of a subdivision.

121. Preliminary plat: A preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of the town subdivision regulations.

122. Premises: A zoned lot, together with the buildings and other structures located thereon.

123. Primary arterial: A road intended to move traffic to and from such major attractions as villages, regional shopping centers, colleges and/or universities, major industrial areas and similar traffic generators within the town and/or as a route for traffic between communities or large areas.

124. Primary or principal building: The building or structure on a commercial development site used to accommodate the majority of the principal permitted use(s). When there are multiple buildings on a commercial development site, such as in a shopping center, the primary or principal building shall be the one containing the greatest amount of gross floor area. Buildings sited on pad sites or free-standing kiosk/ATM machines cannot be "primary" or "principal" buildings.

125. Primary material: Material covering 75% or more of the wall elevation or the individual material that constitutes the majority.

126. Principal structure: A structure in which the principal use of the lot is conducted.

127. Principal use: The primary or predominant use of any lot.

128. Public improvement: Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the town may ultimately assume the responsibility for maintenance and operation.

129. Quasi-public land use: Use of the land by private, not-for-profit institutions or organizations for purposes which may, in fact, be public uses, or which may be restricted to a particular group, but which generally involve the use of the land or the facility located thereon by a large number of people; including but not limited to churches, private schools, not-for-profit social organizations, hospitals, welfare organizations, or non-profit medical centers.

130. RAC: The permitted number of residences per gross acre (43,560 square feet of land area).

131. Ratite: Members of the group ratitae; large flightless birds, including emus and ostriches.

132. Recorded plat: A final plat bearing all of the certificates of approval required by Arizona Revised Statutes, and by the town subdivision regulations, and recorded by the Pima County recorder.

133. Recreational vehicle (RV): A unit, designed to provide temporary living quarters, built into as an integral part of or attached to a self-propelled motor vehicle chassis or to be towed by a motor vehicle. The unit contains permanently installed independent life support systems which provide at least four of the following facilities: cooling, refrigeration or ice box, self-contained toilet, heating and/or air conditioning, a potable water supply

system including a faucet and sink, separate 110-125 volt electrical power supply and/or LP gas supply.

134. Recreation vehicle park: A parcel of land under single or common ownership where two or more spaces are leased, rented or sold for occupancy of an RV. A fee may or may not be charged for the use of the individual space.

135. Recreational vehicle space: An area within the RV park for the placement of an RV unit, in addition to any exclusive use area adjacent to the unit set aside for the occupants of the RV, such as patio or parking space.

136. Redevelopment: Development on a tract of land with existing structures where all or most of the existing structures would be razed and a new structure or structures built.

137. Registered engineer: An engineer properly licensed and registered in the state of Arizona.

138. Registered land surveyor: A land surveyor properly licensed and registered in the state of Arizona.

139. Research laboratory:

    a. An administrative, engineering, specific research, design or experimentation facility.

    b. Shall include research on such things as electronic components, optical equipment, etc.

140. Restaurant: An eating establishment where meals may be bought and eaten, also allowing the sale of alcoholic beverages.

141. Riding arena/rodeo grounds, private: An enclosed area used for the purpose of riding and training horses or other livestock for private enjoyment.

142. Riding arena/rodeo grounds, public: An enclosed area used for the purpose of riding, training, or showing horses or other livestock, or for the purpose of competition involving those animals.

143. Right-of-way: A strip of land occupied or intent to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way, and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drainages, or any other use involving maintenance by a public agency shall be dedicated to public use by the maker of the plat on which such right-of-way is established.

144. Rodent: Any member of the order rodentia, such as, but not limited to: mice, rabbits, and hares.

145. Roof: The outside top covering of a building.

146. Sale or lease: Any immediate or future transfer or ownership including contract of sale or transfer, of an interest in a subdivision or part thereof, whether by metes and bounds, deed, contract, plat, map or other written instrument.

147. Screen: A barrier that functions to shield, protect or conceal.

148. Setback: A distance from a set point.

149. Significant land use change: Any change in land use in zones A-E that will: (1) more than double the number of residential units or enterprise density of the land in question within one year; or (2) change the nature of the activity on the land from residential (including renter occupied housing) to non-residential; or (3) change the nature of any business, industrial, or quasi-public use of the land (including agriculture use) to any use that would fall in a different two-digit sector number of the most recently published north American industry classification system (NAICS) as established by the United States census bureau; or (4) be reasonably expected to equal or exceed the capacity or structural integrity of nearby streets or other public facilities.

150. Single family dwelling, attached: A dwelling unit attached to one or more dwelling units by structural elements common to the attached units with each dwelling unit located on its own individual lot. The structural elements include common wall construction, roof, or other similar improvement. Elements like trusses, beams, and patio walls are not included.

151. Single family dwelling, detached: A dwelling unit which is not attached to any other swelling unit by any structural elements and located on its own separate lot.

152. Sign: Includes all outdoor advertising on any card, cloth, paper, plastic, metal, painted glass, wood or stone, and any and all devices, structural or otherwise, lighted or unlighted, painted or not painted, attached to, made a part of, or placed in the window of, or in the front, rear, sides or top of any structure or on any land or any tree, wall, bush, rock, post, fence, building or structure and visible from any public or private street, way, thoroughfare, alley or walk, which device announces or directs attention to the name or nature of a business, occupant of a structure, building or land or the nature or type of goods, services or projects, produced, sold, stored, furnished or available at the location or at any other location, including signs specifically for the sale of real property.

153. Site: The land area designated for a development project, exclusive of any abutting public right-of-way. The land area can be a portion of a lot, a single lot, or can consist of more than one lot.

154. Small livestock: Includes sheep, goats, miniature horses and other similar animals.

155. Specific plan: A precise plan for a specific piece of property, or properties, typically under single ownership, which contains all the elements as specified within these regulations, and which has been adopted by the council, and which may supersede these land use regulations as they might otherwise apply to the specified property.

156. Stables, public: Structures where animals are kept for sale or hire; breeding, boarding, and or training.

157. Stables, private: Structures where animals are kept for private use.

158. Standards: Mandatory regulations. Standards are indicated by use of the terms "shall" and "must."

159. Stockyard: A penned enclosure, or structure, where small or large livestock are maintained temporarily for the purpose of slaughtering, marketing or shipping.

160. Story: A space in a building between the surface of any floor and the surface of the floor next above, or if there is no floor above, then the space between such floor and the ceiling or roof above.

161. Street: Any existing or proposed street, avenue, boulevard, road, land, parkway, place, bridge, viaduct or easement for public vehicular access or a street shown in a plat approved pursuant to town, county, state of Arizona or other governmental unit regulations, or a street on a plat which has been approved by a unit of government and duly filed and recorded in the office of the county recorder. A street includes all land within the street right-of-way whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges and viaducts.

162. Street, arterial: A street that serves or is intended to serve as a major way by which traffic may be conveyed between the town and other communities as well as between major population or activity concentrations within the town. Arterial streets are designated in the transportation plan element of the town general plan, and are generally one-mile apart on section lines.

163. Street center line: The centerline or monument line of a street or road right-of-way as established by an official survey.

164. Street, collector: A street that is supplementary to an arterial street and serves, or is intended to serve, to convey traffic between neighborhoods or similar areas within town. Collector streets are typically at half-mile points within a section.

165. Streets, minor: Any dedicated street serving as the principal means of access to property which is not shown on the town transportation plan as an arterial or collector street.

166. Street right-of-way width: The distance between property lines measured at right angles to the center line of the street.

167. Structure: Anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed or put together in some definite manner, which requires location on the ground. Includes any part of the structure.

168. Subdivider: Has the same meaning as in the definition of "subdivider" under Arizona law.

A.R.S. § 9-463, paragraph 9 provides: "'Subdivider' means a person, firm, corporation, partnership, association, syndicate, trust or other legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this article, any local applicable ordinance and other state statute, except that an individual serving as agent for such legal entity is not a subdivider."

169. Subdivision: A division of land that meets the definition of "subdivision" under Arizona law.

A.R.S. § 9-463.02 (A) provides: "'Subdivision' means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two or more lots, tracts, or parcels of land, or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two parts. 'Subdivision' also includes any condominium, cooperative, community apartment, townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided." A.R.S. § 9-463.02 (C) provides: "'Subdivision' does not include the following: 1. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots. 2 The partitioning of land in accordance with other statutes of the State of Arizona regulating the partitioning of land held in common ownership. 3. The leasing of apartments, offices, stores or similar space within a building or trailer park, not to mineral, oil or gas leases.

170. Subdivision design: Street alignment, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers and the arrangement and orientation of lots as set forth in the town subdivision regulations or design manuals, or both.

171. Subdivision improvements: Infrastructure and improvements required to be constructed or installed as a condition of subdivision approval pursuant to the town subdivision regulations or state law, including but not limited to grading, sewer and water utilities, streets, easements, and traffic control devices.

172. Swine: Any hoofed animal of the porcine species, such as a pig.

173. Temporary use: Any use allowed for a specified period of time. A use not of a permanent nature.

174. Townhouse: A single-family dwelling, attached, in which each unit has its own separate front entrance, and no unit is located over another unit.

175. Transportation corridor: Land occupied by transportation facilities, including airports, railroads, roads, irrigation canals, or public utility line, or which is immediately adjacent to such facilities, and which has been designated for the purpose of accommodating such modes of transportation and related uses.

176. Use: The purpose for which land or a building is arranged designed or intended, for which either land or building is or may be occupied or maintained.

177. Utilities: Services such as natural gas, electricity, water, telephone, and cable television.

178. Variance: An exception to the provisions of these regulations.

179. Veterinary clinic or animal hospital, large: Any establishment maintained and operated by a licensed veterinarian for the diagnosis and treatment of diseases and injuries of animals including large and small livestock.

180. Veterinary clinic or animal hospital, small: Any establishment maintained and operated by a licensed veterinarian for the diagnosis and treatment of diseases and injuries of animals including domestic pets.

181. Vicinity plan: A map showing the relationship of a project or lot to adjacent streets, lots, and structures.

182. Wall: An upright opaque structure of wood, stone, brick, etc., serving to enclose, divide, support, protect, or screen.

183. Yard: Any open space other than a court on the same lot with a building or dwelling group which open space is unoccupied and unobstructed from the ground upward to the sky except for the projecting and/or accessory buildings permitted by these regulations.

B. The definitions set forth in this section supplement the definitions set forth in chapter 1-3 of this code.

C. Additional definitions that apply to specific chapters of this title may be found in the applicable chapter.

CHAPTER 17-2. ADMINISTRATIVE BODIES AND OFFICERS

Chapter 17-2 was inserted into the town code by Ordinance 2015.021

Sections:

17-2-1 Planning commission 17-16
17-2-2 Board of adjustment.....17-17
17-2-3 Planning director.....17-18
17-2-4 Cultural resources preservation board.....17-18

17-2-1 Planning commission

A.R.S. § 9-461.02 authorizes the creation of a planning commission, and provides for local ordinance to address the organization, number of members, terms of office, method of appointment and removal of members.

A. Establishment and composition. The planning commission consists of seven members appointed by the council from among the residents of the town.

B. Organization. The planning commission shall consist of a chairperson, a vice-chairperson, and five other members. The planning commission shall adopt rules for its own organization and for the transaction of its business. The rules shall not conflict with other sections of this code or other ordinances of the town or with the laws of the state of Arizona.

C. Duties and powers.

1. Obligations imposed by law. The planning commission shall undertake all tasks necessary to comply with state laws.
2. Reports and recommendations. The planning commission may make reports and recommendations relating to the planning and development of the town to the council and to other organizations and residents of the town. The planning commission may recommend programs for the construction or financing of public improvements to executive or legislative officials of the town.
3. Other tasks assigned by the council. The planning commission shall undertake all other tasks assigned by the council.

A.R.S. § 9-461.06 (E) and (F) describe the planning commission's role in the adoption and amendment of the general plan. A.R.S. § 9-461.09 requires the planning commission to hold at least one hearing on a specific plan application. A.R.S. § 9-461.12 authorizes the planning commission to hold joint meetings with other planning commissions upon approval of the council. A.R.S. § 9-462.04 (A) requires the planning commission to hold a public hearing on any zoning ordinance.

17-2-2 Board of adjustment

A.R.S. § 9-462.06 requires the town to establish a board of adjustment and prescribes its duties.

A. Establishment; purpose. There is hereby established a board of adjustment for the town.

B. Appointment; vacancies; term. The board of adjustment shall consist of seven members, who shall serve at the pleasure of the council, each of whom shall be a resident of the town. Members shall serve staggered terms, with four members, initially serving a term of two years, and three members initially serving a term of four years. Thereafter, each member of the board shall be appointed to serve a term of four years. Vacancies on the board of adjustment shall be filled by a majority vote of the council to fill the remaining term of office.

C. Officers; public meeting and minutes; bylaws; quorum; procedure.

1. Immediately upon formation and every two years thereafter, following the seating of new board members, the board of adjustment shall elect a chair person with the power to administer oaths and take evidence.
2. The meetings of the board of adjustment shall be subject to the requirements of the Arizona open meeting laws. The minutes of the board's proceedings shall show the vote of each member. Records of the board's examinations and other official actions shall be filed with the secretary to the board of adjustment as a public record.
3. The board of adjustment shall follow and adhere to any rules of procedure established for the board by the council.
4. The board of adjustment shall adopt all rules and procedures necessary or convenient for the conduct of its business, consistent with applicable law and any rules of procedure established for the board by the council.

The Arizona open meeting laws are found at A.R.S. §§ 38-431 through -431.09, and provide for the posting of agendas, keeping of minutes, and other requirements designed to assure that meetings are conducted openly

D. Powers and duties.

1. Variances. The board of adjustment shall hear and decide appeals for variances, as provided by state law.

A.R.S. § 9-462.06 (G) and (H) establish and restrict the powers and duties of the board of adjustment.

2. Interpretations. The board of adjustment shall hear and decide appeals from zoning decisions of the planning director, as provided by state law.

3. Other matters. The board shall consider any other matter referred by the council.

E. Compensation. The members of the board of adjustment shall serve without compensation; however, members may be reimbursed for actual expenses incurred in conjunction with their duties and authorized and approved by the council.

17-2-3 Planning director

The planning director shall be primarily responsible for the administration of this title, under the direction of the town manager. The planning director is the "zoning administrator" for purposes of title 9, article 6.1, A.R.S. (A.R.S. § 9-462 *et seq.*)

A.R.S. § 9-462.05 (C) requires the council to establish the office of zoning administrator, who is responsible for enforcement of the zoning ordinance. A.R.S. § 9-462 (A)(4), defines the "zoning administrator" as the official responsible for enforcement of the zoning ordinance. In Marana, the planning director is the zoning administrator.

17-2-4 Cultural resources preservation board

A. Function. The cultural resources preservation board is established as an advisory board to the council. As such, its function is to hear and consider matters of legislative nature, of policy and of other cultural resource preservation functions as necessary.

B. Establishment and composition

1. The council hereby creates a cultural resources preservation board to consist of five voting members. The five regular members of the cultural resources preservation board shall be appointed by the mayor, with the consent of the council. The members shall be selected without regard to political affiliation and shall serve without compensation, except for the reimbursement of actual (necessary and reasonable) expenses incurred in accomplishing the purposes of the board, provided such expenses have been approved in accordance with the town's financial procedures ordinance.

2. Terms of office, filling of vacancies and removal. The board members shall be appointed for six-year terms, except that the original members shall be appointed for staggered terms: two for three years and three for six years. Vacancies occurring otherwise than through the expiration of terms shall be filled by appointment by the mayor with the consent of the council. Regular members of the board may be removed from office without cause, by a majority vote of the entire membership of the council.

C. Organization. The cultural resources preservation board shall be comprised of five members, to be appointed by the mayor and approved by the council. Each member must have a demonstrated interest, experience or knowledge in one of the following: history, architecture, planning, archaeology, historic archaeology, real estate, historic preservation, law or a related field; three of the members shall possess professional qualifications in one of the following

fields: archaeology, architecture, preservation planning, or history. A majority membership of the five members shall be residents of the town. One member of the planning commission shall be appointed to ensure the continued coordination between the two groups. If no one can be found to serve on the board who both possesses the required professional qualifications and resides within the town, a person possessing the required professional qualifications may be appointed upon approval by the council. Its membership shall consist of a chairperson, a vice-chairperson, and three voting members. The board shall adopt rules for its own organization and for the transaction of its business, but such rules shall not be in conflict with other sections of this code or other ordinances of the town or with the laws of the state of Arizona.

D. Meetings. Meetings of the cultural resources preservation board shall be quarterly and at such other times as may be necessary to conduct its business in a timely fashion. All meetings shall be open to the public and the board shall cause an agenda to be made public not less than five calendar days prior to its meeting.

E. Quorum and voting. Three members of the cultural resources preservation board shall constitute a quorum. The concurring vote of the three convening members is necessary to approve any matter before the board.

F. Records. The cultural resources preservation board shall maintain a public record of its hearings, decisions and findings.

G. Rules of procedure. The cultural resources preservation board may adopt rules of procedure to carry out its functions. Copies of such rules will be filed with the town clerk and made available through the planning director.

H. Duties. The board is charged with developing a comprehensive cultural resources preservation program and undertaking any actions necessary to assure compliance with certified local government requirements. Duties of the board include, but may not be limited to, the following:

1. Legislative. Reviewing proposed alterations to historic and archaeological resources through the certificate of appropriateness process;

2. Advisory.

   a. Establishing a process for identifying Marana's historic, archaeological and cultural resources;

   b. Developing recommendations to provide a variety of support and incentives, including funding concepts, to enhance and maintain significant historic and archaeological resources;

c. Identifying cultural resources historic significance in the town, and developing, maintaining, and from time to time amending plans for the preservation of those resources;

d. Establishing and maintaining the Marana historic register;

e. Inventorying historic properties and recommending to the council designation for historic property districts;

f. Establishing guidelines for evaluation of historic and archaeological resources;

g. Coordinating resources and providing technical assistance;

h. Developing criteria and review procedures;

3. General.

a. Providing public information and education on preservation;

b. Conferring with other city, county, regional, state and national historic preservation boards and commissions;

c. Developing partnerships with groups such as the Arizona historical society and the state historic preservation office;

d. Reporting its progress to the council.

CHAPTER 17-3. ADMINISTRATION AND ENFORCEMENT

Chapter 17-3 was inserted into the town code by Ordinance 2015.021

Sections:

17-3-1 Amendment procedure 17-20
17-3-2 Conditional use permits 17-21
17-3-3 Temporary use permit 17-25
17-3-4 Compliance with code 17-26
17-3-5 Responsibility for violation 17-26
17-3-6 Responsibility for enforcement 17-26

17-3-1 Amendment procedure

A. This development code, including the zoning map, may be amended. Any person seeking an amendment to this development code shall first submit to the planning director an application designating the change desired and the reasons therefor, and shall pay a filing fee as established by the council. The filing fee shall not be returned to the petitioner requesting the amendment. Any member of the planning commission or the council, acting in an official capacity, or the planning director, the town building official, the town attorney, or the town engineer may also initiate an amendment to this development code without the payment of said filing fee.

B. Application requirements shall be established by the planning director. However, at a minimum, applications for an amendment to the zoning map, or change in zoning classification, shall include the following:

1. A preliminary site plan of the property showing the use(s) proposed for the site, showing setbacks, heights, floor area ratio's, parking areas, landscaping, and other information to assist the planning commission and the council to evaluate the request. This plan shall become part of the record of the case, and final plan review shall substantially comply with the preliminary site plan.
2. Appropriate public service and utility information, including how the project will be served by water, sewer, gas, electricity, telephone, and other utilities.
3. Public service information, including how the project will impact local services such as schools, police, parks, fire service, sanitary pick-up, and other similar services. Included shall be how the developer will provide public paved roads, provisions of parks and playgrounds for residential development, and other services required by the project.
4. Site information, such as site topography, preliminary hydrology and drainage information, and preliminary grading considerations.
5. In addition, the planning director, or the planning commission, may request other information that will be helpful to the planning commission and the council in their evaluation of the request.

17-3-2 Conditional use permits

A. Purpose. The town recognizes certain uses which may be appropriate in a specific zoning district, but which may have characteristics that, depending upon the location, design, and standards of operation, may have a greater impact than permitted uses on adjoining properties, businesses, or residences. Such uses require more comprehensive review, including the ability of the town to establish specific conditions for the project to mitigate any potential impacts. The planning commission can evaluate only conditional uses listed, and is empowered to grant, grant with conditions, or deny any application for a use permit. The planning commission's review is subject to findings and the application meeting requirements of this section. The burden of proof shall be the responsibility of the applicant.

B. Application. Applications shall be filed with the planning director on an application form with the required documentation specified on guidelines provided by the planning director with appropriate fees. The application, at a minimum, shall include the following:

1. Name and address of the applicant. If the applicant is not the owner of the property, the name and address of the owner shall be supplied along with authorization that the applicant is the agent of the owner and may apply for the use permit. Proof of ownership must be submitted with the application.

2. A statement describing the proposed use, and any pertinent data required to evaluate the use, including but not limited to: hours of operation, numbers of employees and shifts, processes and materials involved in the use, and types and volume of traffic generated by the use.
3. A list of all owners of property within 300 feet of the exterior boundaries of the property subject to the application. The list shall be accompanied by a map showing the location of these properties.
4. A site plan including dimensions showing the type and location of buildings, structures, floor plans, parking, landscaping, circulation and other relevant site information.

C. Public hearing. The planning commission shall hold a public hearing on the application. Prior to the public hearing, notice shall be given in the manner provided in A.R.S. § 9-462.04 (A).

D. Findings. A conditional use permit may be granted only after a determination by the planning commission that the proposed use:

1. is appropriate to the specific location;
2. is not detrimental to the health, safety, and general welfare of the town;
3. will not adversely affect the orderly development of property within the town;
4. will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the town;
5. is consistent with the objectives, policies, general land uses and programs specified in the general plan and applicable specific plan, if any;
6. will not create a nuisance or enforcement problem within the neighborhood;
7. will not encourage marginal development within the neighborhood;
8. will not create a demand for public services within the town beyond that of the ability of the town to meet in the light of taxation and spending restraints imposed by law;
9. is consistent with the town's approved funding priorities; and,
10. that the proposed site is adequate in size and shape to accommodate the intended use and that all requirements for the zone district, included but not limited to, the setbacks, walls, landscaping and bufferyards will be met.

E. Action by the planning commission. The planning commission may grant, grant with conditions, or deny the application. The planning commission may place any conditions which are deemed necessary

to mitigate potential impacts and insure compatibility of the use with surrounding development and the town as a whole. These conditions may include, but are not limited to:

1. requirements for setbacks, open spaces, buffers, fences or walls to mitigate conflicts from visual, noise, lighting and similar impacts associated with the use;
2. dedication and/or paving of street or other public rights-of-ways, and control in location of access points and on-site circulation to mitigate traffic impacts from increased volumes or nature of traffic activity associated with the use;
3. regulations pertaining to hours of operation, methods of operation, and phasing of the development of the site to mitigate impacts to surrounding properties and the neighborhood;
4. time limits on the duration of the permit to determine if the use, after a temporary period of operation, is materially detrimental or to evaluate whether changed conditions in the neighborhood effect the capability of the use to continue to adequately mitigate impacts to the surrounding area or the town as a whole.

F. Effective date of the conditional use permit. The decision of the planning commission shall be final and effective 15 days from the date of decision unless an appeal is filed as provided below.

G. Appeal procedure.

1. The action of the planning commission may be appealed to the council by the applicant, any member of the council, the town manager or any property owner within 300 feet of the property subject to the request. Such requests for appeal must be filed on an application form provided by the planning director, with the appropriate fee, within the 15 days following the date of the planning commission action.
2. Consideration of the appeal shall be made at a public hearing only after notice of the hearing has been placed in the newspaper of general circulation in the area designated by the council for legal public notice, at least 15 days prior to the hearing.
3. The council shall act to affirm, or reverse, in whole or in part, or modify the planning commission's decision including adding to or deleting the conditions attached to the approval by the planning commission. Any action to grant a conditional use permit, either by affirmation, modification, or reversal of the planning commission's decision, must include the required findings for use permits as provided in this section.

H. Modification of conditional use permits. A request to modify, expand, or otherwise change an approved conditional use permit, not in substantial conformance with the approved permit, shall be processed according to the provisions of this section as a new application.

I. Exercise and use. A permit automatically expires if the use is not established within six months of its grant or within the time otherwise specified in the permit, whichever is greater. For a use requiring a building permit, the use is established when a building permit is issued or a development plan is approved for the use. If the use does not require a building permit, the use is established when the planning director finds clear and visible evidence of the use's establishment.

J. Extension of initial period for use. Upon a showing of good cause, the planning director may, after notice to the planning commission, extend the period for initially exercising the permit for a maximum of one additional year.

K. Expiration upon discontinuance. If a use established under a conditional use permit is discontinued for any reason for a period of six months, the permit becomes void and the use may not be resumed. Upon applications during the six month period by the owner and upon showing of good cause, the planning director may grant another extension not to exceed a total of six additional months.

L. Revocation. Failure to comply with the conditions, stipulations or terms of the approval of a conditional use permit is a violation of this code and will be enforced as such. Repeated offenses shall be cause for revocation of the permit.

M. Grounds for revocation. The planning commission may revoke a permit on any of the following grounds:

1. Violation of a zoning regulation of the town.
2. Violation of a term, limitation or condition of the conditional use permit.
3. Causing or allowing a nuisance in connection with the premises.
4. Conviction of a violation of federal or state law or town ordinance in connection with the operation of the permitted use.

N. Termination upon change of use. A conditional permit for an established use terminates upon the establishment of a new use.

O. Status of the conditional use permit. A use permit granted pursuant to the provisions if this section shall run with the land and continue to be valid regardless of ownership of the property or structure so long as it operates within the conditions, stipulations, and terms of the permit.

P. Conditional uses upon annexation

1. Purpose. The uses and densities permitted under county zoning and in county zoning districts do not directly correlate to the uses and densities permitted in the most closely comparable town of Marana zoning classifications. Upon annexation, this paragraph P is intended to authorize the council to conditionally permit uses and densities permitted by the county immediately

before annexation upon translation of county zoning to the most closely comparable town of Marana zoning classification.

2. Applicability. The special procedures and authority set forth in this paragraph P apply only to the translation of county zoning to town of Marana zoning upon annexation of property.

3. Procedure. Except as specifically set forth below, paragraphs A through G, I through K, and O of this section 17-3-2 shall not apply to conditional uses authorized upon annexation pursuant to this paragraph P. Conditional uses granted upon annexation shall be included in the ordinance adopted by council translating county zoning upon annexation.

4. Findings. In determining whether to grant conditional uses upon annexation pursuant to this paragraph P, the council shall consider the factors set forth in paragraph D of this section.

5. Conditions. Conditional uses permitted by the council upon annexation may include conditions the council deems necessary to mitigate potential impacts and insure compatibility of the use with surrounding development and the town as a whole, including without limitation those conditions set forth in paragraph E of this section.

6. Effect. Paragraphs H (modification of conditional use permits), L (revocation), M (grounds for revocation), and N (status of conditional use permit) shall apply to conditional uses permitted by the council upon annexation pursuant to this paragraph P.

17-3-3 Temporary use permit

A. Temporary uses or structures not otherwise permitted by code provisions may be permitted provided:

1. That the need for the temporary use or structure has arisen from circumstances constituting a substantial hardship, including but not limited to a natural disaster, fire or governmental action, or construction or development of a permanent structure.

2. That the setback structure will not violate any applicable yard setbacks.

3. That any temporary use permitted must be capable of being removed within 15 days' notice if the temporary permit is revoked.

4. That the temporary use shall not be granted for more than nine months except that up to an additional one-year period may be granted for good cause shown.

5. That a mutual consent agreement between the town and the applicant be signed and guaranteed by cash or a bond acceptable to the town attorney in an amount set by the council to guarantee termination of the temporary use and performance of the provisions of the mutual consent agreement.

B. The council may approve an application with such conditions, modifications and restrictions as the council finds necessary to make the temporary use more compatible with the surrounding neighbors and to carry out the plans and policies of the town.

17-3-4 Compliance with code

Permits shall not be granted for the construction or substantial modification of any building or structure or for the moving of a building or structure onto a lot or for the change in use of any land, building, or structure if such construction, moving, modification, or change in use would be a violation of any of the provisions of this code, nor shall any sewer or water service line or electric or gas utilities be installed to service the premises if such use would be a violation of this code. Any license or permit issued by any official or employee of the town which would not be in conformance with the provisions of this code shall be null and void. Any use, arrangement, or construction that is not in conformance with plans, specifications, or other documents approved under the terms of this code shall be deemed a violation of this code.

17-3-5 Responsibility for violation

It shall be the responsibility of the owner of the land and any and all builders, contractors, sub-contractors, real estate agents, and any other person having appropriate decision-making authority in the establishment of any use of land or the erection, modification, or relocation of any building or structure or other use of the land to make sure that a proper permit has been obtained before work is begun. Any person doing any work on a project for which a proper permit has not been obtained shall be deemed in violation of this ordinance.

17-3-6 Responsibility for enforcement

A. The planning director shall be responsible for the enforcement of zoning ordinances codified in this land development code, with the assistance of the town attorney.

B. The town engineer shall be responsible for the enforcement of subdivision and floodplain regulations codified in this land development code, with the assistance of the town attorney.

CHAPTER 17-4. ZONING

Chapter 17-4 was inserted into the town code by Ordinance 2018.010.

Sections:

17-4-1 New zone districts established 17-27
17-4-2 – 17-4-18 (Reserved) 17-27
17-4-19 Mixed-use zoning districts 17-27
17-4-20 Mixed-use streets 17-40
17-4-21 Blended-use (BU) 17-51
17-4-22 Downtown Marana overlay (DO) 17-53
17-4-23 Downtown neighborhood (DN) 17-54
17-4-24 Downtown (DT) 17-55

17-4-1 New zone districts established

The BU, DO, DN, and DT zones established and regulated by sections 17-4-19 through 17-4-24 are new zoning districts that supplement the zoning districts set forth in title 5 (zoning) of the Marana land development code.

17-4-2 – 17-4-18 (Reserved)

17-4-19 Mixed-use zoning districts

A. General. The mixed-use zoning districts are the BU, DO, DT, and DN zones. Properties in mixed-use zoning districts are regulated primarily on the physical form, intensity, character, and size of buildings and uses. Use restrictions in the mixed-use zoning districts are found in the use matrix set forth in Table 1 below.

B. Purpose. The mixed-use zoning districts promote walkable, compact, downtown and neighborhood development. The zones will vary the intensity of land use, variety of land uses, scale and size of buildings, and other factors according to the context.

1. The BU zone is implemented through a blended-use plan, approved with the rezoning to BU, comprised of a combination of the three intensities described below and regulated by section 17-4-21.

   a. Low intensity: Consists of single-family residential areas, with some mix of uses, home occupations, and accessory buildings.

   b. Medium intensity: Consists of a mix of uses but is primarily blended density residential. It contains a wide range of building types—houses, courtyard housing, townhouses, duplexes, triplexes, small apartment buildings, and live-work units.

   c. High intensity: Consists of higher density mixed-use buildings that accommodate retail, offices, institutions, and apartments or condominiums.

2. The DT and DN zones are implemented through a downtown implementation plan, submitted by one or more owners of land located in the DO district. Until submission and approval of a downtown implementation plan, the underlying zoning entitlements remain in place. Upon town approval of a downtown implementation plan, the underlying zoning entitlements are replaced with the zoning entitlements set forth in the DT and DN zones.

C. Use. Mixed-use districts are subject to the requirements of Table 1 below, where the notations have the following meanings:

1. "P" means the use is permitted subject to design standards.

2. "A" means the use is permitted as an accessory use located on the same lot with a permitted use.
3. "C" means the use is allowed upon approval of a conditional use permit (see section 17-3-2).
4. "U" means the use is allowed upon meeting the conditions set forth in Table 2 below.
5. "T" means the use is allowed upon approval of a temporary use permit (see section 17-3-3).
6. "X" means the use is prohibited.

D. Uses not mentioned.

1. General presumption. Uses not listed in Table 1 and not otherwise prohibited by law shall be presumed to be permitted subject to the conditions and restrictions that apply to the most similar use, as determined by the planning director. A use shall be prohibited only if the planning director determines that the use is not similar to any listed use.
2. Planning director determination. In making the determination required by paragraph 17-4-19 D. 1 above, the planning director shall use as a guide the most recently published north American industry classification system as established by the United States census bureau.
3. Notice of determination. The planning director's determination under paragraph 17-4-19 D. 1 above shall be filed in the office of the town clerk, with copies provided to the council and manager.
4. Ratification or modification. The planning director's determination may be ratified or modified by legislative action of the town council upon recommendation by the planning commission.
5. No similar uses. If the planning director determines that a similar use does not exist, the planning director may submit an amendment to this section to establish a specific listing for the use in question by legislative action of the town council upon recommendation by the planning commission.

Table 1. Mixed-use zoning district use matrix

	Blended use zone (BU) intensity			Downtown overlay (DO)	
Use	**Low**	**Medium**	**High**	**DN**	**DT**
Residential					
Single-family detached	P	P	X	P	X
Two-family	P	P	X	P	X
Three-family	X	P	P	P	P
Townhouse	X	P	P	P	P
Multi-family	X	U	P	U	P

Table 1. Mixed-use zoning district use matrix

Use	Blended use zone (BU) intensity			Downtown overlay (DO)	
	Low	Medium	High	DN	DT
Live-work	X	P	P	P	P
Accessory dwelling	P	P	P	P	P
Detached accessory structure	A	A	A	A	A
Group home	C	C	C	C	C
Home occupation	A	A	A	A	A
Model home	A	A	A	A	A
Modular home	C	X	X	X	X
Sales office	T	T	P	T	P
Sports court, unlighted	A	A	A	A	X
Civic space					
Park	P	P	U	P	U
Green	P	P	U	P	U
Square	P	P	P	P	P
Plaza	X	P	P	P	P
Multipurpose field	P	P	X	P	X
Playground	P	P	P	P	P
Community garden	P	P	P	P	P
Agricultural					
Corral, barn, or other animal-keeping structure	A	X	X	X	X
Greenhouse	P	U	U	U	U
Kennel	A	X	X	X	X
Stables	A	X	X	X	X
Lodging					
Bed and breakfast	U	U	X	U	P
Hotel	X	X	P	U	P
Resort	X	X	P	U	X
Entertainment					
Adult entertainment	X	X	X	X	X
Bowling center	X	X	P	X	P
Theater, excluding drive-in	X	X	P	X	P
Automotive					
Automobile service facility	X	X	C	X	X
Automobile fuel station	X	X	C	X	X
Auto sales	X	X	X	X	X
Car wash	X	X	C	X	X
Drive-thru facility	X	X	C	X	X
Office					
Live-work	U	U	P	U	P
Office	U	U	P	U	P

Table 1. Mixed-use zoning district use matrix

Use	Blended use zone (BU) intensity			Downtown overlay (DO)	
	Low	Medium	High	DN	DT
Service					
Business service	X	U	U	U	U
Commercial laundry	X	X	U	U	X
Child care home provider	P	P	P	P	X
Day care center	C	C	C	C	C
Financial institution	X	X	U	U	U
Hospital	X	X	P	X	X
Medical clinic	X	U	U	U	C
Medical marijuana dispensary	X	X	C	X	C
Mini-storage	X	X	X	X	X
Personal service	X	P	P	P	P
Veterinary clinic	X	X	U	C	C
Retail					
Bar, pub, tavern, micro-brewery	X	U	U	U	U
Live-work	X	P	P	P	P
Package liquor store	X	X	U	X	U
Restaurant	X	U	U	U	U
Retail facility	X	U	U	U	U
Institutional					
Cemetery or mausoleum	U	U	X	U	X
Club or meeting hall	X	U	U	X	X
Funeral home	X	U	U	U	U
Museum	X	U	U	U	U
Place of worship	U	U	U	U	U
Education					
Elementary or middle school	U	U	U	U	X
High school	X	U	U	U	X
Utilities					
Communications facility	C	C	C	C	C
Utility facility	C	C	C	C	C

6. Multiple uses. Multiple uses within a single site or building are permitted in all mixed-use districts and areas.

7. Conditional uses. Conditional uses listed in Table 1 above are limited for size or intensity per Table 2 below.

Table 2. Conditions per area

	BU low intensity	BU medium intensity; DN	BU high intensity; DT
Civic space	None	None	Parks and greens permitted along the perimeter
Agricultural	Not applicable	On-site parking may not exceed 20 spaces	On-site parking may not exceed 30 spaces
Residential	Not applicable	Six dwelling units maximum	No maximum
Lodging	Six rooms maximum	12 rooms maximum	No maximum
Office	600 sq. ft. maximum	6,000 sq. ft. per floor maximum	No maximum
Service & retail	Not applicable	10,000 sq. ft. maximum; no open storage	30,000 sq. ft. maximum; no open storage
Institutional	On-site parking may not exceed 20 spaces	On-site parking may not exceed 30 spaces	On-site parking may not exceed 50 spaces
Education	Not applicable	Childcare facilities may have no more than four parking spaces; elementary schools may not exceed five acres unless playground has 24-hour access	

E. Civic space. The purpose of civic space is to ensure civic amenities are appropriate in type and location. Civic space is required per the standards below.

1. At least 5% of the net developable area of all blended-use plans and of downtown implementation plans five acres or larger must be dedicated to civic space.

2. Civic spaces are identified and located in the blended-use plan or downtown implementation plan, and are permitted by location per Table 1 above.

3. Each blended-use plan or downtown implementation plan 40 acres or more in area must have at least one green, square, or plaza (see 2, 3, or 4 of Table 3). The main civic space must be located within 800 feet of the geographic center of the plan and may be adjusted up to 25% in length from the center by the planning director for topographical conditions, or existing street alignment.

4. A square or plaza (3 and 4 of Table 3) must have a minimum of 50% of its perimeter bounded by streets.

5. Civic spaces are designed per Table 3.

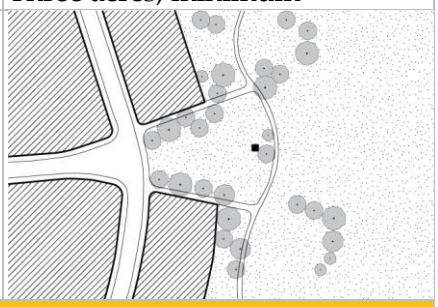
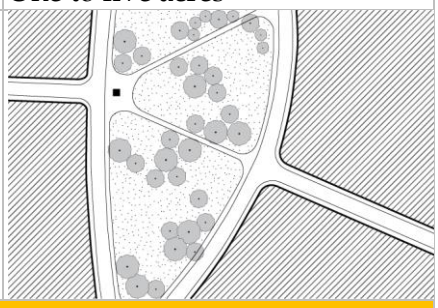
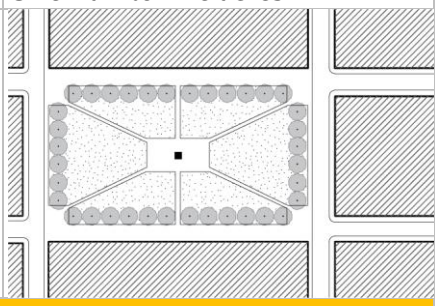
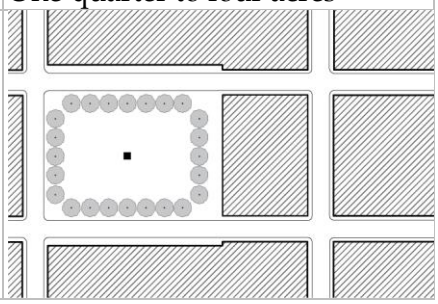
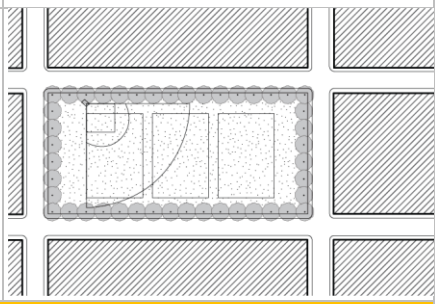
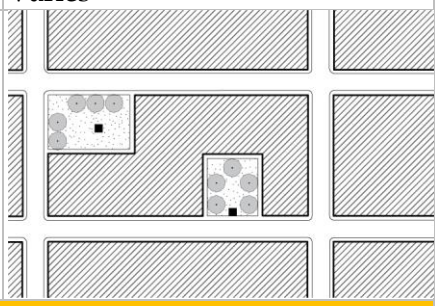
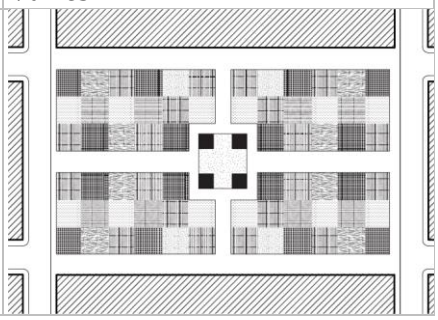
Table 3. Civic space types	
1. Park	
Area	Three acres, minimum
Standard: A space independent of surrounding building frontages. Landscape must consist of paths and trails, fields, and open shelters, all naturalistically disposed.	
2. Green	
Area	One to five acres
Standard: An open space spatially bounded by landscaping rather than building frontages. Character consists of landscaping and trees, naturalistically disposed.	
3. Square	
Area	One-half to five acres
Standard: An open space spatially bounded by building frontages. Landscape consists of paths, landscaping and trees, formally disposed. Squares are located at the intersection of major streets.	
4. Plaza	
Area	One-quarter to four acres
Standard: A plaza is formed by building fronts. Landscape consists primarily of pavement. Shade is required for 30% of the space. Plazas must be located at the intersection of major streets.	

Table 3. Civic space types	
5. Neighborhood multipurpose field	
Area	One and a half to three acres
Standard: There must be a 20-ft. clear zone at the perimeter landscaped with canopy trees. If adjacent to a street, the street trees may provide the required shade. The multipurpose field may also serve as a stormwater basin.	
6. Playground	
Area	Varies
Standard: A playground must be fenced and may include an open shelter or shade structure. Playgrounds are located within residential areas and may be placed within a block or as part of another civic space.	
7. Community garden	
Area	Varies
Standard: Community gardens consist of land used for the cultivation of fruits, vegetables, plants, flowers, or herbs by multiple users.	

F. Development standards.

1. Block sizes are regulated by the town's subdivision street standards.

2. Site standards.

   a. Setbacks. Buildings must be set back from parcel boundaries according to Table 9, Table 10, Table 11, Table 12, and Table 13 below.

   b. Lot coverage. Lot coverage by buildings is limited to the maximum percentage specified in to Table 9, Table 10, Table 11, Table 12, and Table 13 below.

   c. Yards. Yard types must be assigned along all frontages and are limited by type according to Table 4 below. Landscaping in yards is subject to the requirements of Table 4, Table 9, Table 10, Table 11, Table 12, and Table 13 below. Where the minimum number of required trees cannot be reasonably

planted, they may be accommodated with additional streetscape improvements.

d. Buffers are not required within blended-use plans or downtown implementation plans, except as specifically required by Table 9, Table 10, Table 11, Table 12, and Table 13 below. Street frontage buffers are not required in blended-use plans or downtown implementation plans.

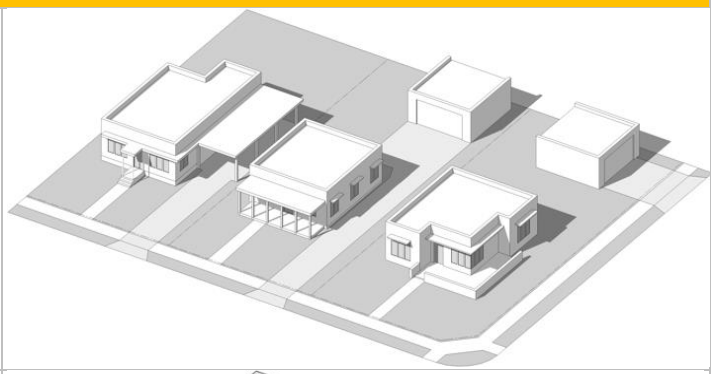
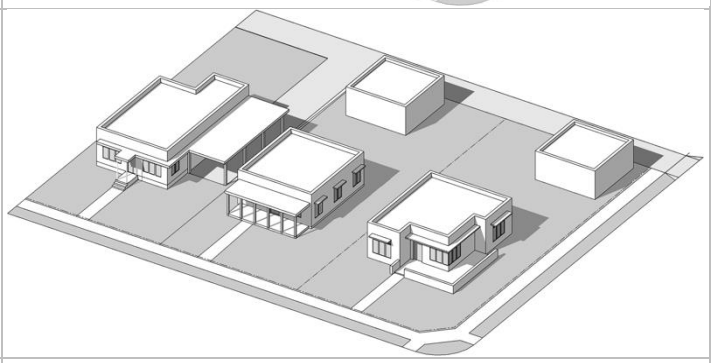
Table 4. Yard types	
1. Common	
Illustration (BU low intensity)	
Illustration (BU medium intensity; DN)	
Planting	See Table 9, Table 10, Table 11, Table 12, and Table 13; trees should shade the sidewalk
Surface	70% minimum must be landscaped; paving is limited to sidewalks and driveways
Walkways	One per frontage providing access to building entries
Fencing	Not permitted

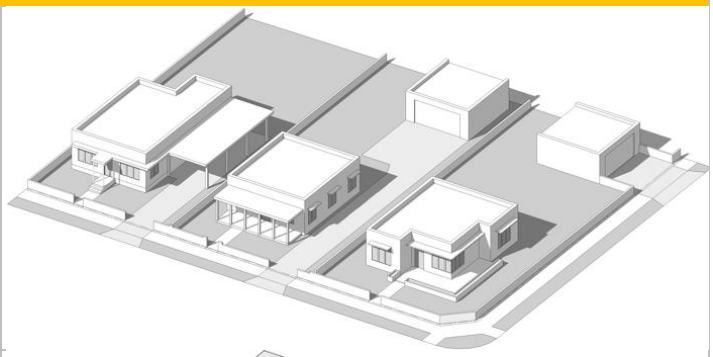
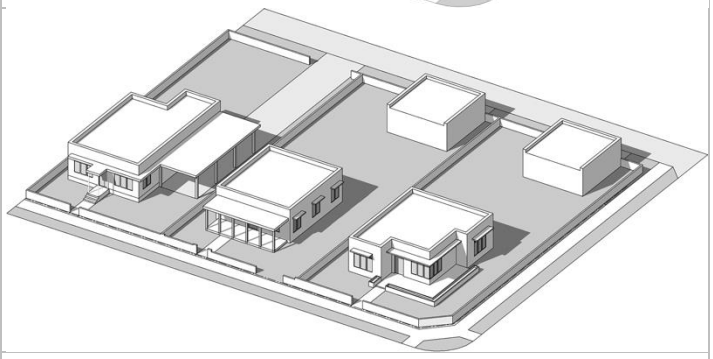
Table 4. Yard types	
2. Fenced	
Illustration (BU low intensity)	
Illustra-tion(BU medium intensity; DN)	
Planting	See Table 9, Table 10, Table 11, Table 12, and Table 13; trees should shade the sidewalk
Surface	50% minimum must be landscaped; paving is limited to sidewalks and driveways
Walkways	One per frontage providing access to building entries
Fencing	Required at frontages; three feet minimum and four feet maximum in height
3. Shallow	
Illustration	
Planting	See Table 9, Table 10, Table 11, Table 12 and Table 13
Surface	Landscaped in M, DN and paved in H, DT (vegeta-tion is permitted in raised containers)
Walkways	One per building entry
Fencing	Permitted at building setback line or at outdoor seat-ing areas; three feet maximum in height

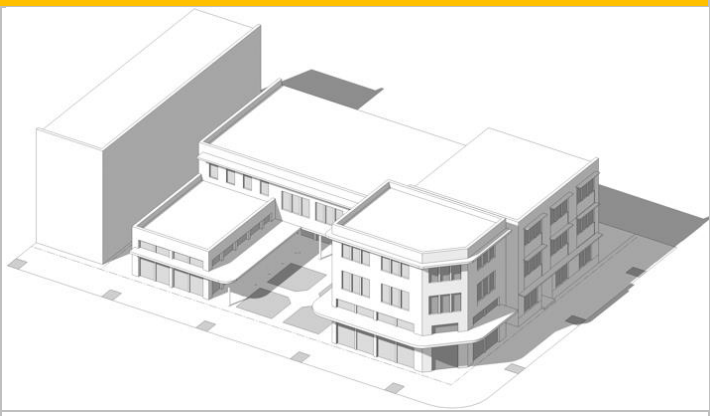
Table 4. Yard types	
4. Urban	
Illustration	
Planting	Not applicable
Surface	Must be paved; vegetation is permitted in raised containers
Walkways	Not applicable
Fencing	Permitted outdoor seating areas only; three feet maximum in height
5. Pedestrian forecourt	
Illustration	
Planting	Not applicable
Surface	Must be paved; vegetation is permitted in courtyard or containers
Fencing	Permitted outdoor seating areas only; three feet maximum in height
Area	1,800 sq. ft. maximum
Activation	Must be bordered by habitable spaces on three sides, or on two sides at corner sites

Table 4. Yard types	
6. Vehicular forecourt	
Illustration	
Planting	Not required
Surface	Driveway must be paved; the remainder of the yard may be paved or landscaped
Fencing	Permitted outdoor seating areas only; three feet maximum in height
Area	3,000 sq. ft. maximum
Activation	Must be bordered by habitable spaces on three sides, or on two sides at corner sites

e. Parking location. Parking on the site must comply with the following:

i. Parking is required to be behind the building.

ii. Parking must be accessed from an alley or rear lane in the BU medium and high intensity areas and in the DN and DT zones.

iii. Open parking areas must be screened from the street by a building or streetscreen.

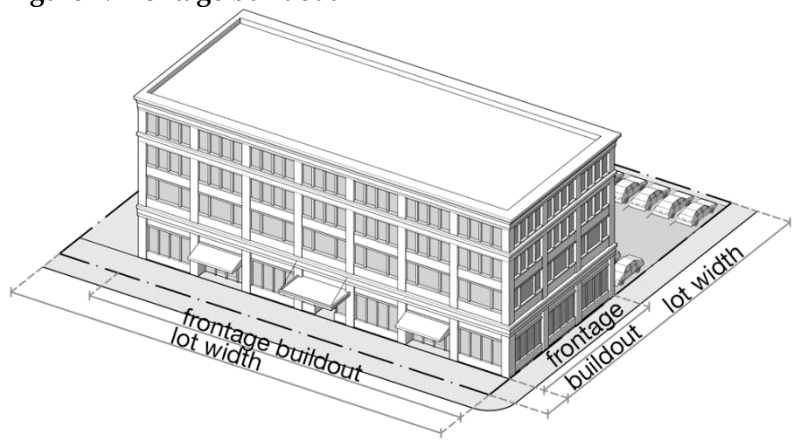
iv. A streetscreen must have openings no wider than the driveway or sidewalk, plus a setback of 18 inches at driveway intersections.

f. Parking requirements. No minimum parking requirements apply in the mixed-use zones. Maximum parking requirements apply to certain uses (see Table 2).

3. Building standards.

a. Minimum frontage buildout. Minimum frontage buildout indicates facades must be built along the prescribed length of the property line as regulated by Table 9, Table 10, Table 11, Table 12, and Table 13 and as illustrated in Figure 1.

Figure 1. Frontage buildout



b. Height. Building heights are measure in stories with the following restrictions:

   i. Stories are measured from finished floor to finished ceiling.

   ii. Stories may not exceed 14 feet in height, except that a commercial use on the first floor has a minimum height of 12 feet and a maximum height of 25 feet.

   iii. Height limits do not apply to attics or raised basements, masts, belfries, clock towers, chimney flues, water tanks, or elevator bulkheads.

   iv. Edge conditions. Height is limited to adjacent parcel zoning height within 50 feet of the lot line in all mixed-use zones.

c. All outdoor electrical, plumbing, and mechanical equipment must be located behind the front facade, or concealed from street view with a screen or wall. These facilities may not encroach into any setback.

d. The habitable area of an accessory dwelling may not exceed 800 sq. ft. or 30% of a principal dwelling, whichever is greater. Garages are not considered habitable area.

e. Facades

   i. The facade must conform to Table 5 and is permitted as specified by Table 9, Table 10, Table 11, Table 12, and Table 13.

   ii. Building entries must be provided as follows:

      a) The main entrance to the principal building must be located on the primary facade.

      b) One entry must be provided for every 80 feet of facade leading to habitable space.

1) Buildings on corner lots are exempt from entry frequency requirements if the facade is under 50 feet in length.

iii. Glazing.

a) At least 15% of each story of each facade must be glazed with clear glass.

b) At least 50% of the first story of buildings facing Marana Main Street must be glazed with clear glass.

c) Additional glazing requirement apply to shopfronts per Table 5.

iv. Buildings may include multiple facade types along their length, each type no less than 30 feet in width.

v. A shopfront is required for all ground floor commercial uses in the BU high intensity area and in the DT zone except for lodging and office.

Table 5. Facade types

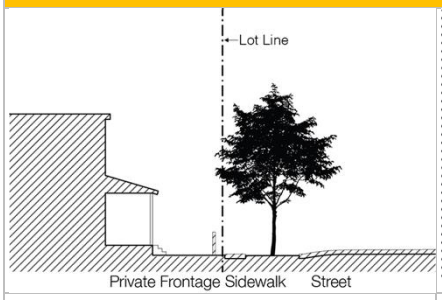
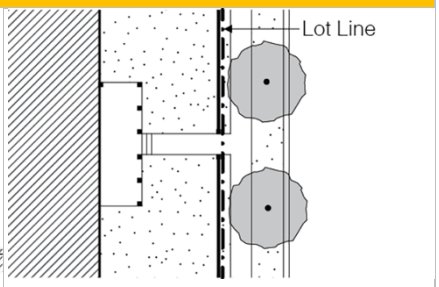
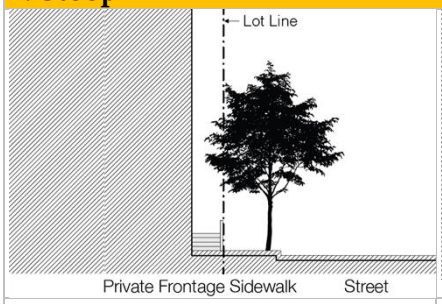
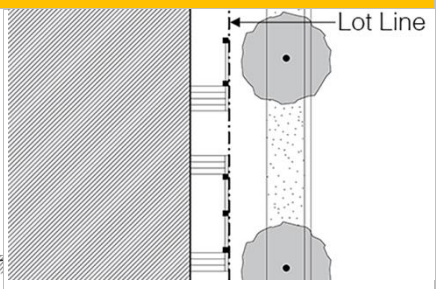
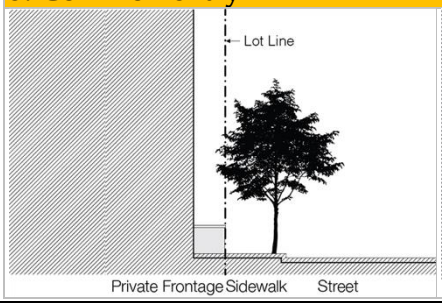
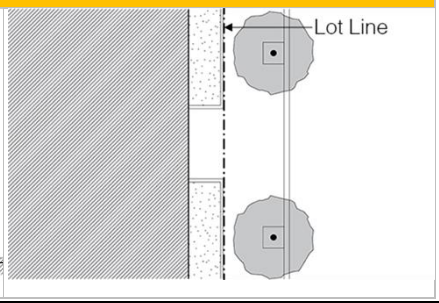
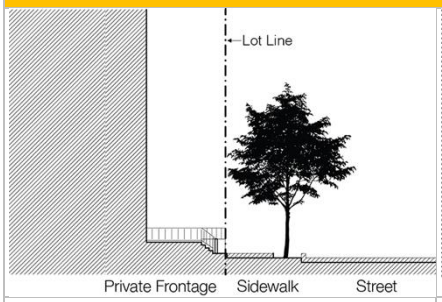
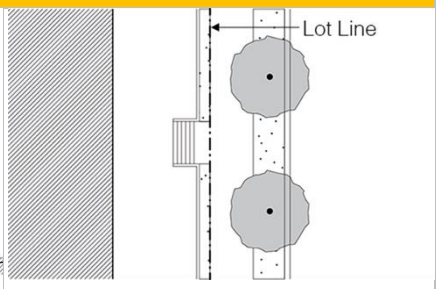
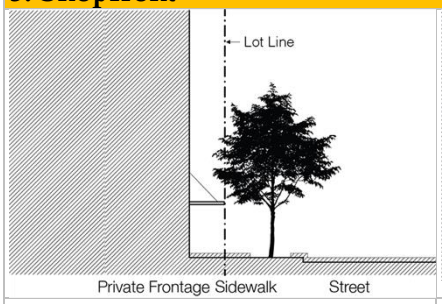
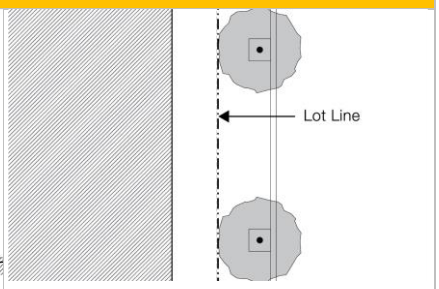
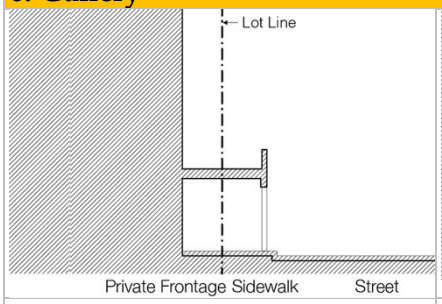
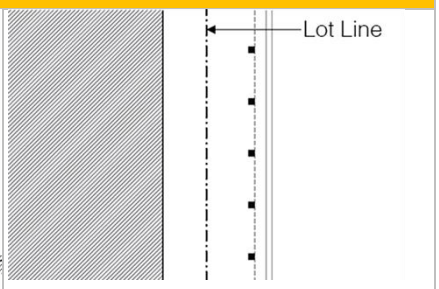
1. Porch	
	
Requirement	Minimum depth of six feet
2. Stoop	
	
Requirement	Minimum of one foot above highest adjacent sidewalk grade
3. Common entry	
	

Table 5. Facade types	
Awnings and canopies should encroach into the right-of-way	
4. Terrace	
	
Requirement	Minimum eight inches above highest adjacent sidewalk grade
5. Shopfront	
	
Requirement	At least 50% of each ground floor facade must be glazed with clear glass
6. Gallery	
	
Requirements	• At least 50% of each ground floor facade must be glazed with clear glass • Must be at least eight feet deep with at least ten feet of vertical clearance

17-4-20 Mixed-use streets

The requirements of this section, rather than the town's subdivision street standards manual, apply within the BU, DN, and DT zones.

A. Centerlines of offset thoroughfares entering onto collector or arterial thoroughfares must be at least 300 feet apart.

B. Streets must connect to other streets, forming a network. The planning director is authorized to permit a deviation to this requirement, thereby allowing a dead-end street terminating in a cul-de-sac, consistent with the following requirements:

1. The planning director, in consultation with the town engineer, makes one or more of the following determinations:

   a. The physical terrain will make connection to other streets cost-prohibitive or unsafe.

   b. Existing development physically blocks connection to other streets.

   c. Access restrictions or standard traffic engineering considerations make connection impossible or unsafe.

2. Connectivity for bicycles and pedestrians should be created and maintained whenever possible, even when there is no vehicular connectivity.

3. No cul-de-sac may exceed the greater of 300 feet to the center of the bulb or one-half block in length.

C. Block standards.

1. Blocks consist of lots surrounded by streets.

   a. Lengths of block faces may not exceed the maximum length of a block face, measured along lot lines, per Table 6, except the planning director may increase the maximum length by up to 10% to accommodate specific site conditions.

Table 6. Maximum block face length

Zone or Intensity	Length in feet
BU low intensity	500
BU medium intensity	400
BU high intensity	300
DT	300
DN	400

   b. Where two or more zones or intensities occur on the same block face, the block face length may not exceed the shortest required length.

2. The planning director may exempt blocks adjacent to undeveloped land, areas unsuitable for development, or pre-existing incomplete blocks from a limitation on block length.

3. Block faces exceeding 500 feet must be subdivided with a sidewalk extending through the block that is 12 feet wide, minimum.

4. Rear alleys are required for medium and high intensity areas in the BU zone and in DT and DN zones. Rear alleys are not mandatory where the rear lot lines are at the edge of the site to be subdivided or where the block has been previously subdivided.

D. Intersection sight visibility distances are determined based on the subdivision street standards, except that sight visibility zones are not required for mixed-use zone intersections controlled by a traffic signal or stop sign.

E. Streets in mixed-use zones must be designed as follows:

1. Streets classified as arterial roadways shall use the avenue street cross section (Table 7, cross section 1)

2. Streets classified as collector roadways shall use the avenue or street cross section (Table 7, cross section 1, 2, 3, or 4).

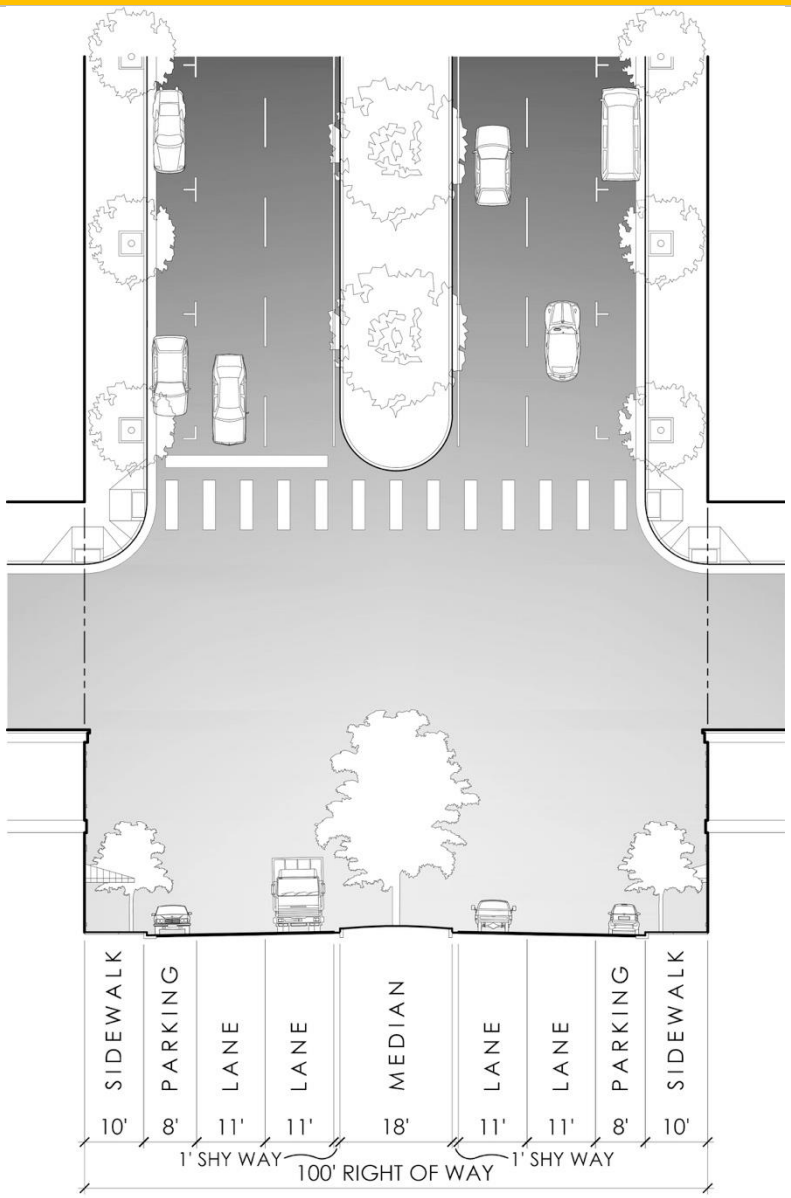
3. Streets classified as local roadways shall use the street cross section (Table 7, cross section 2, 3, or 4).

4. As an alternative to the above, streets in the BU high intensity area and in the DT zone may use the commercial street—mixed parking or parking plaza street cross sections (Table 7, cross section 7 or 8).

5. The alley cross section (Table 7, cross section 5) may be used for secondary, service, or parking access.

Table 7. Mixed-use street cross sections

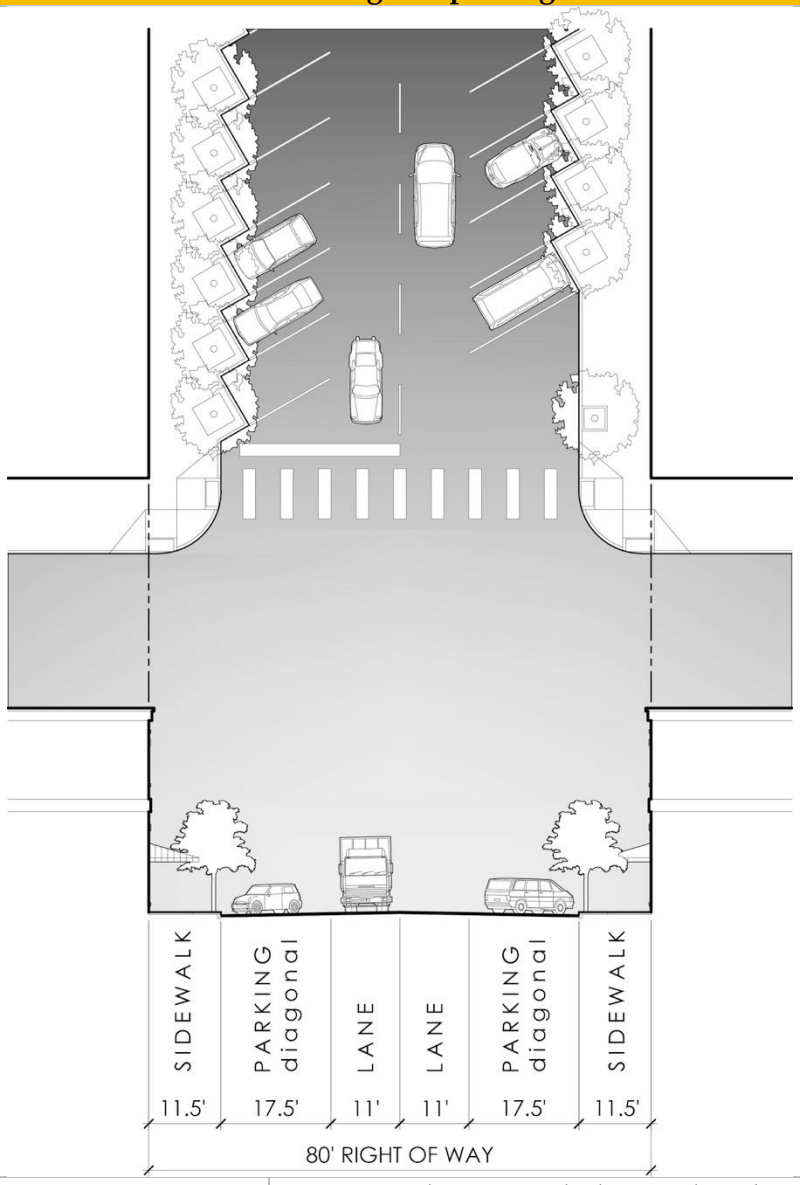
1. Avenue



Street type	Avenue
Right-of-way width	100 feet
Pavement width	62 feet total (31 feet each)
Movement	Free movement, inner lanes
Travel lanes	Four
Parking lanes	Parallel both sides, eight feet
Curb radius, effective	Ten feet
Walkway type	Sidewalk, ten feet
Planter type	Four-foot by seven-foot tree well
Curb type	Vertical, with gutter
Street trees	Maximum 30 feet on center

Table 7. Mixed-use street cross sections

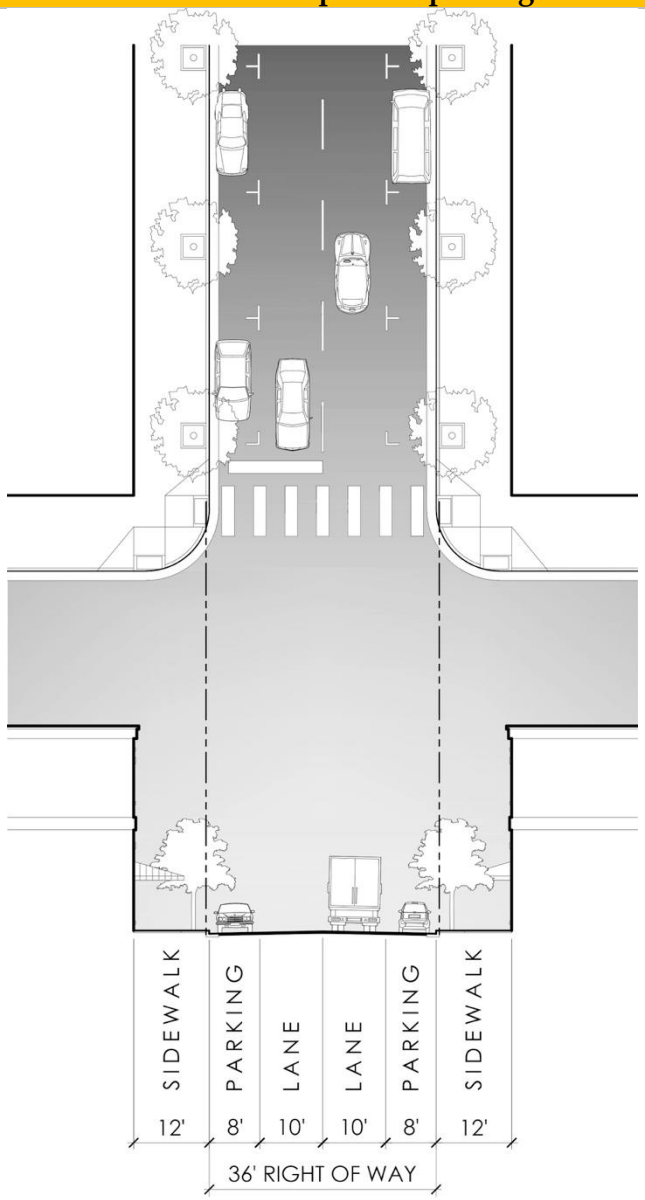
2. Commercial street with diagonal parking



Street type	Commercial street with diagonal parking
Right-of-way width	80 feet
Pavement width	57 feet
Movement	Free movement
Travel lanes	Two
Parking lanes	Diagonal both sides, 17.5 feet
Curb radius, effective	Ten feet
Walkway type	Sidewalk, 11.5 feet
Planter type	Four foot by seven foot tree well
Curb type	Curb with gutter and/or ribbon gutter
Street trees	Maximum 30 feet on center

Table 7. Mixed-use street cross sections

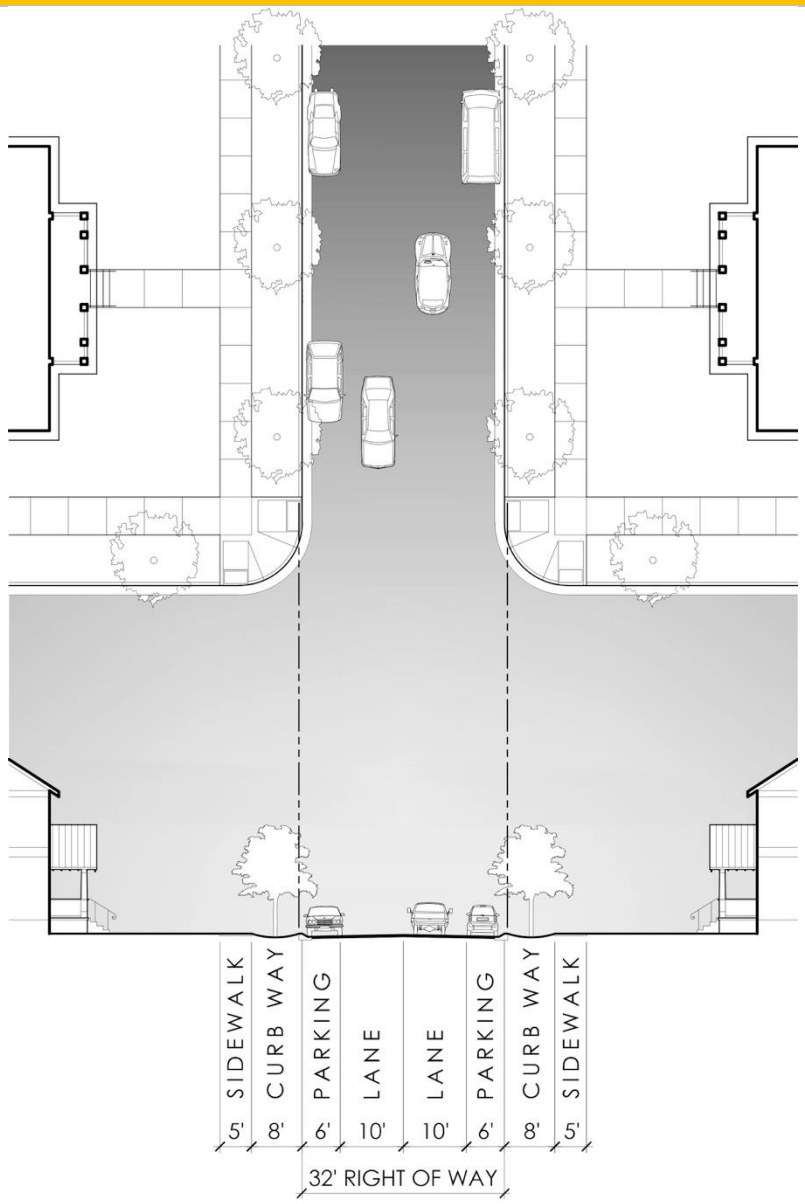
3. Commercial local street with parallel parking



Street type	Commercial local street with parallel parking
Right-of-way width	36 feet; utility and access easement in the sidewalks
Pavement width	36 feet
Movement	Free
Travel lanes	Two
Parking lanes	Parallel both sides, eight feet
Curb radius, effective	Ten feet
Walkway type	Sidewalk, 12 feet
Planter type	Four-foot by seven-foot tree well
Curb type	Vertical, with gutter
Street trees	Maximum 30 feet on center

Table 7. Mixed-use street cross sections

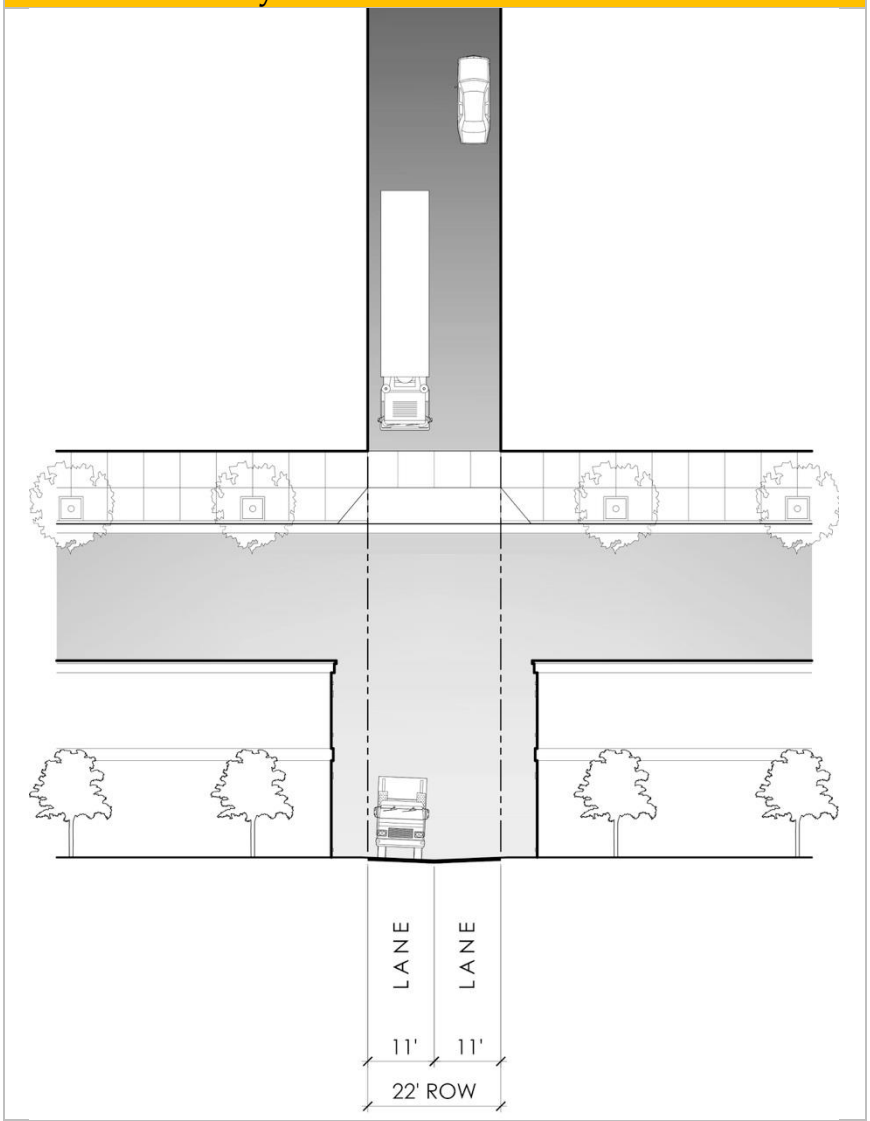
4. Street



Street type	Street
Right-of-way width	32 feet; utility and access easement in curb ways
Pavement width	32 feet
Movement	Slow
Travel lanes	Two
Parking lanes	Parallel both sides, six feet. Omit mid-block for 40 foot long staging area.
Curb radius, effective	Ten feet
Walkway type	Sidewalk, five feet
Planter type	Curbway, eight feet landscaped
Curb type	Mountable, with gutter
Street trees	Maximum 40 feet on center

Table 7. Mixed-use street cross sections

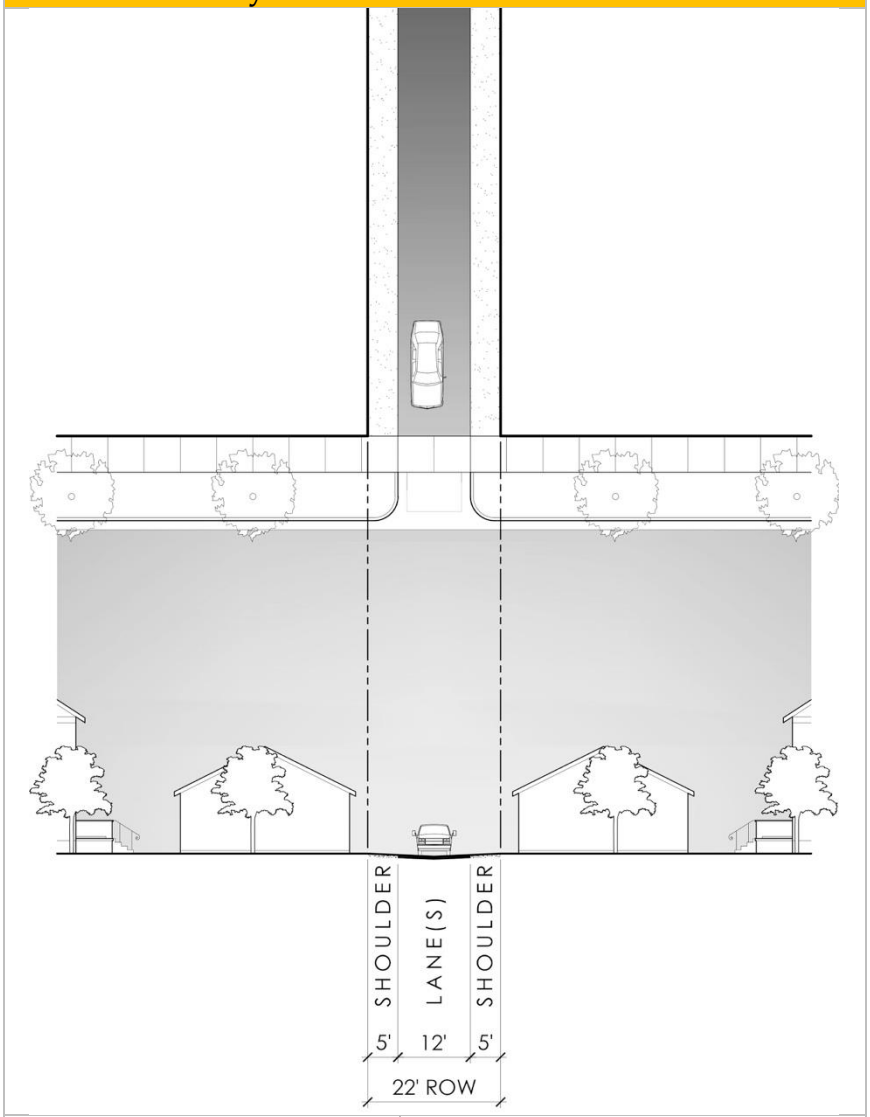
5. Commercial alley



Street type	Commercial alley
Right-of-way width	22 feet
Pavement width	11 feet
Movement	Slow
Travel lanes	Two
Parking lanes	None
Curb radius	Four feet chamfer
Walkway type	Not applicable
Planter type	Not applicable
Curb type	Not applicable
Landscape	Not applicable

Table 7. Mixed-use street cross sections

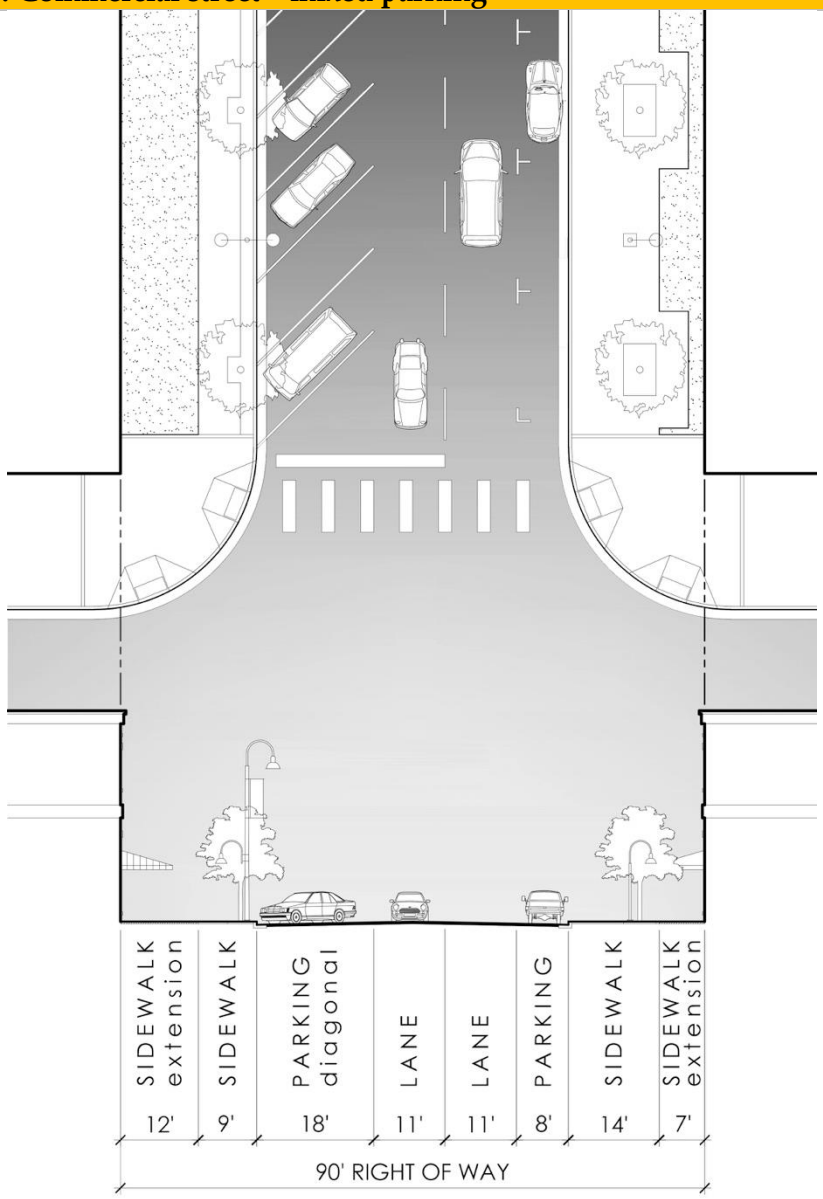
6. Residential alley



Street type	Residential alley
Right-of-way width	22 feet
Pavement width	12 feet
Movement	Yield
Travel lanes	One
Parking lanes	None
Curb radius	Four feet
Walkway type	Not applicable
Planter type	Not applicable
Curb type	Not applicable
Landscape	Not applicable

Table 7. Mixed-use street cross sections

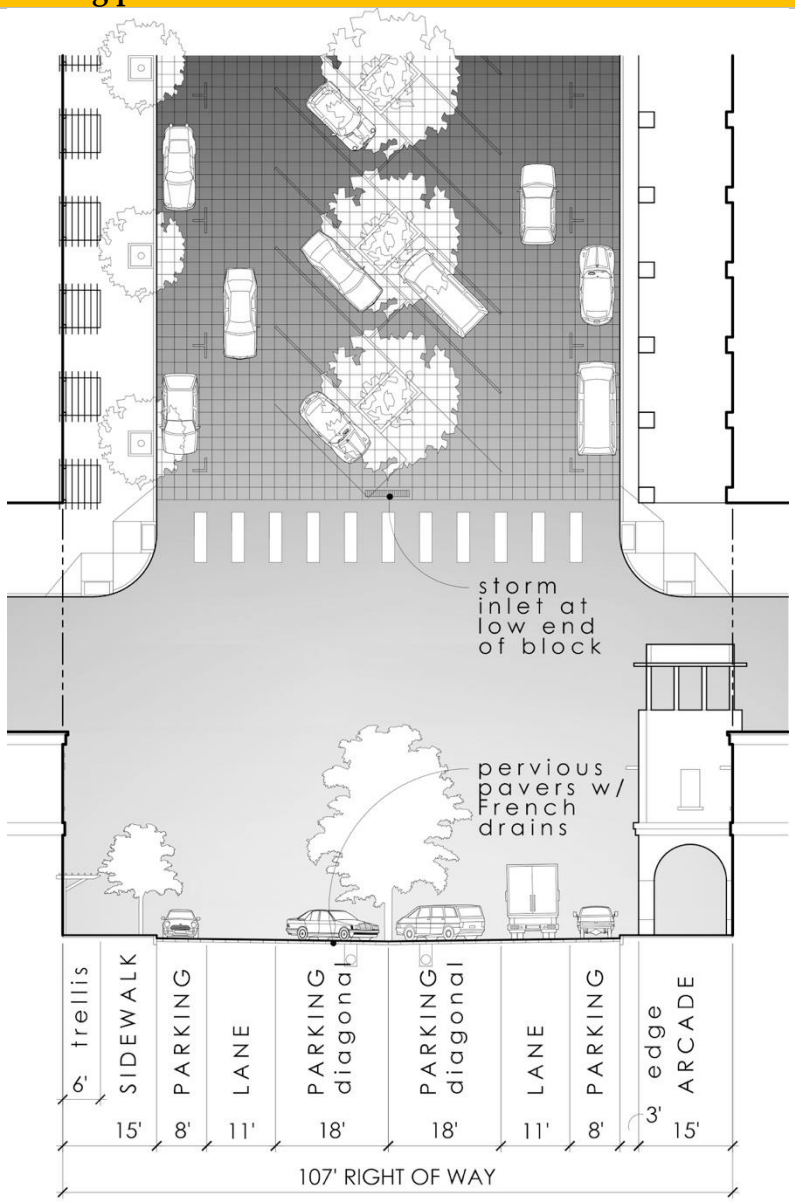
7. Commercial street—mixed parking



Street type	Commercial street—mixed parking
Right-of-way width	90 feet
Pavement width	48 feet
Movement	Free
Travel lanes	Two
Parking lanes	Diagonal, 18 feet; parallel, 8 feet
Curb radius, effective	Ten feet; 25 feet at existing intersections
Walkway type	Sidewalk, 21 feet
Planter type	Tree well, varies
Curb type	Vertical, with gutter
Street trees	Maximum 40 feet on center

Table 7. Mixed-use street cross sections

8. Parking plaza street



Street type	Parking plaza street
Right-of-way width	107 feet
Pavement width	74 feet pervious pavers
Movement	Free
Travel lanes	Two
Parking lanes	Diagonal, 18 feet center; parallel, eight feet sides
Curb radius, effective	Ten feet; 25 feet at existing intersections
Walkway type	Sidewalk, 15 feet
Planter type	4 ft. x 4 ft. tree well, 6 ft. x 9 ft. center wells
Curb type	Vertical
Street trees	Maximum 40 feet on center

17-4-21 Blended-use (BU)

The blended-use zoning district may be applied by process of rezoning to any parcel 40 acres or greater. The approval of rezoning to BU adopts the blended-use plan submitted by the applicant in conformance with this section and section 17-4-19 (Mixed-use zoning districts).

A. Blended-use neighborhood types.

1. Aldea. This blended-use neighborhood type consists of no less than 40 acres and no more than 80 acres.
2. Pueblo. This blended-use neighborhood type has no less than 80 acres, and no more than 200 acres.

B. Multiple neighborhoods must be developed under a single application on properties larger than 200 acres.

C. Intensities. Aldeas and pueblos are comprised of land assigned to intensities rather than uses. The minimum and maximum percentage of the blended-use plan's total land area to be assigned to each intensity is given in Table 8 below.

Table 8. Neighborhood areas

	Low intensity	Medium intensity	High intensity
Aldea	0 – 45%	25 – 75%	0 – 35%
Pueblo	0 – 30%	40 – 70%	0 – 30%

D. Development standards per intensity area.

Lot width	60 feet minimum, 120 feet maximum
Frontage buildout	Not applicable
Lot coverage	50% maximum
Setbacks	Front, primary – 20 feet minimum
	Front, secondary – 15 feet minimum
	Side – ten feet minimum
	Rear – 12 feet minimum, five feet minimum for accessory buildings
	Parking or enclosed storage – 20 feet behind front facade
Building height	Two stories maximum
Yard	Common Fenced
Facades	Porch Stoop
Encroachments	Porch or patio – 40% of setback maximum, but no more than 8 feet
	Balcony or bay window – 20% of setback maximum, but no more than four feet

Landscaping	Two trees required for every 60 feet of lot width

Lot width	24 feet minimum, 96 feet maximum
Frontage buildout	60% minimum at setback
Lot coverage	70% maximum
Setbacks	Front, primary – six feet minimum, 18 feet maximum
	Front, secondary – six feet minimum, 18 feet maximum
	Side – none
	Rear – three feet minimum
	Parking or enclosed storage – 20 feet behind front facade, with access from alley or rear lane (see paragraph 17-4-19 F. 2. e above)
Buildings height	Three stories maximum
Yard	Fenced Shallow
Facades	Porch Stoop Terrace Common entry
Encroachments	Porch, patio or stoop – 60% of actual setback, but no more than eight feet
	Balcony or bay window – 20% of actual setback, but no more than four feet
Landscaping	Minimum ten-foot landscaped buffer abutting non-mixed use residential zones Minimum of one tree for every 40 feet of lot width (in addition to street trees)
Parking lots	Must have a minimum of 15% landscaped area, evenly distributed throughout the parking lot and adjacent to buildings Landscaped islands must provide one tree for every six parking stalls

Lot width	18 feet minimum, 180 feet maximum
Frontage buildout	80% minimum at setback
Lot coverage	80% maximum

Setbacks	Front, primary – no minimum, 12 feet maximum
	Front, secondary – no minimum, 12 feet maximum
	Side – no minimum, 24 feet maximum
	Rear – three feet minimum
	Parking or enclosed storage – 20 feet behind front facade, with access from alley or rear lane (see paragraph 17-4-19 F. 2. e above)
Buildings height	Four stories maximum
Yard	Shallow Urban Pedestrian forecourt Vehicular forecourt
Facades	Stoop Common entry Terrace Shopfront Gallery
Encroachments	Awnings and galleries may encroach the sidewalk to within two feet of the curb
	Balcony or bay window – 100% of setback maximum
Landscaping	Minimum 20-foot landscaped buffer abutting non-mixed use residential zones
Parking lots	Must have a minimum of 10% landscaped area, evenly distributed throughout the parking lot and adjacent to buildings Landscaped islands must provide one tree for every ten parking stalls

17-4-22 Downtown Marana overlay (DO)

A. Purpose. The DO is an overlay designation identifying geographic areas where owners of land may opt to replace their underlying zoning entitlements with the DN and DT zone designations.

B. Application. To obtain DN and DT zoning in the DO district, one or more property owners must submit a downtown implementation plan, showing (at a minimum) the requested locations of DN and DT zone designations on their property.

C. Administrative approval. The planning director is authorized and directed to approve a downtown implementation plan that conforms to the requirements of sections 17-4-19 (Mixed-use zoning districts), 17-4-22 (Downtown Marana overlay (DO)), 17-4-23 (Downtown neighborhood (DN)), and 17-4-24 (Downtown (DT)), and meets the following minimum requirements:

1. The DT designation includes all land within 100 feet of the Marana Main Street right-of-way line.
2. The DN designation includes all land within 100 feet of the property line of all properties containing existing single family residences, excluding any such property for which the property owner consents in writing.
3. The DN designation must be used for land that meets both of the previous two paragraphs.

D. Council approval. Any downtown implementation plan not approved pursuant to paragraph C of this section may be submitted as an application for rezoning, which shall be reviewed through the normal rezoning process.

17-4-23 Downtown neighborhood (DN)

A. Purpose. The DN zone implements the Marana general plan by providing a transition from the DT to surrounding areas. This zone consists of a mix of uses but is primarily medium density residential. It may contain a wide range of building types: houses, courtyard housing, townhouses, duplexes, triplexes, apartment buildings, and live-work units.

B. Development standards.

Lot width	24 feet minimum, 96 feet maximum
Frontage buildout	60% minimum at setback
Lot coverage	70% maximum
Setbacks	Front—six feet minimum, 18 feet maximum
	Side – no minimum
	Rear – three feet minimum
	Parking or enclosed storage – 20 feet behind front facade
Buildings height	Three stories maximum
Yard	Fenced Shallow
Facades	Porch Stoop Terrace Common entry Shopfront
Encroachments	Porch, patio or stoop – 60% of actual setback, but no more than eight feet
	Balcony or bay window – 20% of actual, but no more than four feet

Landscaping	Minimum ten-foot landscaped buffer abutting non-mixed use residential zones One tree required for every 40 feet of lot width (in addition to street trees)
Parking lots	Must have a minimum of 15% landscaped area, evenly distributed throughout the parking lot and adjacent to buildings Landscaped islands must provide one tree for every six parking stalls

17-4-24 Downtown (DT)

A. Purpose. The DT zone implements the Marana general plan by providing a mixed-use center for town. This zone consists of higher density mixed-use buildings that accommodate retail, offices, institutions, and apartments. It has a network of walkable streets that create blocks along Marana Main Street with wide sidewalks, street trees, awnings or galleries for shade, and buildings set close to the sidewalks.

B. Development standards.

Lot width	18 feet minimum, 180 feet maximum
Frontage buildout	80% minimum at setback
Lot coverage	80% maximum
Setbacks	Front—no minimum, 12 feet maximum
	Side – no minimum, 24 feet maximum
	Rear – three feet minimum
Buildings height	Four stories maximum
Yard	Shallow Urban Pedestrian forecourt Vehicular forecourt
Facades	Common entry Terrace Shopfront Gallery
Encroachments	Awnings and galleries may encroach the sidewalk to within two feet of the curb
	Balcony or bay window – 100% of setback maximum
Landscaping	Minimum 20-foot landscaped buffer abutting non-mixed use residential zones

Parking lots	Must have a minimum of 10% landscaped area, evenly distributed throughout the parking lot and adjacent to buildings Landscaped islands must provide one tree for every ten parking stalls

CHAPTER 17-5. SUBDIVISIONS

Sections:

Chapter 17-5 was inserted into the town code by Ordinance 2015.021

17-5-1 Purpose and intent 17-56
17-5-2 Procedure 17-56
17-5-3 Subdivision requirements 17-64
17-5-4 Design standards 17-68
17-5-5 Performance guarantee 17-71
17-5-6 Minor land division 17-72
17-5-7 Modifications to requirements of chapter 17-78
17-5-8 Violations and penalties 17-79

17-5-1 Purpose and intent

The purpose of this chapter is to provide for the orderly growth and harmonious development of the town in accordance with the general plan and other adopted plans and ordinances; to create high quality neighborhoods and ensure adequate traffic circulation through coordinated street systems, transit, bicycle and pedestrian systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to achieve individual property lots of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to ensure consideration of adequate sites for schools, recreation areas, and other public facilities; to promote the conveyance of land by accurate legal description and plat; and to provide logical procedures for the achievement of this purpose.

17-5-2 Procedure

A. Overview.

Paragraphs A, B, and C of section 17-5-2 were comprehensively rewritten by Ordinance 2016.015

1. Except as provided otherwise elsewhere in this code, the preparation, submittal, review and approval of subdivision plats shall proceed through the following progressive steps:

   a. Pre-application meeting with the town.

   b. Preliminary plat submittal, review, and approval.

   c. The submittal and approval of engineering plans for the required subdivision improvements.

   d. Final plat submittal, review, and approval.

e. Recordation of the approved final plat with the county recorder.

2. The following shall be processed in accordance with section 17-5-6:

a. Land splits.

b. Minor land divisions.

3. Subdivisions of ten or fewer lots shall proceed through the following steps:

Subparagraph 17-15-2 (A)(3) was added by Ordinance 2017.002. It was originally adopted by Ordinance 2006.09, but inadvertently deleted by Ordinance 2016.021

a. Pre-application conference with the town.

b. The submittal and approval of engineering plans for improvements as deemed necessary by the town engineer and planning director prior to final plat approval.

c. Final plat submittal and review, and approval by the town council.

d. Recordation of approved final plat with the Pima county recorder.

B. Pre-application meeting

1. The pre-application meeting provides an opportunity for the town and the applicant to review and exchange information regarding a proposed subdivision prior to the preparation and formal submittal of a subdivision plat application.

2. All applications for subdivision plats shall be prepared and processed in accordance with procedures and requirements defined in the preliminary plat application checklist, which town staff will provide to the applicant at the pre-application meeting.

C. Preliminary plat

1. The applicant shall submit a preliminary plat application in accordance with the preliminary plat application checklist.

2. The procedures for review and approval of a preliminary plat shall be as follows, as supplemented by the preliminary plat application checklist.

a. Once a preliminary plat has been accepted by town staff and the appropriate review agencies, the planning commission shall consider the plat and make a recommendation to the council that the preliminary plat be approved, approved with conditions, or denied.

b. After the planning commission's consideration, the council shall review and consider the preliminary plat and the planning commission's recommendation. The council shall approve, approve with conditions, or deny the preliminary plat application. Decisions of the council shall be final.

3. Preliminary plat approval constitutes authorization for the applicant to proceed with preparation and submittal of the final plat, landscape plan, and engineering improvement plans and specifications.

4. Preliminary plat approval is subject to the following conditions:

   a. Changes in conditions such as the land's physical attributes, title conditions, ownership and similar changes that make development of the affected land in accordance with the approved plat infeasible shall require the submission of a new or revised preliminary plat.

   b. A preliminary plat expires two years from the date of council approval unless:

      i. A final plat has been submitted for all or a portion of the property included in the preliminary plat, or

      ii. The council grants an extension.

   c. The applicant may submit a written request for a two-year extension of a preliminary plat approval, which shall be reviewed and considered as follows:

      i. The planning director and the town engineer shall evaluate whether the preliminary plat and supporting documents remain in compliance with all applicable town standards and requirements, and shall make a written recommendation to the council based upon their evaluation.

      ii. The request for extension shall be considered by the council, whose decision shall be final.

   d. Preliminary plat approval shall be automatically extended for a period of two years upon submission of a final plat application for any portion of the land area shown on a preliminary plat.

   e. Once a final plat has been approved for a portion of the land area included within an approved preliminary plat, the approval of the preliminary plat shall be extended for the balance of the land area for a period of two years from the date of council approval of the final plat.

   f. If a preliminary plat expires prior to the submittal of an application for a final plat or prior to the submittal of a request for an extension of the preliminary plat approval, the preliminary plat shall be resubmitted as a new application. If the resubmitted preliminary plat has substantially the same design and configuration as the previously approved plat and no substantive changes have occurred in the standards and requirements, the fees associated with the new application shall be 50% of the original application fees.

   g. The preliminary plat shall not be recorded.

D. Final plat

1. Final plat submittal:

a. The subdivider or his authorized representative shall submit the following materials to the planning department:

i. A completed application and supplemental forms.

ii. A nonrefundable final plat filing fee in an amount set by council resolution to compensate the town for the costs of examining and processing the subdivision plat and subsequent field investigations.

iii. The necessary 24 inch by 36 inch paper copies of the final plat reproduced in the form of blue or black line prints and an 11 inch by 17 inch reduction.

iv. One reproducible mylar copy of the final plat for recordation (submitted prior to council review).

v. The necessary copies of an 11 inch by 17 inch reduction of the final plat (submitted prior to council review).

vi. Copies of the proposed deed restrictions (covenants, conditions, and restrictions) for the proposed subdivision.

vii. One set of the final signed deed restrictions (covenants, conditions, and restrictions) to be recorded with the final subdivision plat (submitted prior to council review).

viii. One fully executed original subdivision assurance agreement (submitted prior to council review).

b. Upon receipt of the final plat application, the planning director shall check the plat for conformity to the approved preliminary plat, all applicable conditions of approval and compliance with the requirements for final plats as set forth in subsection 17-5-2 D. 2.

2. Final plat requirements:

a. Each final subdivision plat shall comply with the requirements of the zoning district within which it is located.

b. The planning director shall submit the final plat application together with the staff recommendations to the council.

c. The final plat shall substantially conform to the approved preliminary plat, and shall be in compliance with all appropriate town standards, codes, specifications, and requirements.

d. The subdivider shall submit all necessary engineering improvement plans to the town for initial review prior to the council meeting.

e. Any information required as part of the final plat submittal shall be shown on the plans in a manner consistent with standard engineering practice and town standards.

f. At a minimum, the final recordable plat of a subdivision shall:

i. Be drawn in on archive quality mylar or other non-shrinking material not exceeding 24 inches by 36 inches in overall dimensions.

ii. Have a left margin of two inches.

iii. Be drawn to an accurate scale of not more than 100 feet to the inch, with one inch to 40 being the preferred alternative, and in at least 11 point type.

iv. Have a cover sheet showing the entire subdivision and indicating where each section of the subdivision may be found on the corresponding pages of the subdivision plat, if the plat exceeds one sheet

v. Meet the recording requirements of the county recorder of the county or counties where the subdivision is located.

vi. Contain a title that includes the name of the subdivision and its location by section, township, range, and county.

vii. Include the name, address, registration number, and seal of the registered land surveyor preparing the plat.

viii. Include a scale (written and graphic), north arrow, and date of plat preparation.

ix. Depict boundaries of the tract to be subdivided, fully balanced and closed, showing all bearings and distances and mathematical calculations, determined by an accurate survey in the field.

x. Express all dimensions in feet and decimals of feet.

xi. Accurately describe any excepted parcels within the plat boundaries by bearings and distances determined by an accurate survey in the field.

xii. Include the location and description of cardinal points of primary interest to which all dimensions, angles, bearings, and similar data on the plat shall be referenced.

xiii. Tie by course and distance to separate survey monuments approved by the town each of two corners of the subdivision traversed.

xiv. Include names, centerlines, right-of-way lines, courses, lengths and widths of all streets, alleys and easements,

radii, points of tangency and central angles of all curvilinear streets and alleys, and radii of all rounded street line intersections.

xv. Show the location and dimensions of all lots.

xvi. Indicate lot dimensions and appropriate bearings for at least one side lot line and either the front or rear lot line assuming additional dimensions are equal to those shown.

xvii. Show a buildable pad and minimum finished first floor elevations in areas subject to flooding.

xviii. Utilize a lot numbering system or be numbered consecutively throughout the plat.

xix. Designate, letter and name, and clearly dimension all tracts or parcels for school sites, parks, or other public uses.

xx. Accurately outline and delineate all property offered for dedication for public use and all property reserved for the common use of the property owners in the subdivision.

xxi. Show the name and parcel number of adjacent recorded subdivisions and the location of existing adjacent lots, easements and rights-of-way, or identify adjacent unsubdivided areas.

xxii. Graphically differentiate all proposed conditions from existing conditions on adjacent properties and on excepted parcels within the plat.

g. Two data diskettes, or other acceptable data carrier, of the approved final plat in a .dxf (data exchange file) format, shall be submitted to the town.

h. All final plats shall contain the following information:

i. Provide on the final plat such easements in such locations and widths as required. In addition, the following notation shall be placed upon all final plats:

"Except for construction and improvements by governmental entities and certificated public utilities, construction and improvements within easements shall be limited to only the following:

a) Wood, wire or removable section type fencing.

b) Construction, structures or buildings expressly approved in writing by all public utilities and the town which use or shall use the utility easement."

ii. Statement and acknowledgement of the dedication of all streets, alleys, tracts, drainageways, utility easements,

and other easements for public use by the persons holding title of record, by persons holding title as vendees under land contract, and by spouses of said parties, if jointly owned. If lands dedicated are mortgaged, the mortgagee shall also approve the plat (consent to dedicate by separate instrument may be necessary). Dedications shall include a written location by section, township, and range of the tract. The dedication shall include direct wording identifying the town as the new owner of any tracts or parcels being dedicated. If the plat contains private streets, provisions shall be made so that the public utilities reserve the right to install and maintain utilities above, on, and below such private streets or ways shall be reserved to the public utilities.

iii. The following certifications must be included on the final plat:

a) Certification by a registered land surveyor preparing the plat that the plat is correct and accurate, and that the monuments described in it have been located as described.

b) Certification of a registered civil engineer, if engineering information is represented on the plat. .

c) Certification of plat approval by the planning director, town engineer (or designated representative), town clerk and council.

d) Certification of plat approval by the authority responsible for providing wastewater management to the subdivision.

iv. For subdivisions located within the town's water service area, the following note must be included on the final plat: "NOTE: This subdivision is located within the town of Marana water service area, which has been designated as having an assured water supply under A.R.S. § 45-576." For subdivisions not located within the town's water service area, consult with the town engineer for the appropriate statement of assured water supply.

A.R.S. § 9-463.01, paragraph I provides in relevant part: "If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within an active management area, as defined in section 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576."

v. The location of appropriate vehicular no access easements shall be included on the plat.

vi. When the plat contains amended development standards or other requirements, they shall be included in the notes of the plat. This includes such items as the maximum building envelope containing minimum building setbacks and maximum lot coverage permitted, conservation easements, etc. Sufficient typical examples must

be included to avoid possible misinterpretation of irregular, nonstandard lots.

vii. Items identified in the final plat review checklist.

3. Final plat approval:

a. An application for approval of a final plat shall not be filed unless there is an approved, signed, preliminary plat for the proposed subdivision as provided for in subsection 17-5-2 D of this chapter.

b. An applicant for final plat approval shall comply in all respects with the provisions of this code.

c. An applicant shall submit all of the documents, information, data, and other requirements for final plat approval to the development coordinator and shall furnish all information and materials needed to satisfy the requirements of this chapter.

d. In addition to the requirements of the preceding paragraphs, the applicant shall provide to the planning director any additional information, documents, or other material relevant to the application that planning staff reasonably believes is necessary in order for the council to evaluate, analyze, and understand the subject matter of the application.

e. An application for final plat approval shall not be deemed to have been filed or properly submitted until all of the above listed requirements have been complied with. The planning director shall determine compliance.

f. Consideration of the final plat by the council and action thereon shall take place in a public meeting, but may be on the consent portion of the agenda.

g. The procedure for approval, or denial of final plat applications shall be as follows:

i. The council shall approve, or deny applications for final plat approval pursuant to the provisions of this chapter. Upon receipt of a final recommendation on an application for final plat approval from planning staff, the planning director shall take the necessary action to add the final plat application to the agenda of the next available regular meeting of the council, whereupon the council shall either approve or deny the final plat application.

ii. Approval:

a) If the council approves the plat, the mayor and town clerk shall transcribe a certificate of the council's approval upon the plat, first making sure that the other required certifications and dedications have been duly signed and acknowledged.

b) After council approval of a final plat and compliance with subsection 17-5-3 B, the subdivider shall pay to the town the fee charged by the county recorder for the recordation of the plat, and the town clerk shall then promptly record the plat with the county recorder, pursuant to A.R.S. § 9-463.01(J).

iii. Amendment: If the council finds that the plat requires revisions, the application shall be tabled until the revisions can be satisfactorily accomplished and the application rescheduled for council action.

iv. Denial: If the council denies the plat, the minutes shall state the reasons for the denial. The final plat application may be re-filed at any time if revisions can resolve the reasons for the denial as originally proposed. The new filing of a final plat application for the same plat, or any portion thereof, shall be treated as a new project and will follow the procedures and requirements specified in this chapter.

17-5-3 Subdivision requirements

A. Design and documentation requirements. The layout and design of all subdivisions and engineering plans and the content of all required documentation shall be in accordance with town standards as directed by the planning commission or its authorized representative and adopted by resolution of the council.

B. Improvement requirements. The following improvements shall be installed in all every subdivision, and said improvements shall meet minimum town standards and shall be installed in accordance with town standards and specifications as directed by the town engineer:

1. Streets. The required streets shall be graded and paved and all required drainage improvements shall be installed, at no expense to the town.

2. Sanitary sewers. The required off-site and on-site sewer lines shall be installed in such a way that each lot can be served therefrom, at no expense to the town.

3. Water mains. The required off-site and on-site water mains shall be installed in such a way that each lot can be served therefrom, at no expense to the town.

4. Curb, gutter, and sidewalk. All streets shall be bordered by an approved curb and gutter. Paved sidewalks shall be required in all subdivisions having a density of more than one lot per acre.

5. Stormwater drainage and retention facilities. The required off-site and on-site drainage facilities shall be installed, at no expense to the town.

6. Traffic control devices. Street name signs, street lights, signals and other traffic control devices shall be installed, at no expense to the town.

7. Fire hydrants. Fire hydrants shall be installed as required by town specifications and/or the fire district serving the site at no expense to the town.

8. Landscaping and irrigation. In accordance with section 17.03 ("landscape requirements") of the Marana land development code, landscaping and irrigation shall be installed at no expense to the town.

The cross-reference in paragraph 8 was corrected by the Town Attorney as a scrivener's error on January 13, 2016

9. Recreational area.

   a. Requirement: All new residential projects with a density greater than or equal to 3.0 dwelling units per gross acre and containing 50 or more dwelling units shall provide an improved on-site recreation area, as accepted by the parks and recreation and planning departments in compliance with the adopted park, trail, and open-space system master plan. The recreation improvements shall be constructed at the project developer's expense.

   b. Area: The minimum area (in square feet) for private, common on-site recreation areas shall be as follows:

      i. Apartment or condominium: 100 sq. ft. per unit

      ii. Town home or patio home: 140 sq. ft. per unit

      iii. Single-family residential: 185 sq. ft. per unit

   c. Limitation: Recreational areas shall not include land unsuitable for recreation purposes, such as peaks, ridges, land fragments, land restricted by town policy, condition or ordinance, and or land determined unusable for recreational purposes by the parks and recreation and planning departments.

   d. Facilities installation: The recreational facilities and parking improvements shall be completed and in place by the time 50% of the building permits are issued or an acceptable bond is secured to guarantee the required improvements.

   e. Optional method: An in-lieu fee may be accepted by the council pursuant to an agreement which shall provide, at a minimum, for the equivalent of park land (based on improved property) and the recreational facilities the project would have been required to provide.

10. Permanent survey monuments. Permanent survey monuments shall be installed in each subdivision, and their location shall be shown on the final plat. All corners of the subdivision and all lot corners in the subdivision shall be marked. The permanent survey monuments shall be indicated on the final plat and shall consist of the state plane coordinate system, Arizona central zone,

north American datum of 1983—high accuracy reference network (HARN), 1993 adjustment. Modified grids and/or constant combined factors are not allowed.

11. Environmental hazards. The subdivision layout shall make adequate provision for natural drainage channels and floodways. Added surface water produced by the subdivision's development, particularly excess runoff created by paving, shall be properly disposed of within the subdivision or shall be drained into natural or man-made channels in a manner that will minimize the exposure to flood hazard, and will minimize erosion of the soil within and without the subdivision, from eroding and will not produce an undue flood hazard for adjacent properties. All other environmental hazards must be eliminated or adequately restricted as directed by the town.

12. Underground utilities. Electric power (except electrical transmission lines carrying 48 kV or more), telephone lines, cable television and fiber optics shall be located underground, except where the subdivider can show the planning commission that underground installation is not feasible. All underground installations shall be constructed prior to surfacing the street. Service stubs to platted lots within the subdivision for underground utilities shall be placed to at such length as not to necessitate disturbance of street improvements when service connections are made. Screening of all aboveground transformers, cabinets, etc., shall be provided.

13. Public safety hazards. The subdivision plan shall make adequate provision for protection of the public from adjacent irrigation canals, railroads, airport runways, mines, gravel pits, electrical substations, and pumps or other stationary equipment that are in existence at the time of approval of the preliminary plan, where such are deemed by the planning staff to constitute a significant hazard to public safety by the planning staff. Such provision may include, but shall not be limited to, adequate boundary walls or fences not to exceed six feet in height.

14. Irrigation lines and ditches. All irrigation channels and ditches within or adjacent to the subdivision, within perimeter easements or the nearest half of a street or alley right of way, shall be reconstructed for the purposes of enclosure in accordance with a specific plan and schedule acceptable and agreed upon by the town engineer, the subdivider and the owner of the irrigation facilities. The undergrounding shall be accomplished in compliance with standards approved by the town and by the owner of the irrigation facilities.

C. General requirements

1. All streets shall be dedicated for public use. The dedication of half streets in any subdivision is prohibited, except on the outside edge of a subdivision where such outside edge is a section

line or mid-section line and there is sufficient width for a two-way road. All streets within the subdivision must be dedicated for public use or designated as a private street to be maintained by the applicable association.

2. Lots shall abut on a public or private street. Each lot of a subdivision shall abut on a public or private street dedicated by the subdivision plat or an existing dedicated street, or on a street which has become public by right of use and is dedicated and constructed to town standards.
3. All lots must be in conformance and consistent with the requirements set forth in the general plan, the land development code, the northwest Marana area plan and/or the applicable adopted specific plan, if any.
4. Uses of all areas must be identified.
5. A minimum 30 feet of lot frontage shall be provided, unless the applicant can provide justification that provisions of adequate access, utility service and public safety can be demonstrated to all reviewing agencies, as accepted by the town.
6. The depth-to-width ratio of subdivided buildable lots shall not be greater than three to one, unless justified and accepted by the planning director.
7. To properly provide for adequate safety and for the welfare of the public, corner lots for residential use, shall be platted at least five feet wider than interior lots to permit conformance with the required street side yard requirements and sight visibility triangles.
8. Lots having double frontage shall be avoided except where necessary to provide separation of residential development from traffic arterials, to provide ingress and egress in commercial or industrial subdivisions, or to overcome specific disadvantages of topography.
9. One-foot no access easements shall be identified, where direct vehicular access is not desired, to a street, common area or other area that might be construed to provide vehicular access.
10. No remnant of property shall be left in the subdivision which does not conform to lot requirements, unless required and dedicated to a homeowners' association, private utility or other public purpose, as accepted by the town.
11. All streets, including without limitation the length of dead-end streets and the number and type of vehicular access points, shall conform to the subdivision street standards.

The subdivision street standards may be found here

12. Wherever practical, all subdivisions created within any single-family residential zone should be designed to facilitate solar access and energy efficiency.

13. Wherever practical, all lots shall be graded in such a manner as to preclude excessive or unnecessary grade differences between adjacent lots or between lots and adjacent streets.

14. School sites and other public spaces. In subdividing property, considerations shall be given to sites for schools, parks, playgrounds, and other areas for public use, as shown by the general plan. Any provision for such open or public spaces shall be indicated on the preliminary plan in order that it may be determined in what manner such areas will be dedicated to, or acquired by, the appropriate public agency.

15. The town shall not accept or maintain streets or other public ways unless they have been constructed in accordance with town standards and specifications adopted by the council.

16. Work to be done by engineer or surveyor. All engineering work and/or surveying must be done by or under the direction of a qualified professional registrant registered in the state of Arizona.

17. Developer responsibility for quality of construction. The developer shall be responsible for the quality of all materials and workmanship in the development of an approved subdivision.

18. If construction deviates from approved plans as-built plans will be required. As-built plans, shall show the location, size, grade, and depth of all paving, grading, water and sewer mains, valves, manholes, and other subsurface utilities and facilities and shall be required prior to the release of performance guarantees. All survey monuments and lot corners shall be installed prior to release of performance guarantees.

19. Amended plats. When major changes are made in the plat of a recorded subdivision, an amended subdivision plat shall be approved and filed in accordance with the requirements of this code. No change shall be made in an approved plat unless the change has been approved by the council.

D. Non-performance. If any portion of a subdivision remains undeveloped five years after the subdivision plat was approved by the council, the council may, after a public hearing and notice to the owner of the property according to current county assessor's records, vacate all or any part of the undeveloped portion of the subdivision by recording a revised plat eliminating the vacated portion. This remedy is in addition to the council's authority to use financial assurances to complete subdivision improvements under subsection 17-5-5 A. 1 below.

17-5-4 Design standards

A. General

1. Every subdivision shall conform to the requirements and objectives of the general plan, the land development code, other ordinances and regulations of the town, and to the Arizona revised statutes.

2. Where the tract to be subdivided contains all or any part of the site of a park, school, flood control facility, or other public area shown on the general plan or recommended by the planning commission, the site should be dedicated to the public or reserved for acquisition by the public within a specified period of time. An agreement should be reached between the subdivider and the appropriate public agency regarding time, method and cost of such acquisition. In the event the planning commission determines that such an agreement has not been reached within a reasonable period of time, then the planning commission may make a determination that the requirements of this section have been met.

3. Land which is subject to periodic flooding, which cannot be properly drained, or other land which, in the opinion of the town engineer, is unsuitable for any use shall not be subdivided; except that the town may approve subdivision of such land upon receipt of evidence that the construction of specific improvements can be expected to render the land suitable; thereafter, construction upon such land shall be prohibited until the specified improvements have been planned and construction assured.

B. Building and site design

1. Building design shall consider the surrounding natural environment and be consistent and compatible with the character of the area and the zoning designation.

2. External building materials should be compatible with the natural landscape. Examples are native stone, adobe, and wood. Use of highly reflective metals, plastic and fiberglass should not be used except where it has been demonstrated that such materials are desirable for the type of use proposed (e.g., greenhouses).

3. Colors shall blend with the surrounding natural environment. In addition, roofs must meet the color requirements as well.

4. Developments should be designed to include smaller, clustered buildings or enhanced articulated elements rather than single massive structures that detract from the character of the area and obliterate the natural viewshed.

5. The siting of structures should take into consideration the natural and built environments of the property. Existing vegetation shall be retained to the extent possible and natural grades should not be significantly modified.

6. All subdivisions shall result in the creation of lots capable of being lawfully built upon. Except for parcels to be maintained as

open space or for another specific stated purpose, no subdivision shall create lots which are physically unsuitable for improvement due to size or shape, steepness of terrain, location of watercourses, problems of sewerage or driveway grades, or other natural physical conditions.

7. Wherever practical, building design and layout should be designed to facilitate solar access and energy efficiency.
8. Vehicle and pedestrian ways should be clearly delineated to prevent congestion and conflicts. Service vehicle areas shall be located such that they are screened from view of public ways and private property.
9. Pedestrian ways and multi-use paths may be required where essential for circulation, or for access to schools, playgrounds, shopping centers, transportation, and other community facilities. Pedestrian ways and multi-use paths may be used for utility purposes.
10. Where feasible, utilities such as meter boxes, mechanical installations and trash containers shall be screened with landscaping and materials complementary to the building design. On-site electrical wiring shall be underground.
11. Landscaping shall be provided in all required front and street side setback areas and should emphasize the use of drought-tolerant and native plants, unless an alternative renewable water resource is available and can be provided.
12. Washes should be retained in a natural state and left undisturbed where possible.
13. All outdoor lighting shall comply with the adopted outdoor lighting code requirements. In addition to these requirements, all fixtures shall be fully shielded. Light standards shall not exceed a maximum height of 15 feet.

C. Street location and arrangement

1. Whenever a tract to be subdivided embraces any part of a street designated in an adopted town streets and highways plan, such street shall be platted in conformance therewith.
2. Street layout shall provide for the continuation of such streets as the town may designate.
3. Certain proposed streets, as designated by the town, shall be extended to the tract boundary to provide future connection with adjoining un-platted lands.
4. Local streets shall be so arranged as to discourage their use by through traffic.
5. Where a proposed subdivision abuts or contains an existing or proposed arterial and/or collector routes, the town may require limited access or reverse frontage with non-access easements

along the arterial route, or such other treatment as may be justified for protection of residential properties from the nuisance and hazard of high volume traffic, and to preserve the traffic function of the arterial route.

6. Streets shall be so arranged in relation to existing topography to minimize cuts and fills and produce streets of reasonable gradient, and to facilitate adequate drainage.

7. Half-streets shall be discouraged except where necessary to complete a street pattern already begun, or to insure reasonable development of a number of adjoining parcels. Where there exists a platted half-street abutting the tract to be subdivided, and said half-street furnishes the sole access to residential lots, then the remaining half shall be platted within the tract.

17-5-5 Performance guarantee

A. Before a subdivision plat is presented to the council for approval, the subdivider shall post assurances, in a form acceptable to the town attorney, to assure the installation of required street, sewer, electric and water utilities, drainage, flood control, landscaping, park facilities, and other improvements as required meeting minimum standards of design and construction established by this title and the Marana subdivision street standards. The purpose of the assurances shall be to guarantee that the improvements are installed in a timely manner and paid for without cost to the town.

1. Financial forms of assurance, including cash, letter of credit, performance bond, or other similar instruments, shall be filed in the office of the town engineer in an amount equal to the sum of the cost of construction for all required improvements, including surveying, construction management, testing, and inspections, as determined by the town engineer, plus a 15% contingency. A financial form of assurances for the installation of required improvements on private property shall grant to the town adequate property rights as determined by the town engineer and town attorney to allow the town or the town's contractor to complete the installation. Where, in the opinion of the council, the subdivider has failed or neglected to install the required improvements or make required corrections within a timely manner, or to pay all liens in connection with the required improvements, the council may, after a public hearing on the matter, use the proceeds from the assurances to install or cause to be installed the required improvements.

2. Third party trust forms of assurance prohibiting the transfer of any individual subdivision lot or block for which required subdivision improvements have not yet been installed, are permitted in lieu of financial forms of assurance.

B. The town manager is authorized to execute substitute subdivision assurances in a form approved as to substance by the town engineer

and approved as to form by the town attorney, if the town manager and town engineer are satisfied that the substitute assurances protect the town to an extent equal to or greater than the original assurances.

C. Before release of assurances of or guarantees for construction or of improvements in existing or proposed public rights-of-way, including subdivisions or development master plans, the following listed documents shall be submitted, where applicable, to the town:

1. Formal acceptance/approval of applicable utilities.
2. Formal acceptance/approval of sewer line and manhole installation from the owner/operator of the wastewater utility.
3. Applicant's engineer/surveyor's record of bench marks set and elevations thereof, and certification that all monuments are in place as shown on final plat.
4. Certification by a professional engineer that construction has been completed in accordance with approved plans, specifications, and applicable town standards, as established by the town engineer, together with as-built mylars and digital copies for all construction accomplished, and so certified by the appropriate professional.
5. Copies of recorded documentation of all easements not dedicated by the plat.
6. Certification and as-built plans by a registered landscape architect that all landscape work has been completed in substantial conformance with approved plans, specifications, and applicable town standards.
7. Filled-out form for release of assurances.
8. Bill of sale to the town for installations to be accepted by the town.
9. Tabulation and verification of all fees paid to the town for plan and report reviews for construction permits; and payment of any remaining or additional review, permit or inspection fees as required.
10. Completed landscape licensing agreement for maintenance of landscaping in the public right-of-way, if applicable.
11. One-year warranty for all public infrastructure.
12. A pavement preservation assurance, in the amount and form satisfactory to the planning director and town engineer.

17-5-6 Minor land division

A. In general

1. For the purpose of this chapter, a minor land division shall consist of any of the following acts, and shall be subject to the provisions of this chapter:

   a. "Land splits" as defined in A.R.S. § 9-463.

   b. Any division of improved or unimproved land that is not a subdivision as defined in A.R.S. § 9-463.02, but is located on land that is subject to a condition of rezoning prohibiting further lot splits without the approval of the town and/or the council.

2. The preparation, submittal, review, and approval of all minor land divisions located within the town shall proceed through the following progressive stages, except when otherwise provided in this section:

   a. Pre-application conference with town planning and engineering staff.

   b. Submittal of the minor land division application and map by the land divider.

   c. Written approval of the application by planning director.

   d. Recordation of the approved minor land division.

3. Minor land divisions shall provide for the dedications of land, rights-of-way and easements, payment of fees and construction of those offsite and onsite improvements as necessary to protect the general health, safety and welfare of the public. Such improvements are required to implement the provisions of the general plan, transportation plan and the town's growth management objectives.

4. Actual construction of improvements to be made according to this Title shall not be required until a building permit or other grant of approval for development is issued by the town, except that as a condition of approval of a minor land division, the town may require such construction prior to the issuance of a building permit or other grant of approval for development upon its finding that such construction is or will be necessary at the time set because of the public health and safety, or because the construction is a necessary prerequisite to the orderly development of the surrounding area, and except that the land divider and the town shall enter into an agreement setting forth the time period within which the requirements shall be met.

B. Pre-application conference. The pre-application conference for a minor land division review is an investigatory period preceding the preparation and submittal of the minor land division application by the land divider. The land divider shall initially present his or her proposal to the Planning Department who shall advise the land di-

See A.R.S. § 9-463 defines "land splits" as "the division of improved or unimproved land whose area is two and one-half acres or less into two or three tracts or parcels of land for the purpose of sale or lease"

vider of specific public objectives, standards, and regulations related to the property and the procedure for minor land division review.

C. Minor land division design standards and requirements. Except where expressly modified or permitted by planning staff, all minor land divisions shall be in general conformity with the lot, street, block, alley, and easement design standards and requirements specified for subdivisions in subsection 17-5-3 C. All lots created by a minor land division shall conform to existing zoning and the town general plan and any applicable area or specific plans.

D. Minimum required minor land division improvements

1. Except where otherwise provided in this section, it shall be the responsibility and duty of the land divider to improve or agree to improve all streets, pedestrian ways, alleys, and easements in the minor land division and adjacent thereto required to service the minor land division, and such other improvements as specified for subdivisions in 17-5-3 B and 17-5-3 C of this chapter. Improvements shall be installed to the permanent line and grade to the satisfaction of the town engineer.

2. Minor land division improvements shall not be required as a condition of approval for minor land divisions in the following situations:

a. In any case when the planning director and town engineer determines that the improvement of the abutting street or the installation of the other normally required improvements would be impractical because of considerations such as, but not limited to: type and extent of existing street improvements; inability to establish a proper street grade or alignment; physical barriers such as excessive grade of terrain or washes, ditches, canals, buildings or other structures; or other special circumstances where, in the opinion of planning and engineering staff, the immediate installation of the improvements is not deemed necessary to protect the public health, safety and general welfare, and that the waiver of the improvement requirements would not impair the purpose and intent of this title.

b. The planning director may require, as a condition for the waiver of the required minor land division improvements, the execution of an acceptable form of assurance to the town attesting that the owner(s), and their heirs, successors, or assigns agree that they will participate in the cost of the improvements abutting their property at a later date whenever it is deemed necessary by the Town based upon future development in the immediate area.

E. Minor land division applications

1. Application submittal:

a. The land divider shall submit the following materials to the planning department for review:

i. Five copies of the minor land division map reproduced in the form of blue or black line prints on a white background.

ii. Completed minor land division application and supplemental forms.

iii. A title report (updated to within 30 days).

iv. A nonrefundable minor land division application filing fee to compensate the town for the costs of examining and processing the minor land division application. (The required fee for minor land division applications shall be approved by resolution of the council).

b. All submittals shall be checked by planning staff for completeness. If incomplete as to the requirements set forth in this title, the submittal may be rejected and returned to the applicant for revision and resubmittal.

2. Application requirements:

a. Every minor land division shall be designed to comply with the requirements of the specific zoning district within which it is located.

b. No lot or parcel shall be divided in such a way that any the division of such lot or parcel shall contain more dwelling units than are permitted by the zoning regulations for which district such applicable to the lot is situated.

c. Any information required as part of the minor land division submittal shall be shown graphically, or by note on plans, or by letter, or by combination thereof, and may comprise several sheets showing various elements of the required data.

d. All minor land division maps shall contain the following information:

i. Notation of the map as "A minor land division map for (land-divider's name)."

ii. Location by quarter-section, section, township, and range.

iii. Legal description of the property involved.

iv. Name, address, and phone number of land -divider.

v. Scale, north arrow, and dates of preparation and revisions.

vi. Existing street dedications, utility easements, and lot lines of all adjacent properties must be indicated by subdivision name and recorder's book and page numbers; unsubdivided land must be identified as such.

vii. Name, address, registration number, and seal of the registered land surveyor preparing the map.

viii. Boundaries of the tract to be divided fully balanced and closed, showing all bearings and distances determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof.

ix. Location and description of cardinal points of primary interest to which all dimensions, angles, bearings, and similar data on the map shall be referenced. One corner of the minor land division map shall be tied by course and distance to a survey monument approved by the town.

x. All existing and proposed drainage structures, known floodplains and natural drainage features, as required by the town.

xi. All existing irrigation structures on the property.

xii. Location and dimensions of all lots within the minor land division map. All sides of the proposed lots shall be identified by bearings and distances.

xiii. All lots shall be identified by number or letter.

xiv. Proposed and existing street dedications and public utility easements shall be identified by course, length, and width.

xv. The following certifications must be included on the minor land division map:

a) Certification by a registered land surveyor preparing the map that the map is correct and accurate, and that the monuments described in it have been located as described.

b) Certification of map approval by the planning director and town engineer.

3. Application approval:

a. The land divider shall submit all of the documents, information, data, and other requirements for minor land division application approval to the planning department and shall furnish any additional information and materials relevant to the application that planning staff reasonably believes is necessary in order to understand the subject matter of the application and to ensure compliance with the requirements of this title. Compliance shall be determined by the planning director.

b. The planning director shall approve, modify or disapprove applications for minor land divisions pursuant to the provisions of this title. The procedures for approval, modification,

or disapproval of minor land division applications shall be as follows:

i. Approval:

a) If the planning director approves the minor land division application, the town shall transcribe a certificate of approval upon the map, first making sure that: (1) all conditions of approval have been complied with; (2) the other required certifications have been duly signed; and (3) that any instruments for required street right-of-way dedications have been prepared, executed, and duly recorded.

b) After approval of the minor land division, certification of approval by the town and compliance with subsections 17-5-6 F and 17-5-6 G hereof, the applicant shall pay to the town the fee charged by the recorder for the recordation of the map, and the town shall then promptly record the map with the recorder.

ii. Modification: If the planning director finds that the minor land division application requires modification, the land divider will be furnished a letter stating the reasons for the necessary modification. Such modification(s) must be completed within 45 days of the letter or the land split will require a new submittal.

iii. Denial:

a) If the planning director disapproves or denies the minor land division application, the land divider will be furnished a letter stating the reasons for the denial. The application may be re-filed without additional fee if suitable revisions can be made to resolve the conflicts noted by planning staff as originally proposed without additional fee and if the application is re-filed within 45 calendar days of the planning director's action.

b) An applicant may appeal a final action by the planning director pursuant to subsection 17-5-6 H of this chapter.

F. Engineering plans for minor land division

1. If improvements are required for minor land divisions pursuant to paragraph D of this section, the applicant shall be responsible for the preparation of a complete set of engineering plans, prepared by an Arizona registered civil engineer, satisfactory to the town engineer for the construction of the required improvements. The plans shall be prepared in conjunction with the minor land division map.

2. The minor land division map shall not be recorded until all engineering plans for the recorded improvements have been approved by the town engineer.

G. Assurance for the construction of minor land division improvements. If improvements are required for the minor land division pursuant to paragraph D of this section, no building permit for any lot created will be issued until such improvements are completed and the work accepted by the town engineer. Required improvements may be waived by the Town if the land divider provides the appropriate (cash or bond) improvement assurance or if all such required improvements have been completed, paid for and accepted, as determined by the town engineer.

H. Minor land division appeal

1. Any person aggrieved by a decision of the planning director regarding a minor land division may appeal to the planning commission within ten days of such decision by the planning director. The appeal shall be filed with the chairman of the planning commission and shall describe the reasons for, and details of, the appeal. The planning commission shall act upon the appeal within 45 days of the date upon which the appeal is filed.

2. Any person aggrieved by the decision of the planning commission may appeal to the council within ten days of the planning commission's decision. The notice of appeal and all papers constituting the record in the action shall be transmitted forthwith to the council. The council shall hear, review and decide the application within 45 days of the date upon which the appeal is filed.

3. Findings of the council shall be incorporated into the plat or map and, if found necessary by the council, the plat or map shall be resubmitted for review by the planning director, to assure conformity to the council's decisions and other requirements.

17-5-7 Modifications to requirements of chapter

A. Where, in the opinion of the council, there exists extraordinary conditions of topography, land ownership, or adjacent development, or other circumstances not provided for in these regulations, the council may modify the provisions of this chapter in such manner and to such extent as it may deem appropriate to the public interest. The burden of proof for council determination of a modification rests with the subdivider and/or land divider.

B. In modifying the standards or requirements of these provisions, as outlined above, the council may make such additional requirements as appear necessary, in its judgment, to substantially secure substantially the objectives of the standards or requirements so modified.

17-5-8 Violations and penalties

A. It shall be a misdemeanor to record or attempt to record a subdivision plat or minor land division map with the county recorder if such plat or map includes any land within the town and such plat or map has not been given approval by the town.

B. It shall be a misdemeanor to attempt to achieve a minor land division or to achieve a minor land division or to attempt to establish a subdivision or to establish a subdivision of any land within the town without first having obtained the approval of the town as provided for by this chapter.

CHAPTER 17-6. GENERAL DEVELOPMENT REGULATIONS

Chapter 17-6 was inserted into the town code by Ordinance 2015.021

Sections:

17-6-1 Nonconforming structures and land uses 17-79
17-6-2 Relationships to streets, other structures, and other property 17-80
17-6-3 Sewage sludge restriction. 17-81
17-6-4 Height of buildings and structures 17-81
17-6-5 Clear view of intersecting streets 17-81
17-6-6 Home occupations 17-81
17-6-7 Location of gasoline pumps 17-82
17-6-8 Motor vehicle access 17-83
17-6-9 Irrigation lines and ditches 17-83
17-6-10 Nuisance uses prohibited 17-83
17-6-11 Specifications for the installation of fiber optics. 17-84
17-6-12 Animal keeping and related structures 17-85
17-6-13 Building height increase 17-90
17-6-14 Medical marijuana dispensary 17-91

17-6-1 Nonconforming structures and land uses

A. Continued use. The owners of land and structures shall not be deprived of the use of any property for the purpose to which it was lawfully devoted at the time of the enactment of this code because of any provision of this code. Nonconforming buildings or structures or land uses may be continued to the same extend and character as that which legally existed on the effective date of this code and any regulations derived from it. Repairs may be made to a nonconforming building or structure or to an existing building or structure housing a nonconforming use.

B. Limitations on enlargement. Any nonconforming but otherwise legal use within a building may be expanded within the same building in which said use is located, provided that: (1) no substantial modifications are made in the building; or (2) the increase or expansion is required to comply with an order to improve issued by a health or safety official acting in their official capacity.

C. Restoration of damaged buildings. A nonconforming building or structure or a building or structure occupied by a nonconforming

use which is damaged or destroyed by fire, flood, or other calamity or act of nature may be restored, and the building or structure or use of such building, structure, or part thereof may be continued or resumed provided that such restoration is started within a period of one year from the date of destruction or damage and is diligently prosecuted to completion. Such restoration shall not increase the floor space devoted to the nonconforming use over that which existed when the building became nonconforming, and such exemption from conforming to this code shall only be to the extent that the building did not conform in the past.

D. Discontinuance or abandonment. A nonconforming building or structure or portion thereof, or a lot or parcel occupied by a nonconforming land use, which is or which hereafter becomes abandoned or which is removed from use for a continuous period of one year or more shall not thereafter be occupied except by a use which conforms to the regulations of the zone in which it is located.

E. Change to a conforming use. Any nonconforming building or structure or land use that has been changed to a conforming building or structure or land use shall not thereafter be changed back to a nonconforming building, structure, or land use.

F. Change to another nonconforming use. A nonconforming use of a building or structure shall not be changed to another nonconforming use. Changes in use shall be permitted only to a conforming use.

17-6-2 Relationships to streets, other structures, and other property

A. Clear view of intersecting streets. On all lots or parcels of land on which a front setback is required, no obstruction that will obscure the view of motor vehicle drivers shall be placed within the triangular area formed by the adjoining street property lines and a line connecting them at points of 45 feet from the intersection of said street property lines, except that trees may be permitted within said triangular area provided that those trees are placed in the street planter strip and the limbs are pruned to at least six feet above the grade level of the adjacent street.

B. Effect of street plan. Wherever a front or side setback is required for a building or structure, and where the lot on which said building or structure is located abuts on a proposed street that has not yet been constructed but which has been designated on the Town's General Plan or an appropriate area or subject plan as a future street, the depth of such front or side setback shall be measured from the planned right-of-way line and not from the existing property line.

C. Drainage. Surface water shall not be allowed to drain from any lot onto any adjacent lot, parcel, or easement, except upon written agreement with the owner of said adjoining lot, parcel, or easement.

17-6-3 Sewage sludge restriction.

The application of sewage sludge to the surface or within eight inches of the surface of any land within one quarter mile of any human residence shall be prohibited, except where written permission to do so has been obtained from the owner of said residence and filed with the town clerk.

17-6-4 Height of buildings and structures

Section 17-6-4 was rewritten by Ordinance 2018.019

A. Additional height is allowed for ornamental elements of buildings and structures such as belfries, clock towers, cupolas, domes, spires, and steeples, subject to the following provisions:

1. The element is an integral part of the building's architecture.
2. The element is not for human occupancy.
3. The element is not used for signage.
4. The element shall be set back at least one foot from all property lines for every foot of height above finished grade. Where the zoning setback exceeds the height of the element, the zoning setback shall apply.
5. Elements higher than 50% above the zoning height limit, or that do not conform to the increased setbacks specified in section 17-6-4 A. 4, shall:
   a. require a conditional use permit
   b. require a viewshed and shadow analysis showing the impact on nearby properties
   c. have a combined footprint not exceeding 25% of the roof area of the principal building
6. Lighting or direct illumination of any part of the element above the zoning height limit shall require a conditional use permit.

B. Multiple architectural elements may be considered separately when determining setbacks and the applicability of section 17-6-4 A. 5.

17-6-5 Clear view of intersecting streets

No obstruction which will obscure the view of motor vehicle drivers shall be placed on any corner lot within a triangular area formed by the street right-of-way lines and a line connecting them at points of 45 feet from the intersection of adjacent street right-of-way lines.

17-6-6 Home occupations

A. A home occupation shall be permitted only pursuant to an approved home occupation permit issued by the planning director.

B. A home occupation shall not exceed 25% of the gross floor area of a dwelling.

C. Except as provided in the following paragraph, a home occupation shall not employ anyone who does not reside in the residence containing the home occupation.

D. A home occupation that employs a person who does not reside in the home where the home occupation is located is a conditional use in any zone where a home occupation is permitted, and subject to the conditional use permit procedure set forth in section 17-3-2.

E. A home occupation shall not display on-site advertising or identification signs or have external evidence of the conduct of the home occupation.

F. A home occupation shall maintain the required residential off-street parking, shall not create off-street or on-street parking, vehicular or pedestrian traffic which is greater than that normally associated with a solely residential use of the premises on which the home occupation is conducted.

G. A home occupation shall not create conditions that are a nuisance to neighboring properties.

H. Equipment used by or in connection with a home occupation which is visible from off-site or which creates audible interference in radio and television receivers or causes fluctuations in line voltage outside the dwelling using it is prohibited.

17-6-7 Location of gasoline pumps

A. Gasoline pump islands and similar facilities for the dispensing of flammable materials, including diesel fuel, propane, and butane, shall be set back not less than:

1. Eighteen feet from any street right-of-way line to which the pump island is perpendicular; and
2. Twelve feet from any street right-of-way line to which the pump island is parallel; and
3. Twelve feet from the property line of any residential lot.

B. If the pump island is set an angle on its lot, it shall be so located that motor vehicles stopped for service shall not extend over the property line of the lot.

C. In no case shall pumps be set closer than 12 feet to any side or rear lot line.

D. Lots from which gasoline or similar flammable fluids are dispenses to customers at retail or wholesale shall be not less than 75 feet in width and not less than 100 feet in length.

E. All approaches to gasoline pumps or similar facilities shall be paved to a distance of no less than 18 feet from the pumps or to the nearest property line, whichever distance is smaller.

17-6-8 Motor vehicle access

Access to all lots and parcels of land having frontage on a public street shall be controlled as follows:

A. Access shall be by not more than two driveways from any one street.

B. Driveways shall not be closer to each other than 20 feet except where a greater distance may be required by other provisions of this code.

C. Each driveway shall be not more than 30 feet in width, measured at right angles to the center line of the driveway, except as that distance may be increased by permissible curb return radii.

D. On corner lots, no driveway shall be closer than 35 feet to the point of intersection of the right-of-way lines of the intersection.

17-6-9 Irrigation lines and ditches

Irrigation channels, ditches or lines. Before a permit can be issued for development or doubling the enterprise density of parcels or lots with an irrigation channel, ditch or line either within the parcel or lot or adjacent thereto within perimeter easements or the nearest half of a street or alley right of way, such irrigation facilities shall be undergrounded in accordance with a plan and schedule acceptable and agreed upon by the town engineer, the subdivider and the owner of the irrigation facilities. Such undergrounding shall be done in accordance with town standards.

17-6-10 Nuisance uses prohibited

A. Purpose and scope: The purpose of this section is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the town, and to protect neighborhoods against nuisances, blight and deterioration, by establishing requirements for the maintenance of all land, whether improved or vacant. This section shall apply to all lands within the town, without regard to zoning or use.

B. Composting prohibited: No person shall compost or permit the composting of organic waste; manure; tree, grass or shrub clippings; grease; bio-solids, or other similar material on any property within the town limits except for composted material that is utilized directly on the property from which it is composted.

C. Tire storage prohibited: Other than by a bona fide commercial entity, engaged in the retail sale of used tires, property licensed and operating, no person shall store, or allow the storage of, used automobile, truck or other vehicle tires in a quantity greater than can be used by such person on the vehicles owned by such person. In no event, shall any person store, keep or maintain used tires outside a completely enclosed structure on any property within the town limits.

D. Grease ponds prohibited: No person shall allow a grease pond or open grease storage facility to be maintained on any property within the town limits.

E. Similar uses prohibited. The planning director may determine other similar uses to be a nuisance, and is hereby authorized and directed to make inspections in the normal course of job duties; or in response to a complaint that an alleged violation of the provisions of this chapter; or when there is reason to believe that a violation of this title has been or is being committed.

17-6-11 Specifications for the installation of fiber optics.

A. Fiber optic cables or lines installed within the municipal limits of the town shall not be installed as a direct bury cable.

B. All fiber optic cables or lines shall be installed within a conduit of at least one inch PVC or other approved material. At the time of initial installation, one extra conduit of at least one inch PVC or other approved material for future expansion shall also be installed.

C. New conduit installation designated for fiber optic cables or lines shall be encased in a minimum of six inches of concrete on all sides of the conduit or conduits. New installations shall have a minimum of four feet of cover on the top of the concrete encasement. A magnetic warning tape shall be placed two feet above the encasement, which shall include a written message indicating the presence of fiber optics in the conduit systems installed, even if they are initially intended to carry standard copper wire cables.

D. If that fiber optic cables or lines are to be installed in existing conduit systems, the installation thereof shall comply with the specifications in the foregoing subsection.

E. All installations of fiber optic cables or lines, whether in new conduit installations or existing conduit installations, shall require a permit.

F. Upon the submission of plans and the application for a permit, it shall be clearly noted thereon by the applicant that fiber optic cables or lines are to be installed pursuant to the permit being requested.

G. Whenever the town, private consultants or entities, or other agencies request any information on existing utilities to be used on the preparation of improvement or development or other plans, existing fiber optic cables or lines shall be clearly indicated on information furnished by the applicable utility company.

H. Any of the foregoing plans prepared shall include a special warning of sufficient size and placed on the plans in such a way that contractors will be aware of the presence and existence of fiber optic cables or lines.

I. Any fiber optic cables or lines installed within the town shall be located in the field, during construction, as part of the "Blue Stake" program.

J. Any locations marked on the ground surface shall include special notations that will adequately indicate the existence of fiber optic cables or lines to the contractor.

17-6-12 Animal keeping and related structures

A. Location of structures to house animals. No barn, shed, corral, fence, or other structure for the housing of confinement of bovine or equine animals or swine, or for more than three-hoofed animals of any other kind, shall be erected, constructed, or moved to within 100 feet of a human residence, except the residence of the owner of any of the aforementioned animals that are maintained on that owner's land.

B. General maintenance

1. Animal keeping and related structures shall be arranged, conducted and or maintained so that:

   a. The animal keeping area is completely enclosed within an approved fence consistent with the quantity, age, and disposition of the animal(s) being kept.

   b. Construction materials are non-toxic.

   c. Insects, vermin, odors, noises, manure, garbage and or other noxious materials or practices do not compromise the public's health.

   d. No condition of said use or structure restricts the rights of the adjacent property owner to enjoy the use of their property.

   e. Adequate water facilities are provided that prevent ponding of water.

   f. Feeding occurs on impervious surfaces, as appropriate.

   g. Frequent or continuous barks, squawks, and or other animal related sounds are not audible to adjacent residential structures.

   h. Generation of dust is minimized.

   i. Outdoor lighting does not generate glare in the direction of streets and or adjacent properties; and is consistent with the town lighting code.

2. Any person keeping animals shall ensure:

   a. Animals are provided with food of sufficient quality and quantity, and food is appropriate to the species, disposition, and age of the animal.

   b. Water is available at all times.

   c. Animals have convenient access to a structure which provides shade from direct sun light.

   d. Animal structures are designed to minimize the spread of disease.

   e. Animals are provided with sufficient medical treatment and care.

f. Opportunity for periodic exercise, under appropriate control, sufficient to maintain good health.

g. Animal keeping structures are designed to minimize the risk of animal injury and are of a size of space conducive to the animal's good health.

h. Tie-outs are located so that they cannot become entangled.

i. Manure is removed from any animal keeping structure or area in a timely manner and handled or disposed of in a manner free of health hazard or nuisance. Mound storage shall not be permitted on a lot less than five acres and shall not be allowed to drain, contaminate, or pollute any watercourse or riparian area.

j. Animals have access to a structurally sound, properly ventilated, sanitary and weatherproof structure which provides relief from exposure to severe weather conditions and is suitable for the species, conditions and age of the animal(s) being kept.

k. Any public and or commercial animal keeping practice provides a schedule for cleaning and maintaining structures. Said schedule shall be posted on or near the structure being maintained in a manner clearly visible to the public.

l. No rental animal including, but not limited to, horses and mules, shall work more than eight hours a day. There shall be a rest period of a minimum of 15 minutes for every two working hours. During such rest periods, the person in charge of such rental animal shall make sufficient fresh water available.

3. Nothing in this section shall be deemed to prohibit the use of animal manure or droppings on any farm, garden, lawn or ranch in a manner compatible with customary methods of good horticulture.

4. Slaughtering for purposes other than for owner's consumption shall be prohibited in all residential districts.

C. Development standards. Unless otherwise noted; the regulation of animal densities permitted within this subsection shall not apply to un-weaned animals or household pets. Certain omissions to the following subsection regulations may be made when animal keeping and related structures are sponsored by the 4-H club, future farmers of America or other similar nonprofit organization, provided that a letter of authorization from the sponsoring organization is submitted to the town acknowledging that the project is in fact sponsored by the organization, describing the project and stating its length of time.

1. Apiaries

a. Beekeeping is prohibited in residential zones and or any lot less than five acres. The keeping of any bees shall require the construction of an apiary.

b. Colonies shall be maintained in movable-frame hives.

c. Hives shall be erected using a hive stand which separates the hive's bottom boards from directly contacting the ground.

d. Colonies shall be maintained to reasonably prevent undue swarming or aggressive behavior.

e. Colonies shall be re-queened following any swarming or aggressive behavior.

f. Four colonies shall be permitted for every 10,000 square feet of parcel area.

g. Apiaries shall be set back a minimum of 100 feet from any adjacent residential property line and a minimum of 60 feet from all other property lines.

2. Aviaries

a. The practice of bird keeping within a primary structure shall be limited to 15 birds and shall not require the construction of an accessory structure and/or aviary.

b. The keeping of more than 100 hundred birds is prohibited in and/or adjacent to a residential district.

c. No person shall keep birds outside of their primary structure without erecting an aviary.

d. A minimum of 1.5 square feet shall be provided for each bird.

e. Except in the AG zone, aviary length or width shall not exceed 50 linear feet, nor shall the height exceed the maximum height for structures of the applicable zoning district.

f. A single aviary shall not exceed 2,000 square feet.

g. Perches shall be provided for perching species in a manner that allows the bird(s) to stretch to its full height without its head touching the top, or its tail touching the bottom, of the aviary.

h. Aviaries shall be set back a minimum of 60 feet from any property line.

i. A minimum of 20 feet shall be provided between any residential structure and aviary.

3. Stables, private

a. Minimum lot size shall be one acre.

b. One animal shall be permitted for every 10,000 square feet of lot area.

c. Animals shall be confined within a stock-tight fence or corral.

d. Stables shall be setback a minimum 60 feet from all property lines.

e. Corrals shall be setback a minimum 30 feet from the front property line.

f. A minimum of 400 square feet of fenced area shall be provided for each animal.

4. Stables, public

a. Minimum lot size shall be five acres.

b. All animal structures shall be set back a minimum of 200 feet from any adjacent residential property line and 100 feet from all other property lines.

c. Corrals shall be set back a minimum of 30 feet from front property line.

d. A minimum of 400 square feet of fenced area shall be provided for each animal.

5. Kennels

a. Minimum lot size shall be one acre.

b. Structures shall be set back a minimum of 60 feet.

c. Fenced area accessory to the kennel (such as but not limited to a dog run) shall be set back a minimum of 30 feet from any property line.

6. Fowl

a. Minimum lot size shall be one acre.

b. A maximum of 40 animals per acre shall be permitted.

c. Structures shall be set back a minimum of 60 feet from any property line.

7. Livestock, large

a. Minimum lot size shall be one acre.

b. One animal shall be permitted for every 10,000 square feet of lot area.

c. Animals shall be confined within a stock-tight fence or corral.

d. Animal structures shall be set back a minimum of 60 feet from all property lines; corrals shall be set back a minimum of 30 feet from front property line.

e. A minimum of 400 square feet of fenced area shall be provided for each animal.

8. Livestock, small

a. Minimum lot size shall be one acre.

b. One animal shall be permitted for every 5,000 square feet of lot area.

c. Animals shall be confined within a stock-tight fence or corral.

d. Animal structures shall be set back a minimum of 60 feet from all property lines; corrals shall be set back a minimum of 30 feet from front property line.

e. A minimum of 200 square feet of fenced area shall be provided for each animal.

9. Ratites

a. Minimum lot size shall be two acres.

b. One ratite shall be permitted for every 10,000 square feet of lot area.

c. Animals shall be confined within minimum six-foot-high stock-tight fenced corrals.

d. The minimum setback for structures shall be 60 feet from any property line; the minimum setback for corrals is 30 feet from any property line.

10. Riding arena, rodeo grounds

a. Minimum lot size shall be three acres for commercial and or public arenas and grounds.

b. Minimum lot size shall be one acre for arenas and grounds for private recreation and training.

c. Minimum required setbacks for all arenas and or rodeo facilities such as but not limited to a chute shall be 100 feet from any property line.

d. A minimum of 400 square feet of fenced arena or grounds shall be provided for each animal.

e. Rodeo grounds practices and maintenance shall be consistent with the Pima County 4-H and FFA Livestock and Small Stock Show Code of Ethics.

11. Rodents

a. Minimum lot size shall be one acre.

b. A maximum of 40 animals per acre shall be permitted.

c. Structures shall be set back a minimum of 60 feet from any property line.

12. Swine

a. Minimum lot size shall be one acre.

b. One swine per acre shall be permitted for a parcel smaller than five acres.

c. The minimum setback for a swine related structure and or pen on a lot less than five acres shall be 100 feet from any property line.

d. On a parcel five acres or greater, all swine related structures and or pens shall be located on the half of the property opposite of the highest classified street adjacent to the subject property.

e. The minimum required setback for any pen or structure on a lot containing five or more swine shall be 300 feet from any property line.

f. The keeping of five or more swine shall be prohibited within a residential district.

17-6-13 Building height increase

A. Building heights may be permitted to increase a maximum of 20% as allowed the applicable zoning district, subject to the review and approval of the council.

B. The acceptance of the increased building height must be supported by written documentation and graphics on how the proposed project is a superior project and provides increased development standards and at a minimum, but not limited to, address all of the following:

1. The proposal is consistent with the general plan.

2. With the exception of the requested building height increase, the proposal complies with the town code, including the land development code.

3. The site is of a sufficient size and configuration to accommodate the design and scale of proposed development, including buildings and elevations, landscaping, parking and other physical features of the proposal.

4. The design, scale and layout of the proposed development will not unreasonably interfere with the use and enjoyment of the future residents and the neighboring existing or future developments, will not create traffic or pedestrian hazards, and will not otherwise have a negative impact on the aesthetics, health, safety or welfare of neighboring uses.

5. The architectural design of the proposed development is compatible with the character of the surrounding neighborhood, will enhance the visual character of the neighborhood, and will provide for the harmonious, orderly and attractive development of the site.

6. The design of the proposed development will provide a desirable environment for its occupants, the visiting public and its

neighbors through good aesthetic use of materials, texture, and color that will remain aesthetically appealing and will retain a reasonably adequate level of maintenance.

7. The building height increase on the proposed development is compatible with and enhances the design of existing buildings and other physical features of the site.

8. The building height increase will not adversely affect viewsheds.

C. Building height increase procedure

1. An applicant shall submit all of the documents, exhibits, information, data, and other requirements for building height increase approval to the planning department and shall furnish all information and materials needed to satisfy the requirements of this section.

2. The applicant shall provide the planning director any additional information, documents, or other material relevant to the application that planning staff reasonably believes is necessary in order for the council to evaluate, analyze, and understand the subject matter of the application.

3. An application for building height increase shall not be deemed to have been filed or properly submitted until all of the above listed requirements have been complied with, as determined by the planning director.

4. Upon receipt of all required information, planning staff shall prepare a recommendation on an application for building height increase and the planning director shall place the application to the agenda of the next available regular meeting of the council or include the request in conjunction with the council's review of a proposed preliminary plat.

5. The council shall consider an application for building height increase in a public meeting, but the item may be on the consent portion of the agenda or taken in conjunction with the approval of a preliminary plat.

17-6-14 Medical marijuana dispensary

A. The minimum requirements of this section shall apply to any "medical marijuana dispensary" located in any zoning district.

B. In addition to any other application requirements, an applicant for any "medical marijuana dispensary" conditional use permit shall provide the following:

1. A notarized authorization executed by the property owner, acknowledging and consenting to the proposed use of the property as a medical marijuana dispensary.

2. The legal name of the medical marijuana dispensary.

3. The name, address, and birth date of each officer and board member of the nonprofit medical marijuana dispensary.

4. A copy of the operating procedures adopted in compliance with A.R.S. § 36-2804 (B) (1) (c).

5. A notarized certification that none of the nonprofit medical marijuana dispensary officers or board members has been convicted of any of the following offenses:

   a. A violent crime as defined in A.R.S. § 13-901.03 (B) that was classified as a felony in the jurisdiction where the person was convicted.

   b. A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. § 36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the state of Arizona.

6. A notarized certification that none of the nonprofit medical marijuana dispensary officers or board members has served as an officer or board member for a medical marijuana dispensary that has had its registration certificate revoked.

7. A floor plan showing the location, dimensions and type of security measures demonstrating that the medical marijuana dispensary will be secured, enclosed, and locked as required by law.

8. A scale drawing depicting the property lines and the separations from the nearest property boundary of the parcel containing the medical marijuana dispensary to the property boundary of the parcel containing any existing uses listed in paragraph D below. If any of the uses are located within 50 feet of the minimum separation, the drawing, showing actual surveyed separations, shall be prepared by a registered land surveyor.

9. A notarized acknowledgment of the requirements of Pima county code chapter 8.80 ("medical marijuana").

C. A medical marijuana dispensary shall:

1. Be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.

2. Not have drive-through service.

3. Not emit dust, fumes, vapors or odors into the environment.

4. Prohibit consumption of marijuana on the premises.

5. Not have outdoor seating areas.

6. Display a current town of Marana business license applicable to a medical marijuana dispensary.

7. Have operating hours not earlier than 7:00 a.m. and not later than 10:00 p.m.

Ordinance 2019.024 modified subparagraph 7, extending the permissible hours to 10 p.m.

D. A medical marijuana dispensary shall meet the following minimum separations, measured in a straight line from the boundary of the parcel containing the medical marijuana dispensary to the property boundary of the parcel containing any existing uses listed below:

1. 2,000 feet from any other medical marijuana dispensary or medical marijuana dispensary offsite cultivation location.

2. 2,000 feet from a residential substance abuse diagnostic and treatment facility or other residential drug or alcohol rehabilitation facility.

3. 1,000 feet from a public, private, parochial, charter, dramatic, dancing, music, learning center, or other similar school or educational facility that caters to children.

4. 1,000 feet from a childcare center.

5. 1,000 feet from a public library or public park.

6. 1,000 feet from a church.

7. 1,000 feet from a facility devoted to family recreation or entertainment.

E. A medical marijuana dispensary offsite cultivation location is prohibited within the town limits.

F. The number of medical marijuana dispensaries permitted within the town limits of Marana shall be limited to two. The number of permitted medical marijuana dispensaries shall be increased by one for each Marana population increase of 50,000 over and above the official 2010 census figure for Marana.

G. The medical marijuana dispensary operator and the owner of the property shall jointly share the rights and obligations of a medical marijuana dispensary conditional use permit issued under this section.

Paragraphs G and H were added by Ordinance 2019.022

H. If a medical marijuana dispensary ceases to operate at a property for which a conditional use permit has been issued under this section, the owner of the property shall have the right to lease or sell the property to another medical marijuana dispensary operator without the need for a new medical marijuana dispensary conditional use permit, subject to the following conditions and requirements:

1. A new conditional use permit shall be required if the medical marijuana dispensary conditional use permit expires by operation of section 17-3-2 paragraph I (exercise and use).

2. Before opening to the public, the new medical marijuana dispensary operator shall provide to the town the information and documentation set forth in subparagraphs 1 through 7 and 9 of paragraph B of this section.

3. The new medical marijuana dispensary operator shall obtain a new medical marijuana dispensary conditional use permit if the planning director determines that the floor plan provided as required by subparagraph 7 of paragraph B of this section is substantially different from the floor plan approved in the medical marijuana dispensary conditional use permit. For purposes of making this determination, the planning director shall disregard floor plan changes required by the state as a condition of the operator's state license.

CHAPTER 17-7. — CHAPTER 17-8. [RESERVED]

CHAPTER 17-9. PARKING

Sections:

17-9-1 Purpose. 17-94
17-9-2 Parking requirements. 17-94
17-9-3 Access and circulation. 17-98
17-9-4 Bicycle parking. 17-98

17-9-1 Purpose.

The purpose of this chapter is to ensure new development and redevelopment have flexibility in addressing parking demand, and to improve the visual appeal of the town by regulating the placement, layout, and design of parking areas and garages.

17-9-2 Parking requirements.

A. General.

1. At least two off-street spaces within a fully enclosed garage shall be provided for residential uses on lots of 16,000 square feet or less.

2. For all other uses, a parking justification analysis shall be provided.

   a. The parking justification analysis shall include the following minimum contents:

      i. An analysis of the parking demand from the existing and proposed onsite buildings or uses, including hours of operation and peak use time and demand for each proposed building or use.

      ii. The number and location of proposed onsite parking spaces (including accessible parking spaces).

      iii. The data source used to establish the number of proposed onsite parking spaces.

iv. The existing and future anticipated available parking within and in the vicinity of the proposed development.

v. If parking demand is proposed to be addressed offsite, reference to or copies of any shared parking agreement or other evidence of a right to park in that location.

vi. The location and distance from the site to existing residential neighborhoods and an explanation of how or why the proposed buildings or uses will not place a parking burden on residential streets.

vii. Discussion of whether the proposed development or uses will be catering to or may likely attract bicyclists, and if so, the location and number of bicycle racks.

viii. Off-street loading requirements and impacts on surrounding uses and properties.

ix. Any other information deeded appropriate by the town engineer, including without limitation a traffic study.

b. The parking justification analysis process:

i. Submission to the planning director.

ii. Approval or rejection with explanation.

iii. Revision or appeal to board of adjustment.

c. Standards for parking justification analysis consideration

i. The planning director may reject the parking justification analysis if it fails to address any adverse impacts on surrounding properties or the public.

ii. Parking demand shall be determined using standard modeling practices.

iii. Available parking shall include any parking available within 660 feet of the proposed use.

iv. Where the proposed development or uses will be catering to or may likely attract bicyclists:

a) Parking areas that exceed 20 spaces must provide at least one bicycle parking space for each 20 vehicle parking spaces or fraction thereof.

b) Spaces are determined by the number of bicycles that the manufacturer specifies that the bicycle rack will accommodate, subject to section 17-9-4 B.

B. Water harvesting. Parking areas that exceed or are planned to exceed 400 spaces must incorporate water harvesting, consisting of one or more of the following elements, which can be credited against detention/retention requirements of this title:

1. Bioretention areas—planted areas designed to filter, store, and infiltrate stormwater by utilizing mulch, soil and plant root systems to retain, degrade and absorb pollutants.

2. Pervious pavement systems—pavement comprised of a permeable surface with an underlying aggregate base course, allowing stormwater to infiltrate through the surface for direct recharge into the soil or collection into a bioretention area.

3. Site grading and drainage designed and constructed to direct runoff to bioretention and pervious pavement areas.

4. Curb-cut inlets and outlets that direct runoff into and out of bioretention and pervious pavement areas.

C. Accessible parking. Accessible parking must be provided for all multifamily and non-residential uses as required by law.

D. Location. The requirements of this paragraph apply in all zones except downtown and blended use zones.

1. Required parking spaces for residential uses must be located on the same lot as the residential use, or in a designated shared parking area located on an abutting lot or on a lot directly across a neighborhood or collector street.

2. Parking for residential uses on lots of 16,000 square feet or less is prohibited on any portion of the front yard setback other than on a driveway.

3. No unenclosed residential parking area or space may be used for the repair, dismantling, or servicing of vehicles or equipment or for the storage of vehicles, equipment, materials, or supplies.

4. A commercial motor vehicle as defined in A.R.S. § 28-5201 may not be parked or stored in an unenclosed residential parking area or space or driveway.

E. Design.

1. General. The following standards apply to proposed development of parking areas that meet the size threshold listed below.

a. Each surface parking lot with parking spaces abutting a public street requires screening along the street in the form of walls, evergreen landscaping, or a combination of the two. Screening must be a minimum of 42 inches high, and must be located outside the site visibility triangle. Where walls are provided, they must harmonize with building colors and materials.

b. Each surface parking lot containing more than 100 spaces must divide the parking lot into separate areas each containing fewer than 100 spaces that are separated by one or more of the following:

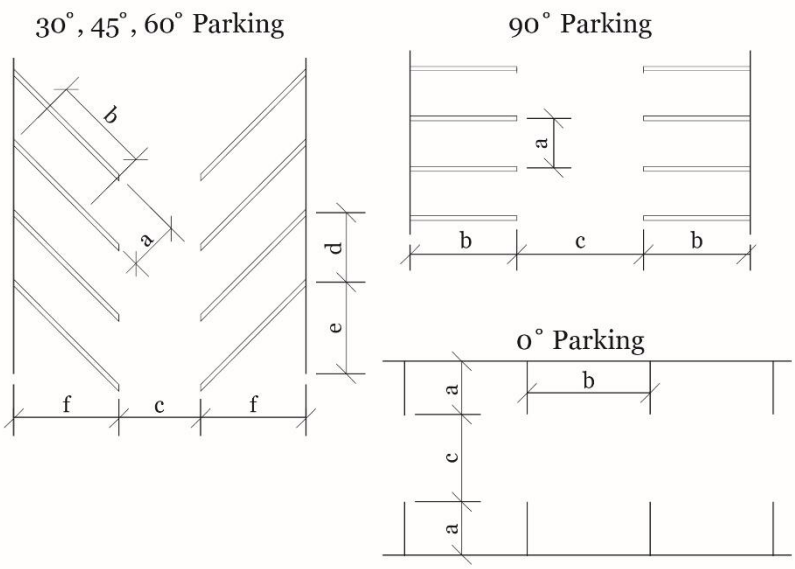
i. Landscaped swale.

ii. Landscaped pedestrian path not less than 10 feet wide.

iii. Primary or accessory building.

c. Each surface parking lot containing more than 400 spaces must incorporate water harvesting (see paragraph B above)

2. Dimensions. Off street parking spaces are subject to table 14 below, as measured along the curb for stall width and perpendicular to the curb for stall depth. The length of a parking space may be reduced by up to one and one-half feet for a vehicle overhang area. The parking space must have a vertical clearance of at least seven feet.



REGULAR PARKING SPACING					
	0°	30°	45°	60°	90°
a	9'-0"	9'-0"	9'-0"	9'-0"	9'-0"
b	21'-0"	18'-0"	18'-0"	18'-0"	18'-0"
c*	15'-0"	13'-0"	14'-0"	18'-0"	22'-0"
d		17'-0"	12'-0"	9'-10"	
e		28'-4"	18'-8"	11'-5"	
f		16'-4"	18'-8"	19'-10"	

HANDICAP PARKING SPACES					
	0°	30°	45°	60°	90°
a	14'-0"	14'-0"	14'-0"	14'-0"	14'-0"
b	23'-0"	19'-0"	19'-0"	19'-0"	19'-0"
c*	15'-0"	13'-0"	14'-0"	18'-0"	24'-0"
d		28'-0"	19'-0"	16'-2"	
e		34'-5"	22'-0"	13'-0"	
f		19'-11"	22'-0"	23'-0"	

SMALL CAR PARKING SPACES					
	0°	30°	45°	60°	90°
a	9'-0"	9'-0"	9'-0"	9'-0"	9'-0"
b	19'-0"	15'-0"	15'-0"	15'-0"	15'-0"
c*	15'-0"	13'-0"	14'-0"	18'-0"	21'-0"
d		17'-0"	12'-0"	9'-10"	
e		25'-9"	16'-7"	9'-11"	
f		14'-10"	16'-7"	17'-3"	

* Minimum of 20 feet for two-way traffic

a. All spaces must include striping to meet the minimum dimensions for parking stalls.

b. No more than 30% of the required off-street parking spaces may be for compact cars and must be marked as such. Compact car space requirements are subject to table 14 above.

17-9-3 Access and circulation.

The following standards apply to driveways, access drives, and parking areas, unless an exception or different standard is provided elsewhere in this title.

A. All residential other than multi-family.

1. The maximum width for surfaced parking and driveways in the front yard setback must not exceed 30 feet.
2. Access must be at least nine feet in width and paved in accordance to town standards.
3. Two adjacent townhomes may share a driveway centered on the property or parcel line with a maximum combined width of 30 feet.
4. In the downtown and blended use areas, tandem parking is permitted. A tandem parking space may be counted toward off-street parking requirements if both spaces are under the control of the same party.
5. No more than two access points are permitted from any one street.

B. All other uses.

1. Public parking areas must be designed so vehicles do not have to back out of the parking area onto a public street.
2. Driveways must be a minimum of ten feet wide for a single lane. A two-lane driveway must be twenty feet in width.
3. Access points to public roadways, distances between driveways, separations from intersections, and other similar traffic safety conditions shall meet current town engineering requirements and be approved by the town engineer.
4. Surfacing and drainage:
   a. Driveways, parking lots, and display areas for vehicle parking must be surfaced to current town engineering requirements and be approved by the town engineer.
   b. Every parking lot is subject to approval of a site plan review process.

17-9-4 Bicycle parking.

A. Bicycle parking installation. Bicycle racks should be:

1. Located in highly visible, well-lit areas within 50 feet of a building entrance used by the public,
2. Placed on and accessible by hard and stable surfaces,
3. Securely and permanently anchored to the ground, and
4. Installed in such a manner that the rack's parking capacity can be fully utilized.

B. Bicycle parking design.

1. Each bicycle rack shall be constructed of durable material and capable of accommodating more than one bicycle.
2. An acceptable option is a bicycle rack constructed of tubular steel with an inverted U design that measures 20″ to 30″ wide by 32″ to 36″ tall when installed.
3. Each bicycle rack shall meet all of the following requirements:
   a. Constructed of tubular steel with a minimum of 1/10″ wall thickness, or similarly durable material.
   b. Provide two points of support for each bicycle frame.
   c. Allow the bicycle frame and one wheel to be locked to the rack using a typical U-shaped lock without disassembling the bicycle.
   d. Accommodate a wide variety of bicycle sizes and types.

C. Bicycle racks must not be located within:

1. Five feet of hydrants, loading zones and bus stop markers,
2. Three feet of curbs, driveways and manholes; and
3. Thirty inches of other bicycle racks, walls, utility meters, tree planters, and other obstructions.

D. Bicycle racks installed perpendicular to walkways must allow for a minimum clearance of six feet for pedestrian paths.

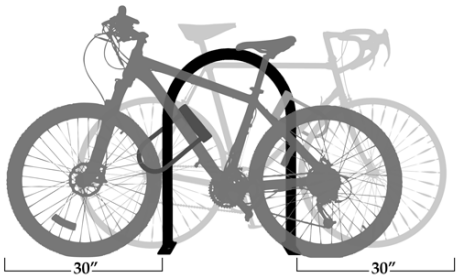


Figure-A. A properly designed and installed bike rack provides two parking spaces

CHAPTER 17-10. SIGNS

Chapter 17-10 was inserted into the town code by Ordinance 2019.004.

Sections:

I. Administration and general 17-100
17-10-1 Purpose 17-100
17-10-2 General 17-100
17-10-3 Definitions and sign types 17-101
17-10-4 Prohibited signs 17-105
17-10-5 Exempt signs 17-106
17-10-6 Permits 17-107
17-10-7 Sign design and construction 17-108
17-10-8 Sign measurement 17-108
17-10-9 Sign illumination 17-110
17-10-10 Sign maintenance 17-110
17-10-11 Areas with special sign regulations 17-111
17-10-12 Planned sign programs 17-111
17-10-13 Legal nonconforming signs 17-112
17-10-14 Abandoned signs 17-112
17-10-15 Classification; enforcement; removal 17-113
II. Regulations by sign type 17-114
17-10-16 Awning signs 17-114
17-10-17 Directory signs 17-114
17-10-18 Drive-through signs 17-114
17-10-19 Electronic message displays 17-114
17-10-20 Flags and flag poles 17-115

17-10-21 Freestanding interstate signs 17-115
17-10-22 Freestanding monument signs 17-116
17-10-23 Shingle signs 17-117
17-10-24 Sign walkers 17-117
17-10-25 Signs in residential areas 17-118
17-10-26 Subdivision entry signs 17-118
17-10-27 Vehicle signs 17-118
17-10-28 Wall signs 17-119
17-10-29 Window signs 17-119
III. Regulations for temporary signs 17-120
17-10-30 Temporary signs—general requirements 17-120
17-10-31 Banners 17-120
17-10-32 Development activity signs 17-121
17-10-33 Inflatable and air activated signs 17-122
17-10-34 Portable directional signs 17-122
17-10-35 Portable signs 17-123
17-10-36 Quill signs 17-123
17-10-37 Residential subdivision sign program 17-124
17-10-38 Roadway construction business identification banners 17-125

I. ADMINISTRATION AND GENERAL

17-10-1 Purpose

This chapter establishes reasonable regulations for the design, placement, construction, and maintenance of all signs within the town, to protect the public interest and achieve these community objectives:

A. To minimize the risk of personal injury and property damage from unregulated and improper sign placement, construction, and maintenance;

B. To balance private and public interests by providing opportunities for adequate signage for business identification and essential communication while preserving and enhancing the community environment, unique character and qualities of the town;

C. To promote the use of signs that are well-designed, of appropriate scale, and appropriately integrated into the built environment; and

D. To preserve and enhance the streetscape appearance throughout the town and the general appearance of business corridors.

17-10-2 General

A. No content restrictions.

1. Any sign allowed under this chapter may contain, in lieu of any other copy, any otherwise lawful message that complies with applicable size, lighting, dimension, design, spacing, and permitting requirements of this chapter.

2. This chapter is intended to regulate signs in a manner that does not favor commercial speech over non-commercial speech and does not regulate non-commercial speech by message content.

3. Any regulation that distinguishes between on-site and off-site signs applies only to commercial messages, and allows any non-commercial message.

B. Conformity.

1. No sign shall be installed, placed, or maintained within the town except in conformance with this chapter or as allowed by a state or federal law preemption of this chapter.

2. If provisions of this chapter are in conflict with any other provision of the code, the more restrictive requirement shall apply.

3. Signs maintained contrary to the provisions of this chapter are declared to be nuisances and may be abated as provided by law.

17-10-3 Definitions and sign types

A. The following definitions supplement those found elsewhere in the town code and land development code. In the event of conflicting definitions related to signs, the definitions in this section prevail.

1. Abandoned sign: A sign associated with a business, use, occupancy, product, or activity that has already occurred or has not existed for a period of 30 consecutive days, for reasons attributable at least in part to the sign-property owner.

2. A-frame: A portable sign typically constructed of wood or plastic that folds out to form the shape of an 'A'.

3. Animation: The movement, or optical illusion of movement, of any part of a sign structure, design, or pictorial segment including the movement of any illumination, flashing, or variation of light intensity, and including but not limited to the automatic changing of all or part of a sign achieved through mechanical, electrical, or environmental means including motion by activity such as wind, thermal changes, or other naturally occurring external forces.

4. Awning: An architectural projection or shelter projecting from, and supported by the exterior wall of, a building and composed of a covering of rigid or non-rigid materials and/or fabric on a supporting framework that may be either permanent or retractable.

5. Awning sign: A sign displayed on or attached to the surface of an awning.

6. Balloon: An airtight bag filled with helium, hot air, or other gas, that is anchored to a building or structure with rope, cable or similar material.

7. Banner: A temporary sign constructed of a flexible material on which copy or graphics may be displayed.

8. Billboard: A sign not associated with a business, use, occupancy, product, or activity located or occurring on the sign-premises and with a sign area 24 square feet or larger.

9. Canopy: A multi-sided overhead structure or architectural projection supported by attachment to a building on one or more sides and cantilevered from the building or supported by columns.

10. Change of sign copy: A replacement or modification of the message or design of an existing sign face without modifying the size, shape, framework or structure of the sign.

11. Commercial sign: Any sign that does not fit the definition of non-commercial sign.

12. Development activity sign: A temporary freestanding sign consisting of a rigid, durable sign face mounted on wood or metal posts embedded in the ground without the use of concrete or other permanent footing material, and conforming to the requirements of subparagraph 17-10-32 (development activity signs).

13. Directory sign: A monument sign that complies with the requirements of section 17-10-17 (directory signs).

14. Drive-through sign: A sign that complies with the requirements of section 17-10-18 (drive-through signs).

15. Electronic message display: An electronically activated changeable message sign.

16. Elevation: An exterior side of a building which includes the building wall face, parapet, fascia, windows, doors, canopies, and visible roof structures.

17. Exceptional design: Refers to a freestanding sign with an architecturally interesting design that complies with the following:

    a. At least 50% of all surfaces of the sign structure shall consist of one or more of the following materials:

        i. Brick

        ii. Decorative block

        iii. Natural or simulated stone

        iv. Decorative or treated wood

        v. Decorative unpainted or unfinished metal

        vi. Other similar materials approved by the planning director

    b. Except as described in subparagraph c below, the area of the sign structure must equal or exceed the sign area for each sign face.

    c. If at least 50% of the sign copy is mounted independently and in relief of the sign face or background and utilizes backlighting (halo or reverse channel illumination), the required area of the sign structure may be reduced by 50%.

d. For purposes of this definition, the sign structure includes the entire structure of the sign other than the sign area.

e. For purposes of subparagraphs b and c above, the sign structure is measured as the surface area of the side of the structure that contains the sign face.

18. Flag: Fabric, vinyl, or similar flexible material typically attached at one edge to a staff.

19. Freestanding interstate sign: A freestanding sign that complies with the requirements of section 17-10-21 (freestanding interstate signs)

20. Freestanding monument sign: A freestanding sign that complies with the requirements of section 17-10-22 (freestanding monument signs).

21. Freestanding sign: A sign erected or mounted on a self-supporting permanent base detached from supporting elements of a building.

22. Fuel service pump topper sign: A sign affixed to the top or side of an operable fuel dispensing pump.

23. Government sign: A sign constructed, placed, or maintained by a government agency or a sign that a government agency requires to be constructed, placed, or maintained.

24. Illuminated sign: A sign that uses artificial light, either projecting through its surface (internal illumination) or reflecting off its surface (externally illuminated).

25. Legal nonconforming sign: A sign that was legally installed in conformance with all applicable sign regulations and ordinances in effect at the time of its installation; but that does not comply with current regulations.

26. Non-commercial sign: A sign containing no message, statement, or expression related to commercial interests. Noncommercial signs include, but are not limited to:

    a. Government signs

    b. Signs expressing political, religious, or ideological views or positions

    c. Signs with information about or announcements of non-profit organizations

27. Non-residential area: Any land that is not in a residential area.

28. Polyhedron: A three-dimensional solid figure formed by plane faces that are polygons.

29. Portable directional sign: A portable sign directing the traveling public to a real estate open house or to an event.

30. Portable sign: A freestanding, moveable sign not permanently affixed to any building, structure, or embedded into the ground. Examples include A-frames and T-frames.

31. Projected image sign: A temporary sign which is projected by an electronic device onto a building, structure, sidewalk or other surface.

32. Quill sign: A temporary sign constructed as a banner, typically in the shape of a feather or sail, attached to a pole assembly embedded in the ground and designed to move in the wind.

33. Reasonable repairs or alterations: Repairs or alterations determined by Arizona case law as being consistent with the "reasonable repairs and alterations" provision of A.R.S. § 9-462.02 (A). In the absence of case law guidance, reasonable repairs or alterations include repairs or alterations that cost less than half of the cost to replace the sign.

34. Residential area: All of the following:

    a. Land zoned AG, RD-180, R-144, R-80, R-36, R-20, R-16, R-12, R-10, R-8, R-7, R-6, R-3.5, MR-2, MR-1, RV, and MH.

    b. Land zoned A, B, and C, except those portions that have an existing non-residential use.

    c. Portions of land zoned D and E that have an existing residential use.

    d. Land with residential land use designations within specific plan areas (areas zoned F).

    e. Parcels devoted solely to residential, park, or open space uses.

35. Roadway construction business identification banner: A sign that complies with the requirements of section 17-10-38 (roadway construction business identification banners).

36. Shingle sign: A wall mounted or hanging sign, located under a covered porch, walkway, extended roof or other similar structure.

37. Sight visibility triangle: An area extending along an intersection approach leg and across the included corners that must be kept clear of obstructions that might block a driver's view of potentially conflicting vehicles or pedestrians.

38. Sign: A name, identification, description, display or illustration affixed to or painted or represented directly or indirectly on a building or other outdoor surface that directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business. Does not include anything that meets this definition but that is located completely within an enclosed building and is not visible from outside the building. A statue is a sign if it

calls attention or relates to an activity or use located on the sign-premises.

39. Sign area: The area of a sign determined in accordance with paragraph 17-10-8 below.
40. Sign copy: All letters, numerals, figures, symbols, logos, and graphic elements comprising the content or message of a sign.
41. Sign face: The entire display surface area of a sign upon, against, or through which copy is placed.
42. Sign-premises:
    a. In residential areas, the sign-property plus adjacent right-of-way used by the sign-property owner under a license from the town.
    b. In non-residential areas, the entire shopping center or industrial center where the sign is located plus adjacent right-of-way used by the sign-premises owner, owners, or owners association under a license from the town.
43. Sign-property: The specific lot or parcel of land upon which the sign is placed or erected. Adjacent lots or parcels under the same ownership and with the same use shall be considered one sign-property.
44. Sign walker: A person who carries, holds or balances a sign.
45. T-frame: A portable sign typically constructed of wood or plastic with a structure in the appearance of an inverted 'T'.
46. Temporary sign: A portable sign, a sign not permanently embedded in the ground, or a sign not permanently affixed to a building or permanent sign structure.
47. Tenant space: The area or portion of a building leased by an individual or entity.
48. Vehicle sign: A sign mounted, painted, attached or affixed to a truck, car, boat, trailer, or other vehicle or similar equipment.
49. Wall sign: A permanent sign fastened, attached, or connected to, or supported in whole or in part by, a building or structure.
50. Window sign: A sign affixed to the interior or exterior of a window, or placed immediately behind a window, and visible from outside of the building.

17-10-4 Prohibited signs

All signs not expressly allowed under this chapter are prohibited, including but not limited to:

A. Billboards.

B. Flashing, blinking, reflective, inflatable or animated signs, including signs with an intermittent or varying color or intensity of artificial illumination, whether deliberate or as a consequence of a defect in

the sign or illumination source, except as expressly allowed by the provisions of section 17-10-19 (electronic message displays) or section 17-10-33 (inflatable and air activated signs).

C. Projected-image signs.

D. Ribbons, streamers, balloons, or pin flags, except as expressly allowed by the provisions of section 17-10-33 (inflatable and air activated signs).

E. Searchlights.

F. Signs projecting sound, except as expressly allowed by the provisions of section 17-10-18 (drive-through signs).

G. Signs that obstruct free and clear vision of motor vehicle operators.

H. Signs located in a sight visibility triangle, unless approved by the planning director.

I. Signs placed in any location where by reason of position, shape, or color may interfere with or be confused with any authorized traffic sign, signal, or device.

J. Signs placed on any curb, sidewalk, post, pole, hydrant, bridge, tree or other surface located on public property or over or across any street or public thoroughfare, or in the public right-of-way, except as expressly allowed by this chapter.

K. Signs projecting above the top of the wall parapet, or roofline, or mounted on a roof.

17-10-5 Exempt signs

The following signs shall be exempt from the application and permit requirements of this chapter. Exempt signs must comply with all other applicable regulations contained in this chapter, if any.

A. Flags that comply with the requirements of section 17-10-20 (flags and flag poles)

B. Fuel service pump topper signs.

C. Government signs.

D. Grave markers, headstones, statues, historical markers, and cornerstones.

E. Hazard warning and parking signs measuring three square feet or less.

F. Portable signs that comply with the requirements of section 17-10-35 (portable signs).

G. Portable directional signs that comply with the requirements of section n 17-10-34 (portable directional signs).

H. Roadway construction business identification banners that comply with the requirements of section 17-10-38 (roadway construction business identification banners).

I. Signs carried or displayed by a sign walker in compliance with the requirements of section 17-10-24 (sign walkers).

J. Signs integrated into the design of an automated bank teller machine.

K. Signs relocated as the result of town construction projects.

L. Vehicle signs that comply with the requirements of section 17-10-27 (vehicle signs).

M. Window signs that comply with the requirements of section 17-10-29 (window signs).

N. Temporary signs in residential areas that comply with the requirements of paragraph 17-10-25 C.

O. Any sign authorized by this chapter that is six square feet or smaller, unless an application and permit are expressly required by this chapter.

17-10-6 Permits

A. General.

1. The sign-property owner or the sign-property owner's representative may apply for a sign permit.

2. Except as provided in subparagraph 3 below, a sign permit is required prior to constructing, installing, placing, altering, or relocating any sign within the town.

3. A sign permit is not required for any of the following:

a. Change of sign copy

b. An exempt sign as defined in this chapter

c. A sign allowed by a state or federal law preemption of this chapter

d. Sign maintenance that does not change the design of the sign

B. Permit fees. Upon approval of an application for a sign permit, the applicant shall pay the applicable fee assessed in accordance with the fee schedule adopted and amended from time to time by the council.

C. Application.

1. A sign permit application shall be submitted for all signs requiring a permit.

2. A sign permit application must be accompanied by all items required by the sign permit application checklist.

D. Permit suspension or revocation. In addition to enforcement pursuant to chapter 5-7 of the town code, the planning director may suspend or revoke a sign permit issued as a result of the applicant's material omission or misstatement of fact. The planning director

shall give notice of any suspension or revocation to the applicant and to the sign-property owner.

17-10-7 Sign design and construction

A. All signs shall incorporate design elements consistent with the overall architectural character of buildings and other improvements on the sign-premises.

B. Electric raceways and transformers shall be located to minimize visibility.

C. All signs shall be designed and constructed in conformance with current town building codes (see town code title 7).

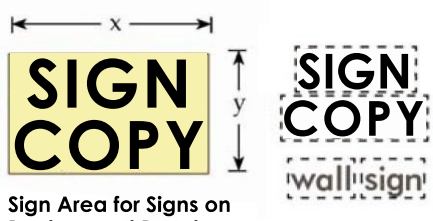
D. All temporary signs shall be constructed using suitably durable materials as approved by the planning director.

17-10-8 Sign measurement

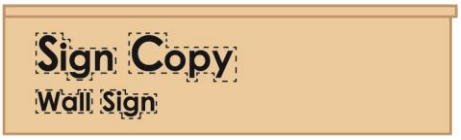
A. Sign area shall be measured as follows:

1. Sign copy mounted on or painted on a background panel or area distinctively painted, textured, or constructed as a background for the sign copy shall be measured as that area contained within the sum of the smallest rectangles that will enclose both the sign copy and the background.

2. Sign copy mounted as individual letters or graphics against a wall, fascia, mansard, or parapet of a building or other structure that has not been painted, textured, or otherwise altered to provide a distinctive background for the sign copy shall be measured as a sum of the smallest polygon of not more than 12 sides that will enclose each word and each graphic in the total sign.

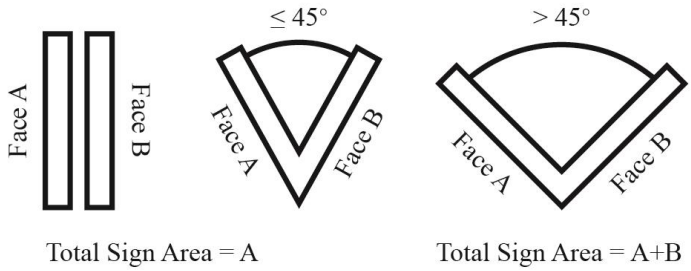


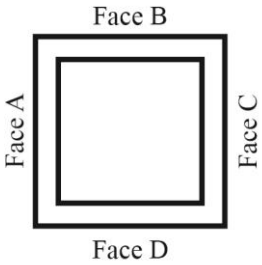
Sign Area for Signs on Background Panel



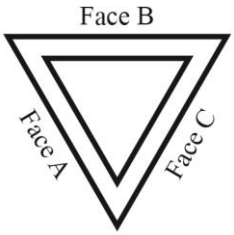
3. Signs with multiple faces shall be measured as follows:

   a. The area of all faces shall be included in determining the area of the sign, except that only one face of a double-faced sign shall be considered in determining the sign area when both faces are parallel and the greatest distance between faces does not exceed five feet, or when the interior angle of the sign faces does not exceed 45 degrees in the case of a 'V'- configured sign. If the area of one sign face exceeds the area of the sign's opposing face, the area of the larger face shall be used to determine the sign area.

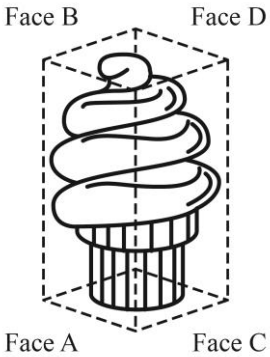




Total Sign Area =
(A + B + C + D) ÷ 2



Total Sign Area =
(A + B + C) ÷ 2



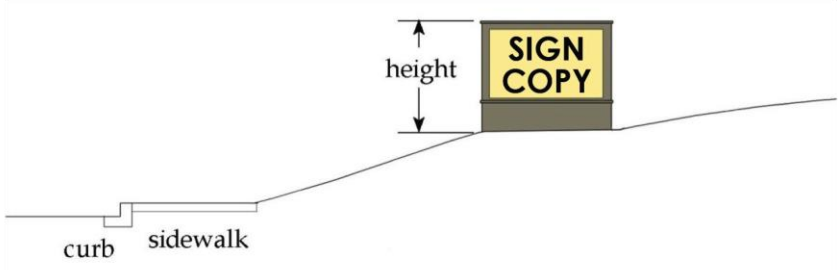
Total Sign Area =
(A + B + C + D) ÷ 2

   b. The area of a sign that contains three or more faces shall be calculated as 50% of the sum of the area of all faces.

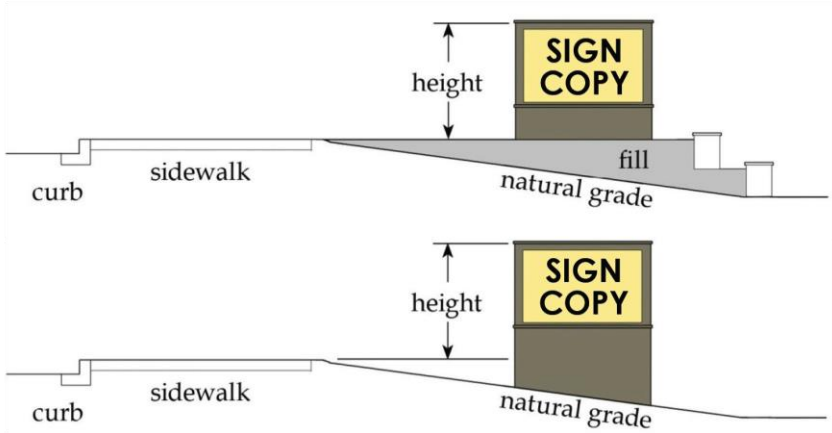
   c. Spherical, free-form, sculptural, or other non-planar sign area is measured as 50% of the sum of the areas using only the four vertical faces of the smallest six-faced polyhedron that will encompass the sign structure.

B. Sign height shall be measured as follows:

1. The height of a freestanding sign shall be measured as the vertical distance from the finished grade beneath the sign, exclusive of any filling, berming, mounding or landscaping done solely for the purpose of locating the sign, to the highest point of the sign. If the sign is proposed in a location in which the finished grade beneath the sign is lower than the grade of the adjacent roadway surface, the sign height shall be measured from the top of the curb, or crown of the adjacent roadway surface where no curb exists. The height of any monument base or other structure erected to support or ornament the sign shall be measured as part of the sign height.

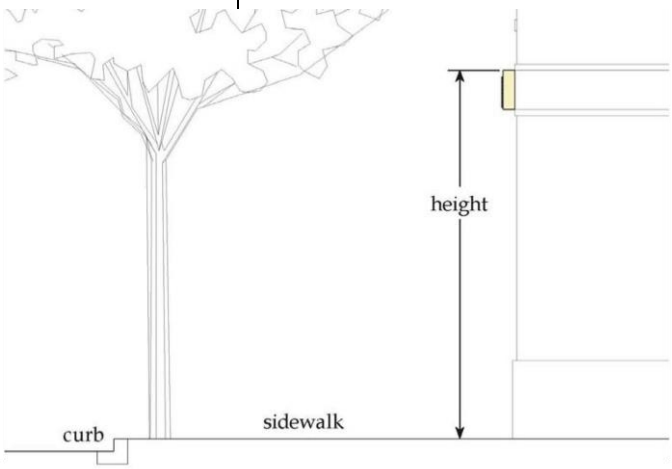


Freestanding Sign Height – Signs Higher than the Grade of an Adjacent Road



Freestanding Sign Height – Signs Lower than the Grade of an Adjacent Road

2. Wall fascia, mansard, and parapet-mounted signs shall be measured as the vertical distance to the top of the sign or sign structure from the base of the wall on which the sign is located.



Building Mounted Sign Height

17-10-9 Sign illumination

A. Signs may be illuminated, except where expressly prohibited in this chapter.

B. All illuminated signs shall be constructed and operated in compliance with the outdoor lighting code.

17-10-10 Sign maintenance

A. Any sign or sign component shall be promptly repaired or replaced if it:

1. Is damaged or deteriorated,

2. Constitutes a danger or hazard to public safety, or

3. Is reasonably determined by the planning director, by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring properties, to:

a. Be detrimental to property value

b. Be offensive to the senses, or

c. Reduce the aesthetic appearance of the area.

B. Maintenance of a sign shall include all of the following:

1. Periodic cleaning

2. Replacement of defective light sources

3. Repair or replacement of any faded, peeled, cracked, or otherwise damaged or broken parts

4. Any other activity necessary to restore the sign to compliance with the requirements of the sign permit issued for its installation and the provisions of this chapter.

17-10-11 Areas with special sign regulations

A. Special sign districts. Special sign districts may be established by ordinance. Special sign districts may have unique regulations applicable to them, which differ from those set forth in this chapter.

B. Specific plans. Sign regulations approved as part of a specific plan take precedence over this chapter within the specific plan area. Particular signage elements not addressed by the specific plan sign regulations shall be governed by this chapter.

C. Planned sign program. Sign regulations approved as part of a planned sign program take precedence over this chapter. Planned sign programs shall be reviewed by staff and subject to consideration and approval by the planning commission.

17-10-12 Planned sign programs

A. A planned sign program is available for development projects consisting of multi-tenant buildings, non-residential developments with multiple buildings or mixed-use developments. The program shall be reviewed by staff and subject to consideration and approval by the planning commission. A planned sign program:

1. Is intended to allow flexibility in order to achieve exceptional project design through architectural integration of the site, buildings, and signs.

2. Is intended to provide for design compatibility of all signs and to establish and maintain a consistent design theme within a development.

3. Shall be in substantial conformance with the general intent of the regulations of this chapter, but may establish reasonable and appropriate alternatives to the standard provisions of this chapter.

4. Shall establish design standards, including, but not limited to, sign types, placement, size, design, colors, materials, textures, and method of illumination.

5. Shall provide adequate identification and information for the development.

6. Shall provide aesthetic appeal, promote traffic safety, and maintain consistency with other town regulations.

B. A planned sign program application shall be submitted to the planning department and must be accompanied by all items required by the planned sign program application checklist and all applicable fees.

C. All freestanding signs approved through a planned sign program and allowed an increase in either area or height above the basic standards for freestanding signs must be constructed to the standards of exceptional design as defined in this chapter (see subparagraph 17-10-3 A. 17 above).

17-10-13 Legal nonconforming signs

A. Legal nonconforming signs are allowed, subject to the requirements of this section.

B. Any legal nonconforming sign shall be permitted to remain, so long as it:

1. Is not increased in area or height and remains structurally unchanged, except for reasonable repairs or alterations; or

2. Is not relocated, unless at the request or requirement of the town so as to comply with applicable safety requirements.

C. A legal nonconforming sign shall be rebuilt, repaired, or replaced only in conformance with the provisions of this chapter if it is:

1. Structurally changed, except for reasonable repairs or alterations;

2. Damaged by half or more of the cost to replace the sign as a result of fire, lack of maintenance, or other causes; or

3. Temporarily or permanently moved or removed by any means, including an act of God, except as provided in subparagraph 17-10-13 B. 2 above.

17-10-14 Abandoned signs

A. The planning director shall, upon determining that a sign is an abandoned sign, give notice to the sign owner that the sign is deemed an abandoned sign.

B. Within 30 days after receipt of the planning director's notice, the sign owner shall take one of the following actions:

1. Remove the sign and its supporting structure;

2. Remove the sign face and replace it with a blank sign face; or

3. Reverse the sign face and not illuminate the sign from the interior.

17-10-15 Classification; enforcement; removal

A. General. Violation of this chapter is a civil infraction and shall be enforced pursuant to chapter 5-7 of the town code.

B. Removal of signs by town; notice; fees.

1. A code compliance officer or other authorized representative of the town may immediately remove or cause the removal of a sign in either of the following circumstances:

   a. When the sign is unlawfully placed in the public right-of-way.

   b. When the sign poses an immediate hazard to persons or property.

2. If possible, when exercising its right to immediately remove or cause the removal of a sign, the town shall provide the sign owner with verbal or written notification of the removal at the time of the removal. The notice shall include all of the following:

   a. The reason or reasons for the removal.

   b. The location where the sign owner may claim the sign.

   c. Notification that if the sign owner does not claim the sign within five days of the notice, the town may destroy or reuse the sign.

3. If a sign is placed in violation of this chapter but does not pose an immediate hazard to persons or property and is not located in the public right-of-way, a code compliance officer or other authorized representative of the town shall provide written notice of violation to the sign owner.

   a. The notice shall include all of the following:

      i. The reason or reasons the sign is in violation.

      ii. Notification that if the sign is not removed within 48 hours of the notice, the town will remove the sign.

      iii. The location where the sign owner may claim the sign if it is removed.

      iv. Notification that if the sign is removed and the sign owner does not claim the sign within five days of the notice, the town may destroy or reuse the sign.

   b. The notice shall be delivered either by personal delivery or, if the town is unable to determine the owner of the sign, by affixing it to the offending sign.

   c. If the offending sign is not removed within the 48-hour period, a code compliance officer or other authorized representative of the town may remove or cause the removal of the sign.

4. The town's cost to remove or store a sign shall be borne by the sign owner in the amount set forth in the fee schedule approved by the council and amended from time to time.

C. Effect. Neither the suspension nor revocation of a sign permit, nor the removal of a sign by the town, shall be a defense against prosecution.

II. REGULATIONS BY SIGN TYPE

17-10-16 Awning signs

A. An awning sign shall be allowed in lieu of, or in conjunction with, a wall sign.

B. Awning sign area shall be calculated as part of the allowable area for wall signage for any given elevation.

17-10-17 Directory signs

Directory signs are allowed in non-residential area developments and multi-family complexes subject to the following:

A. Each sign premise shall be allowed one directory sign at each entrance on each street frontage.

B. Sign height shall not exceed eight feet.

C. Sign area shall not exceed 40 square feet.

D. Signs shall be located at least 100 feet from any abutting street right-of-way unless a building or other structure blocks the sign's visibility from the street.

17-10-18 Drive-through signs

A. Drive-through signs may be freestanding or wall-mounted.

B. Drive-through signs shall be limited to two signs per drive-through lane.

C. Each drive-through sign shall be no greater than ten feet in height.

D. Each drive-through sign shall be located adjacent to a drive-through lane.

E. Drive-through signs may include electronic message displays subject to the requirements and limitations of section 17-10-19 (electronic message displays), except that the display may occupy the entire area of the sign face.

F. Sound emitted by drive-through signs must not be audible from any residential property.

17-10-19 Electronic message displays

A. Electronic message displays are permitted as an integral component of either of the following:

1. A permitted freestanding monument sign.

2. A sign type whose regulations refer to this section, subject to any additional limitations on electronic message signs set forth in the regulations for that sign type.

B. Except as provided in section 17-10-18 (drive-through signs), electronic message displays may occupy up to 50% of the allowable area of a sign face.

C. Electronic message displays may be full color and shall consist only of static messages that change not more frequently than once every 7.5 seconds.

D. Electronic message display messages must transition by instant change method. Scrolling, travelling, flashing, full-motion video, use of sound, and similar operational effects are prohibited.

E. Electronic message displays shall conform to the regulations of the outdoor lighting code.

F. An electronic message display visible from an existing residential use shall be installed a minimum of 150 feet from the property line of the residential use.

17-10-20 Flags and flag poles

A. Each sign-property may contain one flagpole bearing one or more flags, except as otherwise permitted under section 17-10-12 (planned sign programs) or section 17-10-37 (residential subdivision sign program).

B. A flag pole shall not exceed a height of 25 feet when accessory to a residential use. In all other situations, a flag pole shall not exceed the higher of:

1. 30 feet, or

2. 1.25 times the height of any building within 200 feet of where the flagpole is to be constructed, but in any event not to exceed 50 feet.

C. The length of a flag shall be no greater than one-fourth of the height of the flag pole.

D. A flag shall not encroach beyond the sign-premises.

E. A flag shall not create a safety hazard.

F. A flag may be illuminated in conformance with the outdoor lighting code.

17-10-21 Freestanding interstate signs

Freestanding interstate signs shall be allowed only upon approval by the planning commission of a conditional use permit or a planned sign program and shall be subject to the following:

A. A freestanding interstate sign may be allowed for commercial, industrial, or mixed-use sign-premises that are:

1. A minimum of one acre in size,
2. Within 250 feet of the interstate right-of-way or within 250 feet of the railroad right-of-way, and
3. Within 250 feet of the right-of-way of an arterial roadway intersecting the interstate.

B. A freestanding interstate sign shall not exceed a height of 65 feet above the finished grade beneath the sign, exclusive of any filling, berming, mounding or landscaping done solely for the purpose of locating the sign.

C. A freestanding interstate sign shall not exceed an area of 300 square feet.

D. A freestanding interstate sign shall not be located within 500 feet of another freestanding interstate sign.

E. A freestanding interstate sign shall be a minimum of 500 feet from the property line of any existing residential use.

F. A freestanding interstate sign may include an electronic message display component subject to section 17-10-19 (electronic message displays).

17-10-22 Freestanding monument signs

A. A freestanding monument sign shall be allowed in non-residential areas subject to the following:

1. One sign shall be allowed per street frontage of sign-premises provided that the sign-premises has a minimum street frontage of 100 feet.
2. Two signs shall be allowed per street frontage for sign-premises with 600 feet or more of street frontage, and more than one entrance to the sign-premises on that frontage. One additional freestanding monument sign shall be permitted for each additional 300 feet of street frontage with an additional entrance.
3. The sign area shall not exceed 40 square feet for a single tenant sign-premises.
4. The sign area for sign-premises occupied by two or more tenants shall not exceed 80 square feet.
5. The sign height shall not exceed eight feet.
6. A 25% increase in the area and/or height of a sign will be allowed for a sign of exceptional design as defined in subparagraph 17-10-3 A. 17 above.
7. A sign-premises containing two or more tenants shall be allowed an increase in the area and height of one freestanding monument sign per street frontage subject to the following:
   a. One sign of increased area and height shall be allowed for each sign-premises street frontage exceeding 500 linear feet.

b. The sign area shall not exceed 150 square feet.

c. The sign height shall not exceed 20 feet.

d. The sign shall be constructed to the standards of exceptional design, as defined in subparagraph 17-10-3 A. 17 above, and shall not be allowed an increase in area or height.

8. The width of the base of a monument sign must be equal to or greater than 75% of the width of the sign face.

9. Signs shall be set back a minimum of five feet from any road right-of-way, and 30 feet from any residential area property line.

10. A freestanding monument sign shall be located at least 50 feet from any other freestanding monument sign.

B. Multi-family residential complex containing 12 units or more, including apartments, condominiums, townhome complexes, manufactured home parks, recreational vehicle parks, and similar uses, shall be allowed a freestanding monument sign subject to the following:

1. One freestanding monument sign shall be allowed per street frontage of the sign-premises.

2. Signs shall not exceed 40 square feet in area and eight feet in height.

3. A 25% increase in the area and height of a sign will be allowed for a sign of exceptional design as defined in subparagraph 17-10-3 A. 17 above.

17-10-23 Shingle signs

A. Shingle signs shall be limited to one per tenant space frontage and shall be located at a point of public access.

B. Shingle sign area shall not exceed five square feet.

C. A shingle sign shall be located in front of the tenant space it pertains to and shall be suspended from a covered porch, walkway, extended roof or similar architectural element.

D. A minimum clearance of eight feet shall be maintained beneath a shingle sign.

17-10-24 Sign walkers

Sign walkers are allowed subject to the following:

A. Sign walkers are prohibited in parking aisles or stalls, in driving lanes or driveways, in construction zones.

B. Sign walkers are prohibited from operating in any manner that obstructs visibility or movement of pedestrians, motorists or cyclists.

C. Signs displayed by sign walkers shall not include any form of illumination, animation, or attachment.

D. Signs displayed by sign walkers shall not exceed eight square feet in area.

17-10-25 Signs in residential areas

Signs are allowed in residential areas subject to the following requirements:

A. All signs shall comply with the regulations of this chapter applicable to the sign type, as further regulated by this section.

B. All signs shall be displayed on the sign-property.

C. Temporary signs in residential areas are subject to the requirements of section 17-10-30 (temporary signs—general requirements), and each temporary sign must be clearly labeled with the name and telephone number of the sign owner.

D. Signs shall not exceed six feet in height unless attached to a wall or structure.

E. Each single-family residential sign-property shall be allowed a cumulative sign area of six square feet with no limit on the number of signs.

F. For multi-family uses, each residential unit shall be allowed a cumulative sign area of five square feet with no limit on the number of signs.

G. Signs have no display period limitations.

H. Signs may not advertise offsite commercial activities.

17-10-26 Subdivision entry signs

A subdivision entry sign, consisting of a wall sign or freestanding monument sign, may be placed at a main entrance to a residential subdivision or complex, subject to the following:

A. Subdivision entry wall signs may be mounted on a perimeter or landscape wall on both sides of a main entrance to a subdivision or complex. The cumulative wall sign area at each entrance to a subdivision shall not exceed 100 square feet

B. Subdivision entry freestanding monument signs shall be limited to one sign at each main entrance to a subdivision or complex subject to the following:

1. The sign area shall not exceed 100 square feet.
2. The sign must be setback a minimum of one foot from any property line.
3. The sign may not include an electronic message display.

17-10-27 Vehicle signs

A vehicle sign may be displayed only when all of the following conditions are met:

A. Signs must be painted on or applied directly to the vehicle and may not extend beyond the horizontal or vertical profile of the vehicle.

B. Signs shall not be mounted in the bed of a truck.

C. The vehicle displaying the sign must be operable, registered, licensed, and driven at least once a week.

D. The vehicle displaying the sign must be parked in a legal parking space.

17-10-28 Wall signs

A. Wall signs may be mounted flush, angled, bowed, or perpendicular to the wall.

B. Wall signs in residential areas shall be subject to the following:

1. In addition to an address sign as required by this chapter, a single-family residence shall be allowed one wall sign, not to exceed three square feet.

2. Wall signs on single-family residences shall not be placed higher than 10 feet above finished grade.

3. Multi-family residences shall be allowed one sign per dwelling unit, not to exceed three square feet.

4. A multi-family residential complex containing 12 units or more shall be allowed a maximum of 32 square feet of wall signage per street frontage.

5. Illumination of signage shall be prohibited with the exception of multi-family residential complexes containing 12 units or more.

C. Wall signs in non-residential areas shall be subject to the following:

1. Shall be allowed on no more than three elevations of any building.

2. The allowable sign area shall be calculated at a rate of 1.5 square feet for each linear foot of building elevation or tenant space frontage up to a maximum of 200 square feet per elevation.

3. Shall only be placed on the first and top stories of a multi-story building.

4. Shall be allowed on parapet walls that are structurally integrated into the original building design, and shall not be placed on parapet extensions added to an existing building.

5. Signs up to a cumulative total of 75 square feet of signage per canopy are allowed on all sides of a freestanding canopy structure, calculated in the same manner as any other wall sign.

17-10-29 Window signs

A window sign may be painted on, adhered to, or suspended behind a glass door or window surface, subject to the following:

A. In non-residential areas, window signs shall cover no more than 40% of the window upon which the sign is displayed.

B. Window signs shall only be displayed on first floor windows.

C. Window signs shall only be internally illuminated.

D. Portions of window signs consisting of electronic message displays shall be limited to five square feet and shall be subject to the requirements of section 17-10-19 (electronic message displays).

III. REGULATIONS FOR TEMPORARY SIGNS

17-10-30 Temporary signs—general requirements

The requirements set forth in this section apply to all temporary signs.

A. Temporary signs shall be constructed of fabric, plastic, wood, metal, or similar durable weather-resistant materials.

B. Temporary signs shall be maintained free of chipped paint, cracks, loss of text or graphics, or similar defects.

C. No temporary sign shall be placed upon any other sign assembly, utility pole, authorized traffic control device, utility box, fence, free-standing wall, boulder, tree, planter, vehicle, or similar structure.

D. Temporary signs shall be placed in a manner that prevents displacement during adverse weather conditions and does not result in a safety hazard to the public.

E. Except as expressly allowed by this chapter, temporary signs shall not be located within the public right-of-way.

F. Temporary signs shall not interfere with the free movement of pedestrians, bicycles, or vehicles.

G. Temporary signs shall not include amplified sound, animation, motion or attachments such as balloons, flags, streamers, pinwheels, or ribbons, except as specifically authorized by section 17-10-33 (inflatable and air activated signs).

H. Temporary signs shall not be illuminated other than by ambient light present on the property or by existing illumination intended for other uses.

I. All temporary signs require a sign permit except portable signs (section 17-10-35), portable directional signs (section 17-10-34), and temporary signs in residential areas (paragraph 17-10-25 C) (see section 17-10-5, exempt signs).

17-10-31 Banners

Banners are temporary signs which are allowed in non-residential areas subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. Shall be displayed on the sign-premises.

B. Shall be limited in quantity to one per business.

C. Building-mounted banners shall not exceed a height of 25 feet or the top of the parapet, whichever is less.

D. Freestanding banners shall not exceed a height of ten feet above grade.

E. Sign area shall not exceed 40 square feet.

F. May be displayed up to 21 days, four times per calendar year per business.

17-10-32 Development activity signs

Development activity signs are temporary signs which are allowed in non-residential areas subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. Signs shall be displayed on the sign-premises.

B. Signs may be displayed at the beginning of the duration of an activity, and shall be removed within seven days of the completion of the duration of the activity. The duration of an activity is the period of time between any of the following:

1. From development plan approval to the earlier of:

   a. The completion of the improvements shown on the development plan, or

   b. The second anniversary of development plan approval.

2. From the issuance of a building permit for a development project to the earliest of:

   a. The issuance of a certificate of occupancy,

   b. The final inspection approval, or

   c. The second anniversary of the issuance of the building permit.

3. From the date of listing a property for sale or lease to the earlier of:

   a. The consummation of the sale or lease or

   b. The second anniversary of the listing date.

C. No more than three signs shall be allowed per street frontage.

D. Each sign shall not exceed eight feet in height.

E. Each sign shall not exceed 32 square feet in area.

F. A development activity sign shall not be permitted on a residential subdivision that has an approved residential subdivision sign program (see section 17-10-37).

17-10-33 Inflatable and air activated signs

Inflatable and air activated signs are temporary signs which are allowed in non-residential areas subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. May be displayed in conjunction with a special event or activity.

B. May be displayed for a period of up to three consecutive days and no more than two display periods shall be allowed per calendar year.

C. Shall be located on the sign-premises.

D. No more than two signs may be displayed concurrently on a sign-premises.

E. Shall be setback a distance equal to or greater than the height of the sign from all property lines.

F. Shall maintain 18 feet of clearance from overhead utility lines.

Inflatable Sign

G. Shall be placed and operate in accordance with applicable building and fire codes including proper anchoring to the ground.

H. Shall not be placed on the roof of any building or structure.

17-10-34 Portable directional signs

Portable directional signs are permitted subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. Each sign must be clearly labeled with the name and telephone number of the sign owner.

B. Each sign may not exceed six square feet in area and 30 inches in height.

C. No more than eight signs may be placed:

1. Directing the public to any particular real estate open house,
2. Directing the public to any particular event, or
3. With any particular non-commercial message.

D. Signs directing the public to a property or event must be located within five miles of the property or event.

E. All signs with any particular non-commercial message must be located within a five-mile radius of one another.

F. One sign may be placed at each major change in travel direction along the route leading to the property or event.

G. On routes with infrequent major changes in travel direction, signs may be located at each intersection of collector or larger roadways.

H. No sign shall be placed within 20 feet of another sign authorized by this section.

I. Signs shall only be displayed between sunrise and sunset and must be removed daily.

J. Signs shall not be displayed more than four days in any week.

K. Signs shall not be placed within a median, sidewalk, multi-use path, or any location that would create an obstacle for pedestrians.

L. Signs may be placed in the public right-of-way subject to the following additional requirements:

1. On curbed roadways, signs within the public right-of-way shall be placed at least two feet from the back side of the curb and at least two feet from a sidewalk or shared-use path.

2. On roadways without curbs, signs within the public right-of-way shall be placed at least six feet from the edge of the paved surface.

3. Signs shall not be placed between a shared-use path and the paved surface of the roadway unless there is adequate distance to maintain a six-foot setback for the sign from the edge of the roadway and a two-foot setback for the sign from the edge of the path.

M. For purposes of this section, an event is one of the following:

1. A non-commercial assembly.

2. A yard sale in a residential area.

17-10-35 Portable signs

Portable signs are temporary signs which are allowed in non-residential areas subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. Each sign must be clearly labeled with the name and telephone number of the sign owner.

B. Shall be limited in quantity to one per business.

C. Must be located within 30 feet of a building entrance on the sign-property.

D. May only be displayed during hours of operation and must be removed at the end of each business day.

E. Sign area shall not exceed 12 square feet.

17-10-36 Quill signs

Quill signs are temporary signs which are allowed in non-residential areas subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. Shall be displayed on the sign-premises.

B. One sign per 100 linear feet of street frontage up to six signs per frontage.

C. A maximum of two signs may be displayed for any business.

D. Each sign shall not exceed ten feet in height.

E. Each sign shall not exceed 20 square feet in area.

F. Each sign shall be no closer than 50 feet to another quill sign.

G. May be displayed up to 21 days, four times per calendar year per business.

H. Quill signs are not permitted within the downtown neighborhood (DN) or downtown (DT) zones.

17-10-37 Residential subdivision sign program

Residential subdivisions with a sales office and offering new homes for sale may submit a proposed residential subdivision sign program to regulate the use of temporary signs for the subdivision, subject to the requirements of section 17-10-30 (temporary signs—general requirements) and the following additional requirements:

A. A proposed residential subdivision sign program shall be submitted to the planning director, who shall approve, deny, or require modification and resubmission based on the proposed program's compliance with the requirements of this section.

B. A residential subdivision sign program must include:

1. A site plan showing the location of all proposed signs; and

2. A description of the type, number, size, placement, and materials of all proposed signs.

C. The residential subdivision sign program shall expire when the sales office is permanently closed.

D. All signs shall be removed upon expiration of the residential subdivision sign program.

E. A residential subdivision sign program may include the following on-site signage:

1. A maximum of 500 square feet of signage per builder.

2. No individual sign may exceed an area of 128 square feet or a height of 20 feet.

3. Temporary signs, flags (subject to the provisions of 17-10-20, flags and flag poles), and banners.

F. A residential subdivision sign program may include off-site directional signs subject to the following additional requirements:

1. Signs must be located within a reasonable distance of the subdivision, considering its remoteness from major transportation routes.

2. One sign may be placed at each major change in travel direction along the route leading to the subdivision.
3. On routes with infrequent major changes in travel direction, signs may be located at each intersection of collector or larger roadways.
4. Signs for an individual builder for multiple subdivisions shall be combined into a single sign; and
5. Signs of multiple builders for any particular master development shall be combined into a single sign.
6. If the requirements of paragraphs 4 and 5 above would result in three or more builders or subdivisions being combined on any particular sign and if the planning director determines that the sign cannot provide clear direction to the motoring public, the planning director may allow a residential subdivision sign program to include a separate sign that meets all other applicable requirements of this section.

G. In addition to the requirements of paragraph F above, residential subdivision sign program offsite directional signs within the public right-of-way are subject to the following requirements:

1. Each sign may not exceed six square feet in area and 30 inches in height.
2. Each sign must be clearly labeled with the permit number and the name and contact information of the sign permit applicant.
3. The sign owner must comply with right-of-way use permit requirements (see chapter 12-7, construction in town rights-of-way).

H. In addition to the requirements of paragraph F above, residential subdivision sign program offsite directional signs on private property are subject to the following requirements:

1. Written permission of the sign-property owner is required.
2. Each sign may not exceed 32 square feet in area and eight feet in height.

17-10-38 Roadway construction business identification banners

A. An existing use within a commercial, mixed-use, or industrial zoning district and within an area subject to long-term or substantial road construction activity performed by the town or other public entity or utility company may display one roadway construction business identification banner on each adjacent street frontage of sign-premises.

B. Banners shall be located on the sign-premises.

C. Banners shall not exceed 40 square feet.

D. Banners may be displayed throughout the period of construction.

CHAPTER 17-11. — CHAPTER 17-14. [RESERVED]

CHAPTER 17-15. FLOODPLAIN AND EROSION HAZARD MANAGEMENT CODE

Chapter 17-15 was inserted into the town code by Ordinance 2015.021

Sections:

17-15-1 General information....17-126
17-15-2 Abbreviations and definitions....17-127
17-15-3 General provisions....17-136
17-15-4 Statutory exemptions....17-138
17-15-5 Unlawful acts....17-140
17-15-6 Declaration of public nuisance....17-140
17-15-7 Abatement of violations....17-140
17-15-8 Severability....17-141
17-15-9 Administration....17-141
17-15-10 Provisions for flood hazard reduction....17-145
17-15-11 Floodplain variance procedure....17-157
17-15-12 Appendix 1 – Table of regulatory peak discharges....17-161

17-15-1 General information

A. Statutory authorization. In A.R.S. § 48-3610, the Arizona legislature enabled the town to adopt regulations in conformance with A.R.S. § 48-3603 designed to promote the public health, safety and general welfare of its citizenry.

B. Findings of fact.

1. The flood hazard areas of the town are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

2. Flood losses may be exacerbated by the cumulative effects of obstructions to flow, inadequate anchoring of structures and encroachment into the floodplain. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage, also contribute to the flood loss.

C. Statement of purpose. It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;

2. To minimize expenditure of public money for costly flood control projects;

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize blight areas caused by flooding;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard;
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
9. To maintain eligibility for disaster relief.

D. Methods of reducing flood losses. To accomplish its purposes, this chapter includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards in other areas.

17-15-2 Abbreviations and definitions

A. Abbreviations. The following common abbreviations are used throughout this chapter:

1. ADWR: Arizona department of water resources
2. BFE: Base flood elevation
3. CFS: Cubic feet per second
4. CLOMR: Conditional letter of map revision
5. EHS(L): Erosion hazard setback or erosion hazard setback limit
6. FEMA: Federal emergency management agency
7. FFE: Finished floor elevation
8. FIA: Federal insurance administration

9. FIS: Flood insurance study
10. FIRM: Flood insurance rate map
11. LOMR: Letter of map revision
12. NGVD: National geodetic vertical datum of 1929
13. NAVD: North American vertical datum of 1988
14. SFHA: Special flood hazard area

B. Definitions. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. All-weather access. Access considered traversable by normal passenger vehicles, defined as a permanent, durable material with adequate protection against scour and erosion and having a depth of water no more than 12 inches above the roadway surface during a base flood.
2. Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this chapter or a request for a floodplain variance.
3. Area of shallow flooding. A designated AO or AH zone on a community's FIRM with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable or where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
4. Base flood. The flood having a one percent chance of being equaled or exceeded in any given year.
5. Base flood elevation (BFE). The water surface elevation associated with the base flood.
6. Basement. Any area of a building having its floor sub-grade (below ground level) on all sides.
7. Building. See "structure."
8. Conditions and restrictions. Standard requirements which are placed on a parcel of land, the development permit applicant and the parcel owner by the floodplain administrator as a condition of the applicant's or owner's use of the floodplain.
9. Community. Any state, area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
10. Critical facilities. Facilities that are considered critical in their need to remain serviceable during a major flood event or that

their inundation by flood waters poses a high risk to the health, safety or welfare of the community.

11. Detention. A drainage system which delays the downstream progress of flood waters in a controlled manner, generally through the combined use of a temporary storage area and a metered outlet device which causes a lengthening of the duration of flow and thereby reduces downstream flood peaks.

12. Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of materials and equipment located within the area of special flood hazard.

13. Encroachment. The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

14. Erosion. The process of the gradual or avulsive wearing away of land masses due to the flow of water.

15. Erosion hazard setback (EHS). A prescribed horizontal distance measured from the primary channel bank of an incised channel or from the design storm's water surface limits for a non-incised channel for the purpose of providing a measure of safety against lateral erosion.

16. Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, construction of streets and either final site grading or the pouring of concrete slabs) is completed before the effective date of the floodplain management regulations adopted by the community.

17. Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

18. Five hundred year flood (500-year flood). The flood having a 0.2% chance of being equaled or exceeded in any given year.

19. Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

    a. the overflow of flood waters;

    b. the unusual and rapid accumulation or runoff of surface waters from any source; and/or

c. the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

20. Flood boundary and floodway map (FBFM). The official map on which FEMA or FIA has delineated the areas of special flood hazards and the floodway.

21. Flood hazard boundary map (FHBM). The official map on which FEMA or FIA has delineated the areas of flood hazards.

22. Flood insurance rate map (FIRM). The official map on which FEMA or FIA has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

23. Flood insurance study (FIS). The official report provided by FIA that includes flood profiles, FIRM, FBFM and the water surface elevation of the base flood.

24. Flood zones (FEMA defined):

    a. Zone X. Area free from a base flood

    b. Zone X-500. Area free from a base flood due to a manmade protective structure or an area with base flood elevations or sheet flow elevations less than one foot. This area is also known as shaded zone X.

    c. Zone A. SFHA with no base flood elevations determined.

    d. Zone AE. SFHA with base flood elevations determined by the flood insurance study for Pima county.

    e. Zone AH. SFHA with flood depths of one to three feet (usually areas of ponding); base flood elevations determined by the flood insurance study for Pima county.

    f. Zone AO. SFHA with flood depths of one to three feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined. The FIRMs show the depth in one foot increments and velocities in one foot per second increments.

    g. Zone AE floodway. That portion of a regulated watercourse's SFHA which must remain clear of any development. See also definition for floodway.

25. Floodplain or flood-prone area. Any land area susceptible to being inundated by water from any source. This includes FEMA special flood hazard areas, areas platted on accepted town plans

as being flood prone or locally regulated areas that may be inundated by water during a base flood.

26. Floodplain administrator. The individual appointed to administer and enforce the floodplain management regulations. Unless otherwise stated, the town engineer is the floodplain administrator.

27. Floodplain board. The council, at such times as they are engaged in the enforcement of this chapter, which is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of the citizens of the town.

28. Floodplain management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

29. Floodplain variance. A grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by this chapter.

30. Floodproofing. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents by means other than elevating.

31. Flood-related erosion. The collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

32. Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as "regulatory floodway."

33. Floodway fringe. That area of the floodplain on either side of the "regulatory floodway" where encroachment may occur.

34. Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking or port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

35. Hardship. Related to section 17-15-11 (floodplain variances) of this chapter, means the exceptional hardship which would result from a failure to grant the requested floodplain variance. The

floodplain board requires that the floodplain variance be exceptional, unusual and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a floodplain variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

36. Highest adjacent grade. The highest natural elevation of the ground surface prior to construction adjacent to the proposed walls of a structure.

37. Historic structure. Any structure that is:

    a. Listed individually in the national register of historic places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior (secretary) as meeting the requirements for individual listing on the national register;

    b. Certified or preliminarily determined by the secretary as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

    c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary; or

    d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

        i. by an approved state program as determined by the secretary; or

        ii. directly by the secretary in states without approved programs.

38. Levee. A man-made structure designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

39. Locally regulated floodplain. Floodplains in the town associated with washes and/or sheet flow areas having a base flood discharge of 50 cfs or more.

40. Lowest floor. The lowest floor of the lowest enclosed area, including basement (see "basement" definition). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such

enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

41. Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

42. Market value. Market value is determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation that has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

43. Mean sea level. For purposes of the national flood insurance program, the NGVD or NAVD, to which base flood elevations shown on a community's FIRM are referenced.

44. New construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

45. New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

46. Obstruction. Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or

other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

47. One-hundred year flood (100-year flood). A common name for the flood having a one percent chance of being equaled or exceeded in any given year. (See "base flood" definition)

48. Recreational vehicle. A vehicle that is:

    a. Built on a single chassis;

    b. 400 square feet or less when measured at the largest horizontal projection;

    c. Designed to be self-propelled or permanently towable by a light duty truck; and

    d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

49. Regulatory flood elevation. An elevation one foot above the Base Flood elevation for a watercourse for which the base flood elevation has been determined or as determined by the criteria developed by the director of ADWR for all other watercourses.

50. Regulatory floodplain. An area associated with a watercourse, including its channel, or any other floodplain or floodprone area that would be inundated by the Base Flood, including all Base Floods where the 100-year peak discharge is 50 cfs or greater.

51. Regulatory floodway. (See "floodway" definition)

52. Repetitive loss structure. A structure covered by a contract for flood insurance issued pursuant to the FIA that has incurred flood-related damage on two occasions during any ten year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. In addition to the current claim, the NFIP must have paid the previous qualifying claim.

53. Retention. A drainage system which stops the downstream progress of flood waters by employing methods of containment and storage and uses infiltration, evaporation or re-use to dispose of stored waters, thereby eliminating basin contributions to the downstream flood peaks or volumes.

54. Sheet flow area. (See "area of shallow flooding" definition)

55. Special flood hazard area (SFHA). An area defined by FEMA within a community subject to a one percent or greater chance

of flooding in any given year (base flood). These areas are designated as Zone A, AO, AH and AE on the FIRMs, and other areas determined by the criteria adopted by the director of ADWR.

56. Start of construction. Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

57. Structure. A walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home. "Structure" for insurance coverage purposes means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such a construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

58. Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a rolling ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

59. Substantial improvement. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before

the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

b. Any alteration of a "historic structure", provided that the alteration would not preclude the structure's continued designation as a "historic structure".

60. Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in this chapter is presumed to be in violation until that documentation is provided.

61. Water surface elevation. The height, in relation to the NGVD or NAVD of floods of various magnitudes and frequencies in the floodplains of riverine and ponding areas. See also base flood elevation.

62. Watercourse. A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur (e.g. the regulatory floodplain).

17-15-3 General provisions

A. Lands to which this chapter applies. This chapter shall apply to the following lands within the corporate limits of the town:

1. All special flood hazard areas as defined by FEMA.

2. FEMA zone X-500, also known as shaded zone X, as it pertains to alluvial fan or sheet flooding.

3. Local floodplains associated with washes and/or sheet flow having a base flood discharge of 50 cfs or more.

4. Areas within the erosion hazard setback of a watercourse.

5. All floodplains/flood-prone areas and erosion hazard setbacks identified on previously and subsequently recorded subdivision plats.

6. All floodplains/flood-prone areas and erosion hazard setbacks identified on previously and subsequently drainage studies commissioned by the town engineer.

B. Basis for establishing the areas of special flood hazard.

1. The regulated areas of this chapter as outlined in subsection A of this section are derived from a variety of sources, whose hydrologic and hydraulic data and maps of delineation are kept on file by the town at 11555 West Civic Center Drive, Marana, AZ 85653, Marana municipal complex, public works department. This information includes or will include:

   a. The area of special flood hazard identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for Pima County Arizona and incorporated areas, revised February 8, 1999," with accompanying FIRMs dated February 8, 1999 and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. The FIS, FIRMs FBFM and amendments and corrections to the maps are all kept on file.

   b. The FIS and FIRMs may be supplemented by studies for other areas that allow implementation of this chapter. The floodplain board, within the limits of the town, shall require developers to delineate, within areas where development is ongoing or imminent, floodplains consistent with the criteria developed by FEMA, the director of water resources and the town.

   c. Due to the episodic nature of natural flood events and the resulting changes to hydrologic and hydraulic conditions along watercourses within the town, base flood peak discharges, flow volumes, and associated regulatory floodplain and erosion hazard areas are subject to continuous revision. At a minimum, base flood values and base flood elevations shall meet or exceed the current values established by FEMA and reflect historic flood information and general, current watershed conditions. Current regulatory floodplain and erosion hazard area maps will be maintained by the floodplain administrator for the Santa Cruz river and all watersheds which generate regulatory flood peak discharges exceeding 5,000 cfs for the base flood. These watersheds are listed in appendix 1 of this chapter.

   d. The floodplain administrator may accept hydrologic and hydraulic studies prepared by an Arizona registered professional civil engineer as a delineation of regulatory floodplain and erosion hazard setback areas.

   e. In all cases the most recently accepted information shall be used for floodplain management.

C. Compliance. All development of land, construction of residential, commercial or industrial structures, or future development on lands to which this chapter applies is subject to the terms of this chapter and other applicable regulations.

D. Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or

deed restrictions. However, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, the more stringent restrictions shall prevail.

E. Interpretation. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the town; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

F. Disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town, its officers or employees, the state of Arizona, NFIA or FEMA, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made under this chapter.

17-15-4 Statutory exemptions

A. In accordance with A.R.S. § 48-3609(H), unless expressly provided otherwise, this and any regulation adopted pursuant to this chapter do not affect:

1. Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for 12 months, or destroyed to the extent of 50% of its value as determined by a competent appraiser, any further use shall comply with this article and regulations of the town;
2. Reasonable repair or alteration of property for the purposes for which the property was legally used on July 9, 1974, or any regulations affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by 50% or more shall be either floodproofed or elevated to or above the regulatory flood elevation;
3. Reasonable repair of structures constructed with the written authorization required by A.R.S. § 48-3613; and
4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to A.R.S. title 40, chapter 2, article 6.2.

B. Before any authorized construction begins for the exceptions listed below, the responsible person shall submit plans for the construction to the floodplain board for review and comment. In accordance with A.R.S. § 48-3613, written authorization shall not be required, nor shall the floodplain board prohibit:

1. The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse;

2. The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by A.R.S. title 45, chapter 6;

3. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the floodplain board pursuant to regulations adopted by the floodplain board under this chapter;

4. Other construction upon determination by the floodplain board that written authorization is unnecessary;

5. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under A.R.S. title 48, chapter 21, article 1;

6. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision; and

7. The construction and erection of poles, towers, foundations, support structures, guy wires and other infrastructure related to power transmission as constructed by any utility whether a public service corporation or a political subdivision. Buildings, stations, and other similar structures however must comply with standards set forth in this code for non-residential structures.

C. In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the floodplain board or remove the obstruction and restore the watercourse to its original state. The court may

also award such monetary damages as are appropriate to the injured parties resulting from the violation including reasonable costs and attorney fees.

17-15-5 Unlawful acts

A. It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by A.R.S. § 48-3613. Where the watercourse is a delineated floodplain, it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by A.R.S. § 48-3613.

B. Any person violating the provisions of this chapter shall be guilty of a class 2 misdemeanor. Each day that a violation continues shall be considered a separate offense.

17-15-6 Declaration of public nuisance

Every new structure, building, fill, excavation or development located or maintained within any special flood hazard area after August 8, 1973, in violation of this chapter, and without written authorization from the floodplain board, is a public nuisance per se and may be abated, prevented or restrained by action of the town.

17-15-7 Abatement of violations

A. Within 30 days of discovery of a violation of this chapter, the floodplain administrator shall submit a report to the floodplain board which shall include all information available to the floodplain administrator which is pertinent to the violation. Within 30 days of receipt of this report, the floodplain board shall do one of the following:

1. Take any necessary action to effect the abatement of such violation.

2. Issue a floodplain variance to this chapter in accordance with the provisions of section 17-15-11.

3. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the floodplain administrator within 30 days of such order and the floodplain administrator shall submit an amended report to the floodplain board within 20 days. At the next regularly scheduled public meeting, the floodplain board shall either order the abatement of said violation or they shall grant a floodplain variance in accordance with the provisions of section 17-15-11.

4. For FEMA regulated special flood hazard areas, submit to the administrator of FIA a declaration for denial of insurance, stating that the property is in violation of a cited state or local law,

regulation or ordinance, pursuant to section 1316 of the FIA of 1968 as amended.

B. The town may withhold the issuance of permits, including building permits, native plant permits and grading permits, for the development or improvement on the parcel or a any contiguous parcel of land under the same ownership.

17-15-8 Severability

This chapter and its various parts are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

17-15-9 Administration

A. Designation of the floodplain administrator. The town engineer or his/her designee is hereby appointed to administer, implement and enforce this chapter by granting or denying floodplain use permits in accordance with its provisions.

B. Responsibilities of floodplain administrator. The floodplain administrator shall:

1. Review all development permits to determine that:

   a. The permit requirements of this chapter have been satisfied;

   b. All other required state and federal permits have been obtained;

   c. The site is reasonably safe from flooding; and

   d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one tenth of a foot at any point located off of the property which is to be occupied by the anticipated development.

2. Use of other base flood data. When base flood elevation data has not been provided in accordance with paragraph 17-15-3 B, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer section 17-15-10. Any such information shall be consistent with the requirements of FEMA and the director of water resources and shall be submitted to the floodplain board for adoption.

3. Obtain and maintain for public inspection and make available the following:

a. The certified regulatory flood elevation required in subsection 17-15-10 B. 3. a;

b. The zone AO certification required in subsection 17-15-10 B. 3. b;

c. The floodproofing certification required in subsection 17-15-10 B. 3. e;

d. The certified opening elevation required in section 17-15-10 B. 3. f; and

e. Whenever a watercourse is to be altered or relocated:

i. Notify adjacent communities and ADWR prior to such alteration or relocation of a watercourse, and submit evidence of such notification to FIA through appropriate notification means; and

ii. Require that the flood carrying capacity of the altered or relocated portion of said watercourse be maintained.

4. Advise any appropriate adjacent jurisdictions having responsibility for floodplain management in writing and provide a copy of a development plan of all applications for floodplain use permits or floodplain variances to develop land in a floodplain or floodway within one mile of the corporate limits of the town.

5. Advise any public entity with responsibility for floodplain management in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway, which could affect floodplains, floodways or watercourses within the entity's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the entity no later than three working days after the town receives a complete application.

6. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 17-15-11.

7. Take actions on violations of this chapter as required in section 17-15-7.

8. Notify FEMA and ADWR of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

C. Within 120 days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall

be done according to the criteria adopted by the Director of Water Resources.

D. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the FEMA administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

E. Establishment of floodplain use permit.

1. A floodplain use permit shall be obtained before construction or development begins, including placement of manufactured homes, upon any land to which this chapter applies as defined in subsection 17-15-3 A.

2. Application for a floodplain use permit shall be made on forms furnished by the floodplain administrator and include, but not be limited to:

a. Plans in duplicate drawn to scale showing the nature, location, dimensions and elevation of the area in question with contour lines at minimum one foot intervals

b. Datum used for plan and structures with conversion factor between NGVD and NAVD

c. Existing or proposed structures

d. Fill

e. Storage of materials

f. Drainage facilities

g. Proposed elevation in relation to specified datum of the lowest floor (including basement) of all structures. In zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures

h. Proposed elevation in relation to mean sea level to which any non-residential structure will be flood-proofed

i. Certification by an Arizona registered professional civil engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 17-15-10 B. 3. e.

j. Require base flood elevation data for all subdivisions

k. Information requested by the floodplain administrator as found on the site plan checklist used for the purpose of floodplain management

l. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development

m. Items required or permitted as part of state standard SS6-05 (development of single family homes in floodplain).

3. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flooding and lateral erosion and will not otherwise aggravate existing conditions. If a proposed development is found to be in the path of flooding, lateral erosion or would aggravate existing conditions, improvements shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing conditions.

4. Applicants for floodplain use permits shall pay a fee in accordance with the adopted town fee ordinance schedule.

5. Conditions and restrictions shall apply to all floodplain use permits as administered by the floodplain administrator.

6. No permit shall be issued for any development which is not in conformance with this chapter or any other provision of law relating to such development. A floodplain use permit may be denied if the proposed development constitutes a danger or hazard to life or property. In making such a determination, the floodplain administrator may consider the following factors, which are not all-inclusive:

   a. The danger to life, person, or property due to increased flood heights, velocities, or redirection of flow cause by the development;

   b. The danger that materials may be swept onto other lands or downstream to the injury of others;

   c. The proposed water supply or sanitation systems of any development and the ability of these systems to prevent disease, contamination and unsanitary conditions if they should become flooded or eroded;

   d. The susceptibility of the proposed development and/or its contents to flood damage and the effect of such damage on the individual owners;

   e. The availability of alternative locations for the proposed use on the same property which are in areas not subject to flooding or erosion;

   f. The compatibility of the proposed use with existing regulatory floodplain uses and with floodplain management programs anticipated in the foreseeable future;

   g. The relationship of the proposed use to any comprehensive plan and floodplain management program for the area;

   h. All-weather access to the property;

i. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site under both existing and proposed conditions;

j. Documentation that all necessary permits have been obtained from state and federal agencies; and

k. Such other factors which are relevant to the purposes of this chapter.

17-15-10 Provisions for flood hazard reduction

A. General. The following subsections of section 17-15-10 contain the standards of construction for lands to which this chapter applies per subsection 17-15-3 A and are further restricted or supplemented by the requirements that follow. In all cases, impact to adjacent, upstream or downstream properties shall be taken into account.

1. The water surface elevation may not be increased by more than one tenth of one foot at any point located off of the property which is to be occupied by the anticipated development.

2. The velocity of the watercourse may not be increased by ten percent or by more than 1.0 foot per second, whichever is less.

B. Standards of construction in floodprone areas

1. Anchoring

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

b. All manufactured homes shall meet the anchoring standards of subsection 17-15-10 F. 2. b.

2. Construction materials and methods

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;

c. All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

d. Within FEMA zones AH or AO, adequate drainage paths around structures on slopes are required to guide floodwaters around and away from proposed structures;

e. Structures designed or utilized for human habitation, whether full or part time, shall only be permitted where the product of the flow depth d, in feet, times the square of the flow velocity v, in feet per second, of the surrounding floodwaters of the base flood does not exceed the numerical value of 18 ($dv2 \leq 18$) for a period greater than 30 minutes in duration as determined by an Arizona registered professional civil engineer and accepted by the floodplain administrator and the surrounding floodwaters of the Base Flood do not exceed three feet in depth; and

f. All structures designed or utilized for human habitation or commercial enterprise, whether full or part time, located within a floodplain or erosion hazard setback area shall provide protection for scour and lateral erosion based upon a scour/erosion analysis sealed by an Arizona registered professional civil engineer and accepted by the floodplain administrator. In all cases scour protection shall be designed to be a minimum of three feet below the lowest point of the adjacent channel or thalweg.

3. Elevation and flood-proofing

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at or above the regulatory flood elevation.

b. New construction and substantial improvement of any residential structure in zone AO shall have the lowest floor, including basement, elevated at least one foot higher than the depth number shown on the FIRM measured from the highest existing adjacent grade or one foot higher than the BFE from a town approved drainage study, whichever is greater.

c. New construction and substantial improvement of any residential structure in zone A with no base flood elevations shall have the lowest floor, including basement, elevated at least four feet higher than the highest existing adjacent grade unless an engineering analysis is performed by an Arizona registered professional civil engineer to determine the base flood elevations, at which the requirement will then be a minimum of one foot above the base flood elevation.

d. New construction and substantial improvement of any residential structure in zone X-500-alluvial fan shall have the lowest floor, including basement, elevated at least 18 inches higher than the highest existing adjacent grade.

e. Non-residential construction shall either be elevated in conformance with the preceding requirements or shall, together with attendant utility and sanitary facilities:

i. be flood-proofed so that below the regulatory flood level the structure is watertight with walls substantially Impermeable to the passage of water;

ii. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

iii. be certified by an Arizona registered professional civil engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator.

f. All new construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by an Arizona registered professional civil engineer or architect to meet or exceed the following minimum criteria:

i. a minimum of two openings on different sides of each enclosed area that have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

ii. the bottom of all openings shall be no higher than one foot above finished grade; and

iii. openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

g. Manufactured homes shall meet the above applicable standards and also the standards in subsection 17-15-10 F.

h. If fill is used to elevate any structure, the fill shall extend at such elevation for a distance of at least fifteen feet beyond the outside limit of the structure unless a study/analysis prepared by an Arizona registered professional civil engineer demonstrates that a lesser distance is acceptable.

i. Upon the completion of the structure and prior to the issuance of a certificate of occupancy the elevation of the lowest floor including basement shall be certified by an Arizona registered professional civil engineer or surveyor and provided to the floodplain administrator.

C. Standards for storage of materials and equipment

1. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited.

2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

3. Storage of materials and equipment is further restricted in the floodway per subsection 17-15-10 J.

D. Standards for utilities

1. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

2. On-site waste disposal systems shall not be located in a floodplain or erosion hazard setback area if a more suitable area exists on the parcel.

3. Waste disposal systems shall not be installed wholly or partially in a regulatory floodway. Crossings are allowed if buried at least one foot below the calculated scour depth as determined in a study/analysis prepared by an Arizona registered professional civil engineer.

4. Utilities shall be buried at least two feet below the calculated scour depth as determined in a study/analysis prepared by an Arizona registered professional civil engineer.

E. Standards for subdivisions and commercial developments

1. All preliminary subdivision plats and development plans shall delineate the FEMA SFHA, floodway if applicable, locally regulated floodplain, erosion hazard setback areas, and Base Flood elevations. The pre- and post-development conditions shall be shown.

2. All final subdivision plats shall provide the elevation of each proposed structure and pad affected by or adjacent to flood hazards. If the site is filled above the base flood, the final lowest floor and pad elevation shall be certified by an Arizona registered professional civil engineer or surveyor and provided to the Floodplain Administrator. All final subdivision plats shall delineate the FEMA SFHA, floodway if applicable, locally regulated floodplain and erosion hazard setbacks in a surveyable manner and sealed by an Arizona registered land surveyor.

3. All improvement plans relating to grading, paving, sewer or drainage shall delineate the FEMA SFHA, locally regulated floodplain, erosion hazard setback areas and base flood elevations. The pre- and post-development conditions are to be shown.

4. All subdivision and commercial development proposals shall be consistent with the need to minimize flood damage.

5. All subdivision and commercial development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

6. All subdivisions and commercial developments shall provide adequate drainage to reduce exposure to flood hazards.

7. All subdivisions with a minimum lot size of 16,000 square feet or less shall be platted such that FEMA SFHA, locally regulated floodplains, and erosion hazard setback areas are not located on individual lots. Such areas shall be contained within common areas.

8. All subdivisions with a minimum lot size greater than 16,000 square feet shall show buildable pad areas for each lot in which a FEMA SFHA, locally regulated floodplain or erosion hazard setback appears on individual lots. Pad elevations, encroachments, and/or erosion hazard setback protective measures shall be designed by an Arizona registered professional civil engineer as part of the project.

9. When a modification or removal of a FEMA SFHA is sought for a development, the following requirements apply:

    a. A hydraulic analysis and engineering plans for the modifications must be accepted by the floodplain administrator. New delineations of the floodplain conditions shall be prepared in conformance with the requirements of FEMA for LOMRs, the state director of water resources, and the town.

    b. A CLOMR must be submitted to and accepted by FEMA prior to the recording of a final plat for subdivisions.

    c. A CLOMR must be submitted to and accepted by FEMA prior to construction of physical improvements.

    d. Subdivision lots to be affected by a LOMR will not be partially released from assurance agreements or have certificate of occupancies granted until the LOMR has become effective.

    e. Commercial/industrial buildings to be affected by a LOMR shall not be granted a floodplain use permit until the LOMR has become effective, unless the building as designed meets the requirements of this chapter for the pre-LOMR conditions.

    f. Any flood control infrastructure necessary to achieve a LOMR must also have a flood control and maintenance easement dedicated to the Town that allows for inspection of said infrastructure and at the Town's sole discretion the right to repair the infrastructure. The development shall be responsible for maintenance of the infrastructure. Failure to maintain flood control infrastructure on the part of the development shall be a violation of this code.

10. All subdivisions and commercial/industrial developments shall provide all weather access in accordance with subsection 17-15-10 M.

F. Standards for manufactured homes and manufactured home parks or subdivisions.

1. Manufactured homes and manufactured home parks or subdivisions must meet other applicable requirements of section 17-15-10 that have not been supplemented or revised by this subsection.

2. All manufactured homes and substantially improved manufactured homes located within lands to which this chapter applies per subsection 17-15-3 A shall be required to comply with the following:

a. Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation; and

b. Be securely anchored to resist flotation, collapse or lateral movement by one of the following methods:

i. Provision of an anchoring system designed to withstand horizontal forces of 25 pounds per square foot and uplift forces of 15 pounds per square foot; or

ii. Provision of over-the-top and frame ties to ground anchors, specifically:

a) Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, except that manufactured homes less than 50 feet long require only one additional tie per side; and

b) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, except that manufactured homes less than 50 feet long require only four additional ties per side; and

c) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

3. All manufactured home parks or subdivisions located within lands to which this chapter applies per section 17-15-3 A shall be required to comply with the following:

a. All manufactured homes shall be placed:

i. on pads or lots elevated on compacted fill so that the bottom of the structural frame and any attached electrical appliances is at or above the regulatory flood elevation; or

ii. on stem walls or pilings so that the bottom of the structural frame and any attached electrical appliances is at or above the regulatory flood elevation.

b. Lots shall be large enough to permit steps.

c. Pilings or stem wall shall be placed in stable soil.

d. Pilings shall be no more than ten feet apart.

4. Certification that the installation of a manufactured home meets all of the requirements of this section is required. Such certification shall be provided by the person installing the manufactured home, the owner, the developer of a manufactured home park or subdivision, or an agency regulating manufactured home placement, whichever is deemed appropriate by the floodplain administrator. Certification of finished floor elevation shall be in accordance with section 17-15-10 B. 3. i.

G. Standards for recreational vehicles. All recreational vehicles placed on site shall either:

1. Be on site for fewer than 180 consecutive days, and be fully licensed and ready for highway use. (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

2. Meet the permit requirements of subsection 17-15-9 E of this chapter and the elevation and anchoring requirements for manufactured homes in subsection 17-15-10 F.

H. Standards for critical facilities. Critical facilities shall be regulated to withstand the 500-year event. Critical facilities shall be required to meet the following requirements:

1. Structures or facilities that produce, use or store more than 100,000 gallons of highly volatile, flammable, explosive, toxic and/or water-reactive materials shall be located outside of the 500-year FEMA floodplain (shaded zone X) and locally regulated floodplain calculated at the 500 year interval.

2. Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during and after a flood shall be located outside of the FEMA special flood hazard area and the locally regulated floodplain. Such facilities shall be designed to avoid the 500-year floodplain or certify the safety of the development per subsection 17-15-10 H. 4.

3. Police stations, fire stations, hospitals, nursing homes, assisted living homes, public vehicle and equipment storage facilities, emergency operations centers and schools designated to be used as temporary shelters shall be located outside the FEMA special flood hazard area and the locally regulated floodplain. Such facilities shall be designed to avoid the 500-year floodplain or certify the safety of the development per subsection 17-15-10 H. 4.

4. The developers of critical facilities referenced in subsections 2 and 3 above shall certify the safety of the development by providing the following information to the satisfaction of the floodplain administrator:

5. Freeboard requirements shall be such that the finished floor elevation shall be elevated one foot above the 500-year water surface elevation.

6. Developer shall delineate any 500-year floodplains and the respective erosion hazard setback areas within 200 feet of the parcel or development.

7. The 500-year water surface elevations shall be delineated by the developer on the preliminary/final plats, development plans and improvement plans.

8. Toe downs and bank protection shall be designed to withstand the 500-year flood.

I. Standards for excavations, including sand and gravel operations.

1. Excavations, including sand and gravel operations may be permitted provided the following minimum conditions are met in addition to any other requirements per the town code. Additional conditions apply for operations occurring within a regulatory floodway as required in subsection 17-15-10 J.

2. Extraction of sand, gravel and other materials is allowed provided that excavations are not so located or of such depth, or width, or length or combination of depth-width-length as to present a hazard to structures (including but not limited to roads, bridges, culverts, and utilities), to the banks of watercourses, to other property, or which adversely affects groundwater recharge.

3. No stockpiling is permitted within special flood hazard areas of materials or tailings that may obstruct, divert, or retard the flow of floodwaters except as reviewed and accepted by the floodplain administrator on an individual floodplain use permit basis.

4. Due to the rapidly changing hydraulic characteristics of watercourses in the town, and the effects excavations have on these characteristics, floodplain use permits for excavations shall only be issued for a limited time period not to exceed one year, subject to annual renewal and review by the floodplain administrator. Renewals will only be granted after receipt and acceptance of a report by the operator showing that the sand and gravel excavations remain in compliance with the conditions of the previous floodplain use permit, current floodplain conditions and all current related floodplain management regulations.

5. In addition to those conditions provided for elsewhere, floodplain use permits for excavations may impose site specific con-

ditions based upon hydraulics and sediment transport regarding the area and location in which excavations are allowed, the maximum amount of material to be excavated, and other reasonable restraints on the methods of operating in relationship to the floodplain conditions.

6. The floodplain administrator may require hydrologic, hydraulic and geomorphic analyses addressing the existing conditions as well as the impacts under the proposed method of operation.

J. Floodway requirements

1. Located within special flood hazard areas established in subsection 17-15-3 B are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential. Encroachments are prohibited in the floodway, including fill, new construction, substantial improvements and other development. The following subsections clarify how the floodway may be developed.

2. The following open space uses are permitted within the floodway to the extent that they are not prohibited by any provision of this Title or any other ordinance, law or regulation, and provided they do not require fill, excavation, or the storage of materials or equipment:

   a. Agricultural uses, including general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, sod farming, and wild crop harvesting.

   b. Industrial-commercial uses such as loading areas, airport landing strips, and parking areas.

   c. Private and public recreational uses, including golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launch ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

   d. Accessory residential uses, including lawn gardens, parking areas and play areas.

   e. Excavations, including sand and gravel operations may occur in the floodway under the following conditions in addition to those required in subsection 17-15-10 I:

   f. There shall be no stockpiling of materials or tailings within the floodway.

   g. Excavations may be allowed only in those reaches of watercourses which have, at a minimum, a balanced sediment system; that is, the sediment coming into the reach is equal to or greater than the sediment leaving the reach and the long

term sediment balance for the entire river system indicates that the stream channel will aggrade.

h. Flood control structures designed to protect life or property from the dangers or hazards of floodwaters are permitted provided all other provisions of this chapter are met.

i. No use shall be allowed which:

i. Acting alone or in combination with existing or future uses creates danger or hazard to life or property. In determining whether a use creates a danger or hazard to property, the floodplain administrator may require a certification by an Arizona registered professional civil engineer that the proposed use will not result in any increase in the floodway elevations during the occurrence of the base flood nor will the proposed use divert, retard or obstruct the flow of flood waters.

ii. Increases the regulatory floodway elevation.

iii. Adversely effects groundwater recharge.

iv. Increases erosion potential upstream and/or downstream.

v. Places a waste disposal system wholly or partially in a floodway.

K. Erosion hazard setback requirements

1. Close proximity to watercourses poses a hazard to development due to lateral erosion. Per subsection 17-15-3 A, the erosion hazard setback area of a watercourse is a land covered by this chapter.

2. Along natural watercourses where unusual geology, sinuosity or similar physical conditions exist, the erosion hazard setback shall be established on a case-by-case basis by the floodplain administrator, unless an engineering study is done to establish the limits by an Arizona registered professional civil engineer and accepted by the floodplain administrator.

3. Along incised natural watercourses where no unusual geology, sinuosity or similar conditions exist, a standard setback measured from the top of the primary channel bank shall be provided at the time of development. The setback may be reduced by an engineering analysis performed by an Arizona registered professional civil engineer and accepted by the floodplain administrator in accordance with subsection 17-15-10 K. 4.

4. Along non-incised natural watercourses (i.e. sheet flow areas) where no unusual geology, sinuosity or similar conditions exist, a standard setback measured from the base flood limits shall be provided at the time of development. The setback may be re-

duced by an engineering analysis performed by an Arizona registered professional civil engineer and accepted by the floodplain administrator in accordance with subsection 17-15-10 K. 4.

5. Standard erosion hazard setbacks may be reduced by an engineering study performed by an Arizona registered professional civil engineer and accepted by the floodplain administrator. The reduced setbacks shall not fall below minimum allowable erosion hazard setbacks unless the study also includes an analysis performed by an Arizona registered professional geological engineer. The following table shows the standard and minimum allowable setbacks when no physical construction is made to prevent erosion hazard:

Base flood flow rate (cfs)	**Standard erosion hazard setback (feet)**	**Minimum allowable erosion hazard setback (feet)**
<500	25	15
500 to 1,999	50	25
2,000 to 4,999	75	45
5,000 to 9,999	100	70
10,000 and greater	250	175
Santa Cruz River	500	350

L. Detention and retention requirements

1. Any development with a net residential density of three or more units per acre after subtracting out common areas, or any residential development larger than one acre that has a density of six units per developed acre, as well as all proposed commercial and industrial developments shall provide some method of peak and/or volumetric runoff reduction. The amount of reduction is stipulated in the 1991 edition of the Pima county storm water detention/retention manual. The peak runoff reduction shall be provided through detention of storm water and storm water harvesting for irrigation where possible.

2. Balanced and critical drainage basins are watersheds that have been identified by the chief engineer of the Pima county flood control district on a 1987 map as unsuitable for increased development because of the high probability of increased flooding with development and the potential for flooding of existing improvements or property. The floodplain administrator shall maintain this map of critical and balanced basins within the jurisdictional limits of the town. Drainage basins that have not previously been identified as unsuitable for additional urban development shall be considered balanced basins, but upon study by the floodplain administrator, may be classified as critical basins. Critical and balanced basins may be developed further only upon the incorporation of adequate detention systems or flood

control facilities, as reviewed and accepted by the floodplain administrator. These detention systems or flood control facilities shall be incorporated into any and all future basin-development proposals, regardless of size or land-use density.

3. Structural flood control measures may be proposed in conjunction with, or in place of detention/retention systems if it can be clearly demonstrated that such measures will not alter the water and sediment equilibrium of the affected watercourse, and will mitigate environmental impacts. Structural flood control measures, such as channelization to a logical conclusion downstream of the proposed development and/or improvements to existing offsite flood control systems within the applicable drainage or stream reach, shall be completed in accordance with plans reviewed and accepted by the floodplain administrator.

4. Localized areas lacking sufficient improved or natural receiving waters into which runoff may be discharged may be required to follow alternative drainage solutions including complete retention practices as directed by the town engineer.

5. A fee may be collected by the town in lieu of detention/retention system when it can be clearly demonstrated that the detention at the site does not provide offsite flood relief due to the parcel size, location within the drainage basin, or other factors. The fees collected will be used to construct public flood control improvements that will mitigate the potential damage of flood waters originating from the property contributing the fees. In balanced and critical drainage basins, and where development is less than three units per acre, use of a fee system will be encouraged in lieu of a detention system to preserve the natural drainage patterns. The fee shall be equivalent to the cost of a detention system that would otherwise be constructed for the development to mitigate increased storm water runoff created by the proposed development.

M. Access requirements

1. Development shall provide all-weather access in accordance with the following requirements:

   a. Developments that fall under the requirements of subdivisions of ten or fewer lots shall provide all-weather access from each lot to the subdivision entrance. All-weather access shall be constructed from the subdivision entrance to the nearest paved public roadway. This requirement may be waived if the following criteria is met:

      i. Subdivision is characterized as a residential subdivision

      ii. Subdivision is of a rural character, with minimum lot sizes of 36,000 square feet

iii. If, in the determination of the floodplain administrator, it is not reasonably feasible to construct such access to the subdivision entrance

iv. Subsection 17-15-10 M. 2 provisions are utilized.

b. All subdivisions that do not fall under the preceding requirements shall provide all-weather access from each lot to a paved public right of way. A subdivision with more than one access to a paved public roadway need only have one all-weather access.

c. All commercial developments shall provide all-weather access from a paved public roadway to all public portions of their site. Nonpublic portions of a commercial development that are not all-weather access shall be gated and signs posted in accordance with subsection 17-15-10 M. 2.

d. Private residential construction not part of a recorded subdivision shall construct an all-weather access from the property boundary to a paved public roadway. If in the determination of the floodplain administrator it is not reasonably feasible to construct such access to the property, then subsection 17-15-10 M. 2 provisions may be utilized.

2. The floodplain administrator may allow certain exemptions to all-weather access as stated in the preceding section. A condition of allowing this exemption is that the owner shall execute and record a covenant running with the land enforceable by the town which contains the following:

a. An acknowledgement that the vehicular access may be impassable to conventional motor vehicles and emergency vehicles in times of flooding,

b. A hold harmless provision, holding the town, its agents, the floodplain management board harmless from and against all injuries and damages resulting from the traversing or attempting to traverse the vehicle access during times of flooding, and

c. The covenant, successors and assigns shall erect and maintain a sign(s) in a location(s) and size(s) acceptable to the town stating "DO NOT ENTER WHEN FLOODED"

17-15-11 Floodplain variance procedure

A. Nature of floodplain variances

1. Floodplain variances pertain to a piece of property and are not personal in nature. A floodplain variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the

property and not be shared by adjacent parcels. The characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

2. Floodplain variances from the flood elevation or from other requirements in this chapter shall be granted only in rare situations. The long-term goal of preventing and reducing flood loss and damage can only be met if floodplain variances are strictly limited. Therefore, the floodplain variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a floodplain variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a floodplain variance are more appropriate.

B. Appeal board

1. The floodplain board of the town of Marana shall hear and decide appeals and requests for floodplain variances from the requirements of this chapter.

2. The floodplain board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.

3. In considering applications, the floodplain board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

   a. The danger that materials may be swept onto other lands to the injury of others;

   b. The danger of life and property due to flooding or erosion damage;

   c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

   d. The importance of the services provided by the proposed facility to the community.

   e. The necessity to the facility of a waterfront location, where applicable;

   f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

   g. The compatibility of the proposed use with existing and anticipated development;

   h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

   i. The safety of access to the property and all of its habitable structures in time of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and,

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.

4. Upon consideration of the factors of subsection 3 and the purposes of this chapter, the floodplain board may attach such conditions to the granting of floodplain variances as it deems necessary to further the purposes of this chapter.

5. Any applicant to whom a floodplain variance is granted shall be given written notice over the signature of a community official that:

   a. The issuance of a floodplain variance to construct a structure below the base flood level will result in increased premium rates for flood insurance coverage;

   b. Such construction below the base flood level increases risks to life and property; and

   c. The land upon which the floodplain variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided for by A.R.S. title 26, chapter 2, article 2. A copy of the notice shall be recorded in the office of the Pima County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

6. The floodplain administrator shall maintain a record of all floodplain variance actions, including justification for their issuance and report such floodplain variances issued in its biennial report submitted to FEMA.

C. Conditions for floodplain variances.

1. Floodplain variances may be issued for the repair, rehabilitation, restoration, or floodproofing of structures listed in the national register of historic places or the state inventory of historic places, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the floodplain variance is the minimum necessary to preserve the historic character and design of the structure.

2. Floodplain variances may be issued for accessory structures used solely for limited storage that have a size of less than 150 square feet, provided that the following requirements are met:

   a. Structure is anchored to resist flotation, collapse and lateral movement;

b. The portions of the structure located below the BFE are constructed of flood resistant materials;

c. The structure is designed to allow for the automatic entry and exit of flood waters;

d. Any mechanical, utility or electrical equipment is elevated or floodproofed above the BFE; and

e. The structure does not violate any floodway requirements.

3. Floodplain variances may be issued for agricultural structures whose use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, such as pole and pre-fabricated metal structures, grain bins and corn cribs provided that the following requirements are met:

a. The structure is designed in a manner that results in minimal damage from flooding;

b. The contents stored in the structure will create no additional threat to the public;

c. The structure is designed to allow for the automatic entry and exit of flood waters;

d. Any mechanical, utility or electrical equipment is elevated or floodproofed above the BFE; and

e. The structure does not violate any floodway requirements.

4. Floodplain variances shall not be issued within any designated floodway if any increase in flood levels during the Base Flood discharge would result.

5. Floodplain variances shall only be issued upon a determination that the floodplain variance is the minimum necessary, considering the flood hazard, to afford relief.

6. Floodplain variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the floodplain variance would result in exceptional hardship to the applicant;

c. A showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in section 17-15-2 of this chapter in the definition of "functionally dependent use"; and,

d. A determination that the granting of a floodplain variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

17-15-12 Appendix 1 – Table of regulatory peak discharges

Note: List is not all inclusive; remaining watersheds area also subjected to Marana floodplain and erosion hazard management code restrictions. Listed discharges are subject to review and revision due to urbanization and improvements. Check with the town engineer before their use.

WATERCOURSE	REGULATORY	DESIGN
Blanco Wash @ Los Robles Wash	17,000	22,000
Brawley Wash @ Los Robles Wash	35,000	40,000
Hardy Wash @ Camino De Oeste Road	4,536	
Little Brawley Wash @ 32d7′25″	13,440	
Los Robles Wash @ Blanco Wash	37,000	42,000
Picture Rock Wash @ Picture Rocks Road	3,479	
Canada Del Oro Wash @ Thornydale	28,000	33,000
Rillito River @ I-10	32,000	38,000
Santa Cruz River @ Cortaro Road	70,000	80,000
Tortolita Fan: Canada Agua Canyon @ I-10	5,255	
Tortolita Fan: Cochie Canyon @ I-10	5,779	
Tortolita Fan: Cottonwood Canyon @ I-10	5,439	
Derrio Canyon @ I-10	5,229	
Eastern Limit of Fan @ I-10	4,084	
Guild Canyon @ I-10	4,561	
Ruelas Canyon @ I-10	4,604	
Prospect Canyon @ I-10	4,340	
Wild Burro @ I-10	5,831	

Unless otherwise noted, design discharges shall be 20% greater than regulatory discharges.

CHAPTER 17-16. STORMWATER MANAGEMENT

Chapter 17-16 was inserted into the town code by Ordinance 2015.021

Sections:

17-16-1 General provisions 17-162
17-16-2 Prohibitions and controls to reduce the discharge of pollutants in stormwater 17-167
17-16-3 Compliance monitoring 17-174

17-16-1 General provisions

A. Purpose. These regulations establish minimum stormwater management requirements for the management of pollutants that are or may be discharged to the municipal storm sewer system. The purpose is to improve the quality of stormwater discharges and to enable the Town to comply with all applicable state and federal laws, including but not limited to, the clean water act (33 U.S.C. § 1251 et seq.), the national pollutant discharge elimination system regulations (40 CFR, Part 122), and the town's Arizona pollutant discharge elimination system (AZPDES) MS4 general permit (Ariz. admin. code R18-9-A902).

B. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings set forth in this paragraph. Where noted, the definitions shall correspond with the applicable section of the Arizona revised statutes as amended.

1. ADEQ: Arizona department of environmental quality, regulatory entity of the state of Arizona responsible for administering various federal and state environmental laws and programs, including most water quality programs, air quality, and waste programs.

2. AZPDES permit: Arizona pollutant discharge elimination system - any permit issued by the Arizona department of environmental quality delegated pursuant to 33 U.S.C. § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis in compliance with the clean water act (CWA).

3. BMPs, best management practices: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

4. CGP: Construction general permit

5. Common plan of development: A smaller project is part of a larger common plan of development or sale if the project collectively will disturb one or more acres, e.g., a single private or commercial lot that is part of a subdivision or commercial development.

6. Contractor: Synonymous with the term "builder" and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, who, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid or responds to a request for qualification or a request for proposals for construction

services to, does himself or by or through others, or directly or indirectly supervises others to:

a. Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

b. Connect such structure or improvements to utility service lines and metering devices and the sewer line.

c. Provide mechanical or structural service for any such structure or improvements. A.R.S. § 32-1101 (3).

7. CWA, clean water act: The federal water pollution control act, as amended, 33 U.S.C. 1251 et. seq.

8. Developer: Any person, group or entity proposing or constructing a development as defined by the land development code.

9. Discharge: Any addition of any pollutant to waters of the United States from any point source. A.R.S. § 49-255 (2).

10. EPA: The United States environmental protection agency charged with primary enforcement of the clean water act (CWA).

11. Final stabilization: means that either:

a. All soil disturbing activities at the site have been completed and either of the two following criteria are met:

i. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

ii. Equivalent permanent stabilization measures (such as riprap, gabions, or geotextiles) have been employed.

b. When background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches), the 70% coverage criteria is adjusted as follows: if the native vegetation covers 50% of the ground, 70% of 50% (.70 x .50 = .35) would require 35% total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.

c. For individual lots in residential construction final stabilization means that either:

i. The homebuilder has completed final stabilization as specified above, or

ii. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and

informing the homeowner of the need for, and benefits of, final stabilization, or

iii. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "water of the United States," and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria above.

12. Illicit discharge: Any discharge to a storm drain system that is not composed entirely of stormwater except discharges pursuant to a NPDES or AZPDES permit, discharges resulting from emergency fire fighting activities, and discharges further exempted in subsection 17-16-2 B of this chapter.

13. Monitoring: Periodic or continuous surveillance or testing to determine the level of compliance with statutory requirements and/or pollutant levels in various media or in humans, plants, and animals.

14. MS4, municipal separate storm sewer system: Includes, but is not limited to, those facilities located within the town and owned or operated by a public entity by which stormwater may be collected and conveyed to waters of the United States, including any roads with drainage systems, public streets, inlets, curbs, gutters, piped storm drains and retention or detention basins.

15. NPDES permit, national pollutant discharge elimination system permit: A discharge permit issued by the EPA in compliance with the federal clean water act.

16. NOI: Notice of intent

17. NOT: Notice of termination

18. Operator: In the context of stormwater associated with construction activity, means any person associated with a construction project that meets either of the following two criteria:

    a. The person has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

    b. The person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). This definition is provided to inform operators of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of stormwater associated with construction activity.

19. Owner or operator: The owner or operator of any "facility or activity" subject to regulation under the NPDES program.

20. Person: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns.

21. Point source: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged to navigable waters. Point source does not include return flows from irrigated agriculture. A.R.S. § 49-201 (27).

22. Pollutant: Fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances. A.R.S. § 49-201 (28).

23. Pollution: The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water of the state or water of the United States, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose as determined by the town engineer.

24. Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that can cause pollution.

25. Stormwater: Stormwater runoff, snow melt runoff, and surface runoff and drainage.

26. SWPPP, stormwater pollution prevention plan: A plan that includes site map(s), an identification of owner/operator activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants.

27. Waters of the state: All waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state. A.R.S. § 49-201 (41).

28. Waters of the United States:

a. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

b. All interstate waters, including interstate wetlands;

c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:

i. That are or could be used by interstate or foreign travelers for recreational or other purposes;

ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

iii. That are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters defined as waters of the United States under this definition;

e. Tributaries of waters identified in subsections a through d above;

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections a through f above.

C. Applicability. This chapter shall apply to all activities which may potentially affect the municipal separate storm sewer system, any private storm sewer system or any water of the Untied States within the town. Additionally, permanent and temporary stormwater management controls, practices and facilities, constructed as part of any activities listed in this section, which are located within the town limits, are also subject to this chapter. The stormwater management practices and discharge standards, should such standards be established, shall apply to any construction project that disturbs one acre or more, including industrial, commercial, institutional, and residential.

D. Delegation of authority for administration and enforcement. The town engineer of the town is delegated the authority to exercise the powers and perform the duties set forth in this chapter and to administer and enforce provisions of this chapter. The town engineer may designate other employees to exercise such powers and perform such duties, as he or she deems appropriate.

E. Regulatory consistency. This chapter shall be construed to assure consistency with the requirements of the federal clean water act (CWA) and acts amendatory thereof or supplementary thereto, applicable state or federal implementing regulations, and the municipal AZPDES or NPDES permit and any amendments, revisions, or reissuance thereof. No permit or approval issued pursuant to this chapter shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable rule, code, act, permit, or ordinance. The town shall not certify or defend that the applicant has met the requirements of the federal CWA.

F. General. The town engineer may adopt and enforce such rules, regulations, ordinances, standards, processes and forms as the town engineer deems necessary for the efficient administration and enforcement of this chapter. The town engineer may interpret and enforce this chapter. Upon request of the town engineer any other department of the town has the authority to assist in the exercise of powers and performance of duties under this chapter.

G. Severability. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are hereby declared to be severable.

17-16-2 Prohibitions and controls to reduce the discharge of pollutants in stormwater

A. General Requirements

1. Any person engaged in activities which will or may result in pollutants entering a storm sewer system shall undertake appropriate measures to reduce the potential to discharge such pollutants. Examples of such activities include, but are not limited to, reduction of use and proper disposal of household chemicals, such as cleaners, disinfectants, pesticides, fertilizers, carpet cleaning waste water and other pollutants associated from the ownership and use of facilities which may be a source of pollutants such as parking lots, gasoline stations, industrial facilities, construction sites, and retail establishments.

2. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, vegetation trimmings or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any public or private plot of land so that the same might be or become a pollutant, except where such pollutant is being temporarily stored

in properly contained waste receptacles or is part of a well-defined compost system or pursuant to another recycling system.

3. No person shall cause or permit the discharge into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private plot of land in the town any pollutant originating from a dumpster, solid waste bin, or similar container.

B. Prohibition of non-stormwater discharge to the municipal storm sewer system; exemptions

1. Unless expressly authorized or exempted by this chapter, no person shall cause or allow the discharge to a public right-of-way or municipal storm sewer system of any substance that is not composed entirely of stormwater.

2. Unless expressly authorized or exempted by this chapter, no person shall use, store, spill, dump, or dispose of materials in a manner that those materials could cause or contribute to the addition of pollutants to stormwater.

3. Exemptions. The following discharges are exempt from the prohibitions set forth in subsections 1 and 2 of this subsection:

a. Dechlorinated waters from water line flushing;

b. Landscape irrigation;

c. Diverted stream flows;

d. Rising ground waters;

e. Uncontaminated groundwater infiltration;

f. Uncontaminated pumped groundwater;

g. Discharges from potable water sources;

h. Foundation drains;

i. Air condition condensation;

j. Irrigation water;

k. Springs;

l. Water from crawl space pumps;

m. Footing drains;

n. Lawn watering;

o. Individual residential car washing;

p. Discharges from riparian habitats and wetlands;

q. Dechlorinated swimming pool discharges; and

r. Discharges or flows from emergency fire fighting activities.

4. No person shall discharge to a publicly owned right-of-way or the municipal storm sewer system any exempted discharge un-

der subsection 3 if the town engineer or assigned designee identifies and provides written notice to the person that the discharge has the potential to be a source of pollutants to receiving waters, waterways, or groundwater.

5. No person shall discharge to the municipal storm sewer system where such discharge would result in or contribute to a violation of the AZPDES stormwater permit issued to the town, either separately considered or when combined with other discharges. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge.

C. Operating facilities or activities

1. All persons owning or operating premises or engaged in activities who are required by federal or state law to submit to EPA and/or ADEQ a notice of intent (NOI) to comply with an NPDES or AZPDES stormwater permit shall provide a copy of the authorization certificate to the town upon request. Facilities required to apply for a stormwater permit are identified in 40 CFR 122.23(B) (14).

2. All persons engaged in activities which will or may reasonably be expected to result in pollutants entering the municipal storm sewer system shall undertake best management (BMPs) to minimize such pollutants, shall provide protection from accidental discharge of pollutants to the municipal storm sewer system and further comply with the cleanup and notification requirements of this chapter. Such measures shall include any additional requirements imposed by federal, state, county, or local authorities.

3. In the case that a specific best management practice is required by the town to prevent a pollutant from entering the municipal storm sewer system, the person receiving the notice of such a requirement may petition the town to reconsider the application of the BMP to the premises or activity. The written petition must be received within ten calendar days setting forth any reasons and proposed alternatives. The town will act within 14 calendar days of the petition.

4. No person shall establish, use, maintain, or continue any connection to the municipal storm sewer system which is causing a violation of this section. This shall apply to any connection that was made in the past, regardless of whether it was made under permit or other authorization, or whether it was permissible under the law or practices applicable or prevailing at the time of connection as of the effective date of this chapter.

D. Construction sites

1. All persons engaged in construction activities who are required by federal or state law to submit to EPA and/or ADEQ a notice of intent (NOI) to comply with an NPDES or AZPDES storm-

water permit, shall provide the town with copies of the approved NOI, the site-specific stormwater pollution prevention plan (SWPPP), and the AZPDES individual stormwater permit, if applicable, issued by ADEQ. Town acceptance of the SWPPP is required prior to issuance of a grading permit. Construction activities that will disturb one acre or more of land area or that are part of a larger common plan of development or sale are required to apply for a stormwater permit (40 CFR 122.26(B)(15)).

2. Any person performing construction that has submitted a copy of an approved NOI to the town shall not cause or contribute to a violation of the AZPDES stormwater permit issued to the town. Liability for any such discharge shall remain the responsibility of the person causing or responsible for the discharge. Any person performing construction activity shall undertake best management practices to minimize or eliminate pollutants (including the discharge of sediments) from leaving the construction site, shall provide protection from accidental discharge of other pollutants to the municipal storm sewer system, and comply with the cleanup and notification requirements of this chapter. Site operator shall ensure effective erosion, sediment and waste control and properly dispose of wastes, such as discarded building materials, concrete truck washout material, chemicals, litter, sanitary waste and other pollutants at the construction site that may cause adverse impacts to water quality. Such measures shall include the requirements imposed by federal, state, county and/or local authorities.

3. Stormwater pollution prevention plans shall be prepared and reviewed in accordance with the Arizona pollutant discharge elimination system construction general permit issued by the Arizona department of environmental quality. The town shall not certify or defend that the applicant has met the requirements of the federal Clean Water Act.

4. In the case that a specific best management practice is required by the town to prevent a pollutant from entering the municipal storm sewer system, the person receiving the notice of such a requirement may petition the town to reconsider the application of the BMP to the premises or activity. The written petition must be received within ten calendar days setting forth any reasons and proposed alternatives. The town will act within fourteen calendar days of the petition.

5. Basins with a retention component may be used as temporary sediment basins during construction provided the following conditions are met:

    a. Prior to acceptance, the basin shall be retested for percolation; and

    b. Additional measures must be put in place to collect sediment prior to entry into the basin, i.e. the basin must be part of a cascading sediment trapping system.

6. Exemptions: The following discharges are exempt from the prohibitions set forth in subsection 17-16-2 C for construction sites or activities:

   a. Discharges from fire-fighting activities;

   b. Fire hydrant flushing;

   c. Waters used to wash vehicles where detergents are not used;

   d. Water used to control dust, provided effluent or other wastewaters are not used;

   e. Potable water sources including water line flushing;

   f. Routine external building wash down where detergents are not used;

   g. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;

   h. Uncontaminated air conditioning or compressor condensate;

   i. Uncontaminated ground water or spring water;

   j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

   k. Potable water well flushing where the receiving waters are ephemeral;

   l. Water used for compacting soil, provided effluent or other wastewaters are not used;

   m. Water used for drilling and coring such as for evaluation of foundation materials; where flows are not contaminated with additives; and

   n. Water obtained from dewatering operations/foundations in preparation for and during excavation and construction.

E. Stormwater pollution prevention plans (SWPPP)

1. The owner/operator shall submit two copies of a site specific SWPPP (both a narrative and engineering drawings) during the grading/improvement plan review period.

2. Town staff will review the submission in accordance with applicable federal, state, and/or local regulations.

3. A SWPPP accepted by the town is required prior to the issuance of a grading permit.

4. Two copies of the accepted SWPPP, a copy of the owner(s) and operator(s) NOI, along with copies of the accepted grading/improvement plans shall be submitted with the application for a grading permit prior to start of any work on-site.

5. For projects that are part of a larger common plan of development with custom lots, the following shall apply:

a. The developer for the project shall prepare a stormwater pollution prevention plan (SWPPP) and submit a notice of intent (NOI) to ADEQ or EPA, with an approved copy of the NOI to the town for the portion of the project for which they have operational control.

b. The SWPPP shall address the construction of infrastructure site development and proposed residential construction. The developer shall submit a NOI and SWPPP with accepted grading/improvement plans with the application for a grading permit.

c. The individual buyer of a lot in a large lot/custom home site subdivision shall submit to the town, with the application for a grading permit, a plan sheet outlining stormwater pollution prevention measures for construction on the individual lot. This plan sheet shall become an attachment to the SWPPP previously completed by the developer and accepted by the town. The individual buyer and the operator shall submit separate NOIs and sign the certifications in the SWPPP. An accepted plan sheet and NOIs shall be required prior to the issuance of a grading permit.

6. For mass graded subdivisions, the following shall apply:

a. The developer for the project shall prepare a stormwater pollution prevention plan (SWPPP) and submit a notice of intent (NOI) to ADEQ or EPA, with an approved copy of the NOI to the town for the portion of the project for which they have operation control.

b. The developer shall prepare a SWPPP that addresses off-site and on-site best management practices for erosion, sediment and waste control for both the infrastructure and residential improvements.

c. The developer shall be responsible for compliance with this chapter until such time as the developer can demonstrate that operational control for all portions of the site has been transferred to another operator or final stabilization for the entire site has been achieved.

7. For commercial development, the following shall apply:

a. The developer for the project shall prepare a stormwater pollution prevention plan (SWPPP) and submit a notice of intent (NOI) to ADEQ or EPA, with an approved copy of the NOI to the town for the portion of the project for which they have operation control.

b. The developer shall prepare a SWPPP to address on-site and off-site best management practices for erosion, sediment, and waste control.

c. For commercial lots that are part of a common plan of development, the owner/operator for the individual lot shall submit a separate SWPPP and NOI with improvement plans; the SWPPP shall be accepted by the town prior to issuance of a grading permit.

8. Routine inspection schedule: The operator must ensure routine inspections are performed at the site to ensure that BMPs are functional and that the SWPPP is being properly implemented. The operator must specify an inspection schedule in the SWPPP and may choose either of the following:

   a. The site will be inspected at least once every seven calendar days, or

   b. The site will be inspected at least once every 14 calendar days, and also within 24 hours of the end of each storm event of 0.5 inches or greater.

9. Based on the results of the inspection, the operator must modify the SWPPP to include additional or modified BMPs designed to correct problems identified. The operator must complete revisions to the SWPPP within seven calendar days following the inspection.

10. No waivers allowable under the AZPDES construction general permit shall be accepted by the town for any development over one acre in size or that is part of a larger common plan of development or sale.

F. Maintenance of stormwater facilities

1. Property owners or operators shall warrant post-construction stormwater runoff control facilities including but not limited to, retention basins, dry wells, and other measures (as described in 40 CFR 122.34 (B)(5)(III) during the warranty period.

2. Stormwater facilities shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

3. Disposal of waste from maintenance of facilities shall be conducted in accordance with applicable federal, state, and local laws and regulations

4. Records of installation and maintenance and repair of facilities referenced in subsection 1 of this section shall be retained by the owner or other responsible party for a period of five years and shall be made available to the public works department upon request.

5. Any failure to maintain facilities or correct problems with facilities after receiving due notice from the town may result in criminal or civil penalties and the town may perform corrective or maintenance work which shall be at the owner's expense.

G. Cleanup and notification requirements

1. In the event of a spill or release in reportable quantities as defined in 40 CFR 302, 40 CFR 110 and 40 CFR 117, the owner, operator, or the person who has control of the source or location of any spill or release, which may result in a discharge that is not in compliance with this chapter, shall immediately take all reasonable safety precautions including, if appropriate, calling 911 and completing the following steps:

   a. Proceed with containment and clean up in accordance with:

      i. The orders of an involved health and safety agency, or if no such orders have been issued, then:

      ii. The orders of an authorized representative, or if no such orders have been issued, then

      iii. The stormwater pollution prevention plan or approved corrective action plan utilizing best management practices for the involved facility.

   b. Report any violations of the northwest fire department fire code or other such applicable safety or health codes in the manner required by such code;

   c. Notify the town environmental engineering division at (520) 382-2600 of the release by telephone within 24 hours of knowledge of the release;

   d. Provide written notification within five calendar days to the town environmental engineering division of the type, volume, cause of the discharge, corrective actions taken, and measures to be taken to prevent future occurrences.

2. Compliance with the requirement in subsection 17-16-2 G. 1 shall not relieve the discharger from the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302.

17-16-3 Compliance monitoring

A. Inspections

1. Authority to inspect. Upon presentation of credentials and at all reasonable or necessary hours, all authorized employees of the town shall have access to all premises and to all records pertaining to those premises for purposes of ensuring compliance with this chapter. Inspection, interviewing, copying, sampling, photographing, and other activities conducted on the premises shall be limited to those which are reasonably needed by the town in determining compliance with the requirements of this chapter. All persons shall allow such activities under safe and non-hazardous conditions with a minimum of delay.

2. Monitoring activities. The town may order any person engaged in any activity or owning or operating on any premises which is

causing or contributing to discharges of pollutants to the municipal storm sewer system in violation of this chapter or any applicable NPDES or AZPDES stormwater permit condition or that is posing a risk to public health, safety, and welfare to undertake such monitoring activities and analyses and furnish such reports as the town reasonably may specify. The costs of such activities, analyses, and reports shall be borne in the recipient of the order.

3. When inspections by town staff reveal deficiencies in the implementation of the SWPPP a written inspection report will be provided to the owner and operator within 30 days of the inspection.

4. Access refusal. If an authorized employee of the town has been refused access to any premises, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect, interview, copy, photograph or sample as part of an inspection and sampling procedure of the town designed to determine compliance with the requirements of this chapter or any related laws or regulations, or to protect the environment and the public health, safety, and welfare of the community, then the town may seek issuance of a search warrant from the town municipal court.

B. Enforcement and penalties

1. Charges or penalties levied pursuant to this chapter shall be collected by the department of public works and utilized for public education and outreach in compliance with the town's MS4 Permit. The town engineer shall make and enforce economic and efficient management and protection of the town's storm sewer system.

2. Operator and/or owner of record. The operator performing activities and/or owner of record of the property upon which a violation of this chapter occurs shall be presumed to be a person having lawful control over the activity or premises unless it is demonstrated and documented that another person has knowingly and in good faith accepted responsibility for the activity at issue. If more than one person is identified as the owner, such persons shall be presumed to be jointly and severally in lawful possession and control of the activity or premises.

3. Notice to correct. The town may issue a written notice to correct to any person who has violated or is in violation of this chapter. Failure to comply with any act required in the notice to correct may result in a notice of violation and/or stop work order as described in subsections 4 and 6 of this section.

4. Notice of violation. The town may issue a written notice of violation to any person who has violated or is in violation of this chapter. Failure to comply with any act required in the notice of violation shall be a separate violation for each day beyond the

thirtieth calendar day following the notice of violation. Nothing in this section shall limit the authority of the town to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the town may notify the person orally either in person or by telephone prior to written notification.

5. Consent orders. The town may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements, or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document, including an identification and description of the best management practices and measures to utilize in implementing the order. Such documents shall have the same force and effect as any other orders issued under this chapter and shall be judicially enforceable.

6. Stop work order. For projects under construction in the town, if the town finds that a person has violated, or continues to violate, any provision of this chapter or any related laws or regulations, or that the person's past violations are likely to recur, the town may issue a stop work order to the person directing them to cease and desist all such violations and direct the person to immediately comply with all requirements; and take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order issued pursuant to this chapter shall constitute a violation of this chapter.

7. Civil penalties. In addition to any other enforcement authority contained in this chapter, the town may issue a civil citation to any person who has violated, or continues to violate, any provision of this chapter or any related laws or regulations. A person who violates any requirement of this chapter or any applicable NPDES or AZPDES stormwater permit condition shall be civilly liable to the town for a sum not to exceed $2,500 per day for each violation.

8. Criminal penalties. A person who willfully or negligently violates any provision of this chapter, or any related laws or regulations shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed $2,500 per day for each violation and/or by imprisonment for a period not to exceed six months.

9. Criminal prosecution. Some intentional violations may constitute criminal violations of federal, state, and town law, and that under such circumstances, the town may seek the assistance of the EPA, the state, or the town prosecutor to commence civil

and/or criminal action against any person who violates any requirement of this chapter or any applicable NPDES or AZPDES stormwater permit condition.

10. The town may withhold the issuance of permits including but not limited to building permits, native plant permits and grading permits, for the development or improvement on the parcel or any contiguous parcel of land under the ownership of a person or persons in violation of any requirement of this chapter or any applicable NPDES or AZPDES stormwater permit condition.

11. Liability for costs. The town may assess liability for costs to any person in violation of this chapter for all actual costs incurred by the town in surveillance, sampling and testing, abatement, and remediation associated with a discharge. Additionally, the town may assess liability for costs to any person whose discharge resulted in a violation of the town's AZPDES stormwater permit.

CHAPTER 17-17. DEVELOPMENT IMPACT FEE ORDINANCE

Chapter 17-17 was inserted into the town code by Ordinance 2014.011

Sections:

17-17-1 Title 17-177
17-17-2 Legislative intent and purpose 17-177
17-17-3 Definitions 17-178
17-17-4 Applicability 17-185
17-17-5 Authority for development impact fees 17-185
17-17-6 Administration of development impact fees 17-186
17-17-7 Land use assumptions 17-187
17-17-8 Infrastructure improvements plan 17-187
17-17-9 Adoption and modification procedures 17-191
17-17-10 Timing for the renewal and updating of the infrastructure improvements plan and the land use assumptions 17-192
17-17-11 Collection of development impact fees 17-193
17-17-12 Development impact fee credits and credit agreements 17-195
17-17-13 Development agreements 17-200
17-17-14 Appeals 17-201
17-17-15 Refunds of development impact fees 17-202
17-17-16 Oversight of development impact fee program 17-203

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 17-17-8A.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 facilities, 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, veterinary offices, clinics, and urgent care facilities fall under this category instead of medical facilities. See ITE land use categories 700-799.

Paragraph 25 was amended by Ordinance 2017.029 to add clinics and urgent care facilities

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.

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, micro-hospitals, standalone emergency rooms, and similar uses as determined by the town engineer. See ITE land use categories 600-699.

Paragraph 37 was amended by Ordinance 2017.029 to add micro-hospitals and standalone emergency rooms and to delete urgent care facilities, clinics, and veterinary hospitals and clinics

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) (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, swimming 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 infrastructure 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 prior 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.

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 17-17-8A.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:

   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 utilities director, is capable of discharging sewage to a town public sewer.
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 non-residential 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 development 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 connection. 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 EDU's for the development.

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 assurances 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.

CHAPTER 17-18. WIRELESS COMMUNICATION FACILITIES

Chapter 17-18 was adopted by Ordinance 2018.002. For prior history, see former Marana Land Development Code Chapter 23 (Wireless Communication Facilities), adopted by Ordinance 97.27.

Sections:

17-18-1 Purpose 17-204
17-18-2 Definitions 17-205
17-18-3 Applicability; exemptions 17-208
17-18-4 Permits required; approval authority 17-209
17-18-5 Permit application 17-210
17-18-6 Development standards 17-212
17-18-7 Design and aesthetic standards 17-213
17-18-8 Public notice and hearing requirements 17-217
17-18-9 Required findings for approval 17-217
17-18-10 Standard conditions of approval 17-219
17-18-11 Notice of decision; appeals 17-221
17-18-12 Permit renewal 17-222
17-18-13 Permit revocation 17-222
17-18-14 Facility abandonment or discontinuation; relocation; removal 17-223
17-18-15 Transfers involving a wireless facility or permit 17-224
17-18-16 Limited exemption from standards 17-225
17-18-17 Independent consultant review 17-225
17-18-18 Obligation to comply with this chapter 17-226

17-18-1 Purpose

A. The purpose of this chapter is to reasonably regulate, to the extent permitted by state and federal law, the installation, operation, collocation, modification and removal of wireless facilities in the town in a manner that protects and promotes public health, safety and welfare, and balances the benefits that flow from robust wireless services with the unique and historic character, aesthetics, and local values of the town.

B. This chapter does not intend to, and shall not be interpreted or applied to:

1. Prohibit or effectively prohibit personal wireless services; or

2. Unreasonably discriminate among providers of functionally equivalent personal wireless services; or
3. Regulate the installation, operation, collocation, modification or removal of wireless facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or
4. Prohibit or effectively prohibit any collocation or modification that the town may not deny under state or federal law; or
5. Preempt any applicable state or federal law.

C. Wireless communication facilities located in the public right-of-way are subject to the requirements set forth in town code chapter 12-8 (wireless communication facilities in the right-of-way).

17-18-2 Definitions

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

A. "ACC" means the Arizona corporation commission or its successor agency.

B. "Antenna" means a device used to transmit and/or receive radio or electromagnetic waves. Examples include, but are not limited to, panel antennas, directional antennas, microwave dishes and whip (omni-directional) antennas.

C. "Approval authority" means the public body or official responsible for review of permit applications and vested with the authority to approve or deny them. The approval authority for a project which requires a conditional use permit refers to the planning commission, except that the approval authority refers to the council if the commission's decision is appealed to the council. The approval authority for a project which requires an administrative wireless facilities permit or for a project which qualifies as a section 6409(a) modification refers to the planning director.

D. "Array" means one or more antennas mounted at approximately the same level above ground on tower or base station.

E. "Base station" means the same as defined in 47 CFR § 1.40001(b)(1), as may be amended.

47 CFR § 1.40001(b)(1) defines "base station" as follows:
A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.
(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

F. "Collocation" means the same as defined in 47 CFR § 1.40001(b)(2), as may be amended.

47 CFR § 1.40001(b)(2) defines "collocation" as "The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."

G. "Distributed antenna system" or "DAS" means a network of one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.

H. "Eligible facilities request" means the same as defined in 47 CFR § 1.40001(b)(3), as may be amended.

47 CFR § 1.40001(b)(3) defines "eligible facilities request" as "Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment."

I. "Eligible support structure" means the same as defined in 47 CFR § 1.40001(b)(4), as may be amended.

47 CFR § 1.40001(b)(4) defines "eligible support structure" as "Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the state or local government under this section."

J. "Existing" means the same as defined in 47 CFR § 1.40001(b)(5), as may be amended.

47 CFR § 1.40001(b)(4) defines "existing" as "A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition."

K. "Facility" means an installation used to transmit signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities.

L. "FCC" means the federal communications commission, its designated representative, or its lawful successor.

M. "Monopole" means the same as defined in A.R.S. § 9-591 paragraph 13, as may be amended.

A.R.S. § 9-591 paragraph 13 provides: "Monopole" means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the

N. "OTARD antenna" means antennas covered by the "over-the-air reception devices" rule in 47 CFR §§ 1.4000 et seq., as may be amended.

O. "Personal wireless services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended.

47 U.S.C. § 332(c)(7)(C)(i) defines "personal wireless services" as "Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."

P. "Personal wireless service facilities" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended.

47 U.S.C. § 332(c)(7)(C)(ii) defines "personal wireless service facilities" as "Facilities for the provision of personal wireless services."

Q. "Radome" means a weatherproof enclosure, typically constructed from fiberglass or plastic material, that protects and conceals an antenna or antennas contained inside.

R. "RF" means radio frequency.

S. "Right-of-way" means the same as defined in A.R.S. § 9-591 paragraph 18, as may be amended.

A.R.S. § 9-591 paragraph 18 provides: "Right-of-way" means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement. Right-of-way does not include a federal interstate highway, a state highway or state route under the jurisdiction of the department of transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.

T. "Section 6409(a)" means section 6409(a) of the middle class tax relief and job creation act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

U. "Section 6409(a) modification" means any eligible facilities request that does not cause a substantial change and that is submitted for approval pursuant to section 6409(a) and the FCC's regulations at 47 CFR § 1.40001 et seq.

V. "Site" means the same as defined in 47 CFR § 1.40001(b)(6), as may be amended.

47 CFR § 1.40001(b)(6) defines "site" as "For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."

W. "Small wireless facility" means the same as defined in A.R.S. § 9-591 paragraph 19, as may be amended.

A.R.S. § 9-591 paragraph 19 provides: "Small wireless facility" means a wireless facility that meets both of the following qualifications: (a) All antennas are located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six cubic feet in volume. (b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume, or fifty cubic feet in volume if the equipment was ground mounted before August 9, 2017. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision: (i) An electric meter. (ii) Concealment elements. (iii) A telecommunications demarcation box. (iv) Grounding equipment. (v) A power transfer switch. (vi) A cutoff switch. (vii) Vertical cable runs for the connection of power and other services.

X. "Substantial change" means the same as defined in 47 CFR § 1.40001(b)(7), as may be amended.

47 CFR § 1.40001(b)(7) defines "substantial change" as follows:
(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
(iv) It entails any excavation or deployment outside the current site;
(v) It would defeat the concealment elements of the eligible support structure; or
(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in §1.40001(b)(7)(i) through (iv).

Y. "Tower" means the same as defined in 47 CFR § 1.40001(b)(9), as may be amended. Includes monopole and wireless support structure.

47 CFR § 1.40001(b)(9) defines "tower" as "Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the asso-

Z. "Transmission equipment" means the same as defined in 47 CFR § 1.40001(b)(8), as may be amended.

47 CFR § 1.40001(b)(8) defines "transmission equipment" as "Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul."

AA. "Utility pole" means the same as defined in A.R.S. § 9-591 paragraph 21, as may be amended.

A.R.S. § 9-591 paragraph 21 provides: "Utility pole" means a pole or similar structure that is used in whole or in part for communications services, electric distribution, lighting or traffic signals. Utility pole does not include a monopole.

BB. "Wireless" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

CC. "Wireless support structure" means the same as defined in A.R.S. § 9-591 paragraph 27, as may be amended.

A.R.S. § 9-591 paragraph 27 provides: "Wireless support structure": (a) Means: (i) A free-standing structure, such as a monopole. (ii) A tower, either guyed or self-supporting. (iii) A sign or billboard. (iv) Any other existing or proposed structure designed to support or capable of supporting small wireless facilities. (b) Does not include a utility pole.

17-18-3 Applicability; exemptions

A. This chapter applies to all new facilities and all modifications to existing facilities for which a permit is issued after the effective date of this chapter, unless the facility qualifies for an exemption.

B. Conflicts.

1. With respect to wireless communication facilities in the right-of-way, the provisions in town code chapter 12-8 shall apply in the event of a conflict with this chapter.

2. In all other situations, the provision included in this chapter shall apply where conflicts exist between this chapter and the remainder of the town code.

C. This chapter does not apply to the following:

1. Amateur radio facilities

2. OTARD antennas

3. Facilities owned and operated by the town for its use

17-18-4 Permits required; approval authority

A. Section 6409(a) permit. All section 6409(a) modifications are subject to review and approval or denial of a section 6409(a) permit by the planning director in accordance with this chapter. Section 6409(a) modifications do not require an administrative wireless facilities permit; provided, however that section 6409(a) modifications must comply with all prior conditions of approval related to concealment or reasonably related to public health and safety.

B. Exempt small wireless facilities in the right-of-way. Collocation of small wireless facilities within a right-of-way that are exempt from zoning pursuant to A.R.S. § 9-592 (I) or (J) do not require a conditional use permit or other zoning approval, but are subject to the requirements set forth in town code chapter 12-8.

C. Administrative wireless facilities permit. A new facility, collocation or modification to an existing facility is subject to the planning director's approval of an administrative wireless facilities permit, and not subject to a conditional use permit, when all the following criteria are met:

1. The proposed project is not a section 6409(a) modification

2. The proposed project qualifies as a design listed in section 17-18-6 A. 2 through 17-18-6 A. 3 below; specifically,

   a. A collocation on an existing base station outside the right-of-way,

   b. A collocation on a tower outside the right-of-way, or

   c. A collocation on an eligible support structure or utility pole in the right-of-way that is not exempt from zoning (see paragraph 17-18-4 B above).

3. The proposed project will not require any limited exemption pursuant to section 17-18-16 below.

D. Conditional use permit. Except as provided in paragraphs A through C of this section, any new facility or modification or collocation to an existing facility is subject to the approval of a conditional use permit pursuant to section 17-3-2 of this code.

17-18-5 Permit application

A. Each permit granted under this chapter requires an application.

B. Unless an exemption or waiver applies, each application submitted under this chapter must include the following:

1. Application fee. The applicable wireless facility application fee in an amount established by a fee schedule adopted by the council and amended from time to time.

2. Master application. A fully completed and executed master application on the form provided by the town for that purpose, as may be amended or updated from time-to-time. The master application must state what approval is being sought, i.e., conditional use permit, administrative wireless facilities permit, or section 6409(a) permit.

3. Required licenses or approvals. Evidence that the applicant has all current licenses and registrations from the FCC, the ACC, and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless communication services utilizing the proposed wireless communication facility.

4. Proof of property rights. Proof either that the applicant is the owner of the property where the facility is to be located, or that the applicant has the right to use the property for the facility, in the form of a lease or license agreement from the property owner. For wireless communication facilities in the right-of-way, the license need not be submitted with the application but shall be submitted no later than the applicant's submission of a building permit request.

5. Site development plans. Fully dimensioned site plan and elevation drawings prepared and sealed by an Arizona-licensed engineer or architect showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements. For new facilities, the plans shall also include, in plan and elevation views, a scaled depiction of the maximum permitted increase as authorized by section 6409(a) using the proposed project as a baseline.

6. Photo simulations. Photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from nearby public streets or other public viewpoints, together with a map that shows the photo location of each view angle.

7. RF exposure compliance report. A radio frequency report acceptable to the town prepared and certified by an RF engineer that certifies that the proposed facility and any collocated facilities will comply with applicable federal RF exposure standards and exposure limits as set forth in the code of federal regulations, including without limitation those set forth in 47 CFR §§ 1.1307(b), 1.1310, 2.1091, and 2.1093. The RF report must include all of the following:

    a. The actual frequency and power levels in watts effective radiated power (ERP) for all existing and proposed antennas at the site

    b. Exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit and the boundaries of areas with RF exposures in excess of the controlled/occupational limit, as these terms are defined by the FCC.

    c. Each project site boundary shall be clearly marked and identified for every transmitting antenna.

8. Alternative sites analysis.

    a. The applicant must provide a list of all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location.

    b. The applicant must also provide a written explanation as to why the alternatives considered were unacceptable or infeasible, unavailable, or not as consistent with the development standards in this chapter as the proposed location. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable, or not as consistent with the development standards in this chapter as the proposed location.

    c. If an existing facility is listed among the alternatives, the applicant must specifically address why the modification of that wireless communication facility is not a viable option.

9. Noise study. A noise study prepared and certified by an engineer for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compatibility with existing nearby land uses and compliance with any applicable noise regulations. The noise study must also include an analysis of the manufac-

turers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

10. Deposit. A cash or other sufficient deposit tendered by the applicant to the town for any third party peer review determined by the planning director to be necessary to ensure compliance with the requirements of this chapter.

C. The planning director is authorized and directed to develop permit applications and other materials specific for wireless facilities, make them publicly available, and update and amend them as the planning director deems appropriate.

D. Applications for a section 6409(a) permit are exempt from the requirement for an alternative sites analysis (subparagraph 17-18-5 B. 8 above).

E. The planning director may waive a specific application requirement for a specific project only when all of the following are true:

1. The applicant attends a pre-submittal consultation meeting for the project
2. The planning director finds that compliance with the specific application requirement would create an unnecessary or unreasonable burden on the applicant
3. The planning director memorializes the waiver and grounds for it in writing.

17-18-6 Development standards

A. Preferred siting. All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities with designs according to the following preferences, ordered from most preferred to least preferred:

1. Collocations on existing base stations outside the right-of-way
2. Collocations on towers outside the right-of-way
3. Collocations on eligible support structures and utility poles in the right-of-way that are not exempt from zoning (see paragraph 17-18-4 B above)
4. New building-mounted facilities outside the right-of-way
5. New towers outside the right-of-way
6. New eligible support structures and utility poles in the right-of-way that are not exempt from zoning (see paragraph 17-18-4 B above).

B. Preferred locations. All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities in non-residential zones.

1. Non-residential preferences. Non-residential preferences are as follows, ordered from most preferred to least preferred:
    a. Town-owned or -controlled parcels, not including right-of-way
    b. Parcels in industrial zones
    c. Parcels in commercial zones
    d. Right-of-way in non-residential areas
2. Residential preferences. If an applicant seeks to site wireless facilities in a residential zone, the applicant should, to the extent feasible, propose new facilities and substantial changes to existing facilities in residential zones according to the following preferences, ordered from most preferred to least preferred:
    a. In the right-of-way abutting a residential zone
    b. Town-owned or -controlled parcels
    c. Parcels that contain approved non-residential conditional uses and do not contain approved residential uses
    d. Parcels that contain approved non-residential conditional uses and do contain approved residential uses
    e. Parcels that do not contain single-family residences
    f. All other parcels.
3. Additional alternative sites analysis. If an applicant proposes to locate a new facility or substantial change to an existing facility on a parcel that contains a single-family residence, the applicant shall provide an additional alternative sites analysis that at a minimum shall include a meaningful comparative analysis of all the alternative sites in the more preferred locations that the applicant considered, and states the underlying factual basis for concluding why each alternative in a more preferred location was:
    a. Technically infeasible;
    b. Not available; and/or
    c. More intrusive.

17-18-7 Design and aesthetic standards

A. General design and aesthetic standards. All facilities must conform to the following standards.
    1. Concealment.
        a. All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design.

b. All ground-mounted equipment must be completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:

i. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse or dumpster corral

ii. Within a new structure designed to integrate with or mimic the adjacent existing structure

iii. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (i) or (ii) exists.

2. Height.

a. General. All new facilities and substantial changes to existing facilities must not exceed the applicable zone height limit, provided, however, that the approval authority may approve height extensions of not more than eight feet above the applicable zone height limit when the proposed site is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any towers or utility poles.

b. Right-of-way. New facilities and substantial changes to existing facilities in the right-of-way must conform to the height limitations set forth in chapter 12-8 of this code.

3. Setbacks.

a. General. All facilities must comply with all applicable setback requirements of the zone where the facility is located.

b. Right-of-way. Facilities in the right-of-way shall conform to the clearance and location limitations set forth in chapter 12-8 of this code.

4. Collocation. Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.

5. Fences. The town will not approve any barbed wire, razor wire, or electrified fences associated with a proposed facility.

6. Landscaping. In addition to any landscaping required by the town for concealment or screening purposes, the applicant shall propose, install and maintain additional landscaping to replace any existing landscaping displaced during the construction or installation of the applicant's facility on private property or in the right-of-way. The applicant's landscaping plan shall be subject to the town's approval.

7. Backup or standby power sources and generators. The town may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility

cannot feasibly achieve its power needs with batteries, fuel cells, or other similarly non-polluting, low noise-level means.

8. Lights. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install lights that comply with the town-adopted outdoor lighting code. Lighting must avoid illumination impacts to adjacent properties to the maximum extent feasible. The town may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the town to the maximum extent feasible.

9. Noise. All transmission equipment and other equipment, including without limitation air conditioners and sump pumps, associated with the facility must not emit sound that exceeds the applicable noise limits established by the town.

10. Signage and advertising. No facility may display any signage or advertisements unless expressly allowed by the town in a written approval, recommended under FCC regulations, or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.

11. Code compliance. Applicant shall design and maintain all facilities in compliance with all applicable federal, state and local laws, codes, regulations, ordinances or other rules.

B. Tower-mounted facilities. In addition to the general standards set forth in paragraph A of this section, all tower-mounted facilities must conform to the following standards.

1. General design preferences. All applicants should, to the extent feasible and appropriate for the proposed location, design new towers according to the following preferences, ordered from most preferred to least preferred:

   a. Faux architectural features, include, but are not limited to, bell towers, clock towers, lighthouses, obelisks, and water tanks

   b. Faux cactus

   c. Monopalms.

2. Most disfavored designs. The town may not approve any designs that do not conceal the antennas within a radome or other concealment device without a limited exemption pursuant to this chapter.

3. Tower-mounted equipment. All tower-mounted equipment must be mounted as close to the vertical support structure as

possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment, including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes, directly behind the antennas to the maximum extent feasible.

4. Ground-mounted equipment. Notwithstanding subparagraph 17-18-7 A. 1. b above, applicants must conceal ground-mounted equipment associated with tower-mounted facilities with opaque fences or other opaque enclosures. The town may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.

5. Concealment standards for faux trees and cacti. All permits for faux tree and cactus facilities approved under this chapter are subject to the following required conditions of approval:

   a. The canopy must completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least 18 inches;

   b. The canopy must be naturally tapered to mimic the particular tree or cactus species;

   c. All tower-mounted equipment, including all antennas, equipment cabinets, cables, mounts, and brackets, must be painted flat natural colors to mimic the particular tree or cactus species;

   d. For faux trees, all antennas and other tower-mounted equipment cabinets must be covered to blend in with the faux foliage; and

   e. For faux trees, the entire vertical structure must be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.

C. Building- or façade-mounted facilities. In addition to the general standards set forth in paragraph A above, all building- or façade-mounted facilities must conform to the following standards.

1. General design preferences. All applicants should, to the extent feasible, propose new non-tower facilities according to the following preferences, ordered from most preferred to least preferred:

   a. Completely concealed and architecturally integrated façade- or rooftop-mounted base stations with no visible impacts from any publicly accessible areas at ground level, including, but not limited to, antennas behind existing parapet walls or façades replaced with RF-transparent material and finished to mimic the replaced materials

b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions, including, but not limited to, cupolas, steeples, chimneys, and water tanks.

2. Façade-mounted equipment. Applicants must conceal all façade-mounted transmission equipment behind screen walls as flush to the façade as practicable. The town may not approve any "pop-out" screen boxes unless the design is architecturally consistent with the original support structure. The town may not approve any exposed façade-mounted antennas, which includes exposed antennas painted to match the façade.

3. Rooftop-mounted equipment. The town may approve unscreened rooftop transmission equipment only when it expressly includes a condition of approval that the equipment is effectively concealed due to its low height and setback from the roofline.

4. Ground-mounted equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s), including, but not limited to, dumpster corrals and other accessory structures.

D. Facilities in the right-of-way. Facilities in the right-of-way must conform to the requirements of chapter 12-8 (wireless communication facilities in the right-of-way) of this code.

17-18-8 Public notice and hearing requirements

A. Before the planning commission may grant any conditional use permit under this chapter, the planning commission shall conduct a noticed public hearing as provided in section 17-3-2 of this code.

B. Before the planning director may grant any administrative wireless facilities permit or approve any application for a section 6409(a) modification under this chapter, notice of the application shall be posted on the project site. The notice shall include a general explanation of the proposed facility, modification, or collocation, and a general description, in text or by diagram, of the location of the real property that is the subject of the application. For a section 6409(a) modification, the notice shall also state: "Federal law may require approval for this application. Further, Federal Communications Commission regulations may deem this application granted by the operation of law unless the town approves or denies the application, or the town and applicant reach a mutual tolling agreement."

17-18-9 Required findings for approval

A. Conditional use permit. The planning commission may grant a conditional use permit for a new wireless facility or a substantial change

to an existing wireless facility only when the planning commission makes all the findings required by section 17-3-2 of this code, as well as the following additional findings.

1. The proposed use is deemed essential or desirable to the public convenience or welfare.
2. The total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided.
3. The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location of parking areas, landscaping and other features is compatible with the character of the area.
4. The applicant demonstrated that it proposed the least intrusive means to achieve its technical objectives.

B. Administrative wireless facilities permit. The planning director may grant an administrative wireless facilities permit for a new wireless facility or a substantial change to an existing wireless facility when the planning director finds all of the following:

1. The proposed design qualifies as a design subject to administrative approval as set forth in this chapter.
2. The proposed location qualifies as a location subject to administrative approval as set forth in this chapter.
3. The proposal conforms to all applicable design standards set forth in this this chapter.
4. The proposed project will not require any exemption pursuant to section 17-18-16 of this chapter.

C. Section 6409(a) permit.

1. Findings for approval. The planning director may approve a section 6409(a) modification when the planning director finds that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change.
2. Grounds for denial. In addition to any other alternative recourse permitted under federal law, the planning director may deny a section 6409(a) permit when the planning director finds that the proposed collocation or modification:
   a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
   b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification; or
   c. Involves the replacement of the entire support structure; or

d. Does not qualify for mandatory approval under section 6409(a) for any lawful reason.

3. Any denial of a section 6409(a) permit application shall be without prejudice to the applicant, the real property owner, or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for a conditional use permit, an administrative wireless facilities permit, or a section 6409(a) permit as appropriate.

17-18-10 Standard conditions of approval

The following standard conditions of approval apply to all permits issued under this chapter, except as otherwise provided in this chapter.

A. Permit term. Any validly issued conditional use permit or administrative wireless facilities permit for a wireless facility will automatically expire at 12:01 a.m. local time exactly ten years and one day from the issuance date.

B. Code compliance. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules.

C. Inspections; emergencies. The town or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The town reserves the right to enter or to direct its designee to enter the facility and support, repair, disable or remove any elements of the facility in emergencies, or when the facility threatens imminent harm to persons or property.

D. Contact information for responsible parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the planning department upon permittee's receipt of the planning department's written request, except in an emergency as determined by the town, when all contact information for responsible parties shall be immediately provided to the planning director upon verbal request.

E. Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the facility is located shall defend, indemnify and hold harmless the town, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings brought against the town or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void, or annul the town's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, lawsuits, or causes of action and other actions or

proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. If the town becomes aware of any such actions or claims, the town shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the town's defense, and the property owner and/or permittee (as applicable) shall reimburse the town for any costs and expenses directly and necessarily incurred by the town in the course of the defense.

F. Interference with public safety radio services. If the town finds reason to believe that permittee's radio communications operations are causing interference with the town's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the town to either rule-out permittee as the interference source or eliminate the interference. Cooperation with the town may include, but shall not be limited to, temporarily switching the transmission equipment on and off for intermittent testing.

G. Adverse impacts on adjacent properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.

H. General maintenance. The site and the facility, including, but not limited to, all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

I. Graffiti removal. All graffiti on facilities must be removed at the sole expense of the permittee in accordance with chapter 11-3 of this code.

J. RF exposure compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

K. Optional completion time limit. As a condition of approval, the approval authority may establish a reasonable time limit for completion of the approved facility.

L. Section 6409(a) modifications. In addition to all applicable standard conditions of approval required under this section, any section 6409(a) permit granted by the planning director or deemed granted by the operation of law includes the following conditions of approval:

1. No permit term extension. The town's grant or grant by operation of law of a section 6409(a) permit constitutes a federally-

mandated modification to the underlying permit or approval for the subject tower or base station. The town's grant or grant by operation of law of a section 6409(a) permit will not extend the permit term for any conditional use permit, administrative wireless facilities permit, or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

2. Accelerated permit terms due to invalidation. If any court of competent jurisdiction invalidates any portion of section 6409(a) or any FCC rule that interprets section 6409(a) such that federal law would not mandate approval for any section 6409(a) modification, the permit or permits issued in connection with a section 6409(a) modification(s) shall automatically expire one year from the effective date of the judicial order. A permittee shall be required to remove its improvements approved under the invalidated section 6409(a) permit unless it has submitted an application for either a conditional use permit or an administrative wireless facilities permit for those improvements before the one-year period ends. The planning director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.

3. No waiver of standing. The town's grant or grant by operation of law of a section 6409(a) modification does not waive, and shall not be construed to waive, any standing by the town to challenge section 6409(a), any FCC rules that interpret section 6409(a), or any section 6409(a) modification.

17-18-11 Notice of decision; appeals

A. Within five working days after final decision by the approval authority on an application submitted for approval pursuant to this chapter, notice of the decision shall be mailed to the applicant at the address shown on the master application. The town shall provide the reasons for any denial either in the written decision or in some other written record available at the same time as the denial.

B. Any person or entity may appeal a final decision by the planning commission on a conditional use permit application to the council in accordance with section 17-3-2 of this code. The council shall review the decision of the planning commission *de novo*.

C. Any person or entity may appeal a final decision by the planning director on an administrative wireless facilities permit application to the council in accordance with this paragraph. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee in an amount established by a fee schedule adopted by the council and amended from time to time at the time the appeal is filed. The council shall review the decision of the planning director *de novo* solely on the specific issues raised by the appellant.

D. Subject to applicable federal timeframes for local review, any person or entity may file a written appeal to the council to reverse the planning director's final decision to approve or deny without prejudice a section 6409(a) permit application. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee in an amount established by a fee schedule adopted by the council and amended from time to time at the time the appeal is filed. The council shall review the decision of the planning director *de novo*.

17-18-12 Permit renewal

A. Any application to renew any conditional use permit or administrative wireless facilities permit granted under this chapter must be tendered to the town between 365 days and 180 days prior to the expiration of the current permit, and shall be accompanied by all required application materials, fees and deposits for a new application as then in effect.

B. The town shall review an application for permit renewal in accordance with the standards for new facilities as then in effect.

C. If an applicant timely submits a permit renewal application and the town is unable to fully review the application prior to its expiration, the planning director shall grant a written temporary extension on the permit term to allow sufficient time to review the application.

17-18-13 Permit revocation

A. A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition, or law applicable to the facility.

B. When the planning director finds reason to believe that grounds for permit revocation exist, the planning director shall send written notice by certified U.S. mail, return receipt requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice to cure the noncompliance or show that no noncompliance ever occurred.

C. If the permittee fails to cure any noncompliance after notice and opportunity to dispute or cure the noncompliance, the council shall conduct a noticed public hearing to determine whether to revoke the permit. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the council. After the noticed public hearing, the council may deny the revocation or revoke the permit when it finds that the permittee had notice of the noncompliance and a reasonable opportunity to cure the noncompliance, but failed to comply with any enforceable permit, permit condition, or law applicable to the facility. Written notice of the council's determination and the reasons for it shall be dispatched by certified U.S. mail, return receipt requested, to the permittee's last known address.

D. Upon revocation, the council may take any legally permissible action or combination of actions necessary to protect public health, safety and welfare.

17-18-14 Facility abandonment or discontinuation; relocation; removal

A. To promote the public health, safety and welfare, the planning director may declare a facility abandoned or discontinued when:

1. The permittee notifies the planning director that it abandoned or discontinued the use of a facility for a continuous period of 90 days; or

2. The permittee fails to respond within 30 days to a written notice sent by certified U.S. mail, return receipt requested, from the planning director that states the basis for the planning director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or

3. The permit expires and the permittee has failed to file a timely application for renewal.

B. After the planning director declares a facility abandoned or discontinued, the permittee shall have 90 days from the date of the declaration, or a longer time as the planning director may approve in writing as reasonably necessary, to:

1. Reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval; or

2. Transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or

3. Remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.

C. If the permittee fails to act as required in paragraph B of this section within the prescribed time period, the council may deem the facility abandoned at a noticed public meeting. The planning director shall send written notice by certified U.S. mail, return receipt requested, to the last-known permittee or real property owner that provides 30 days (or longer time as the planning director may approve in writing as reasonably necessary) from the notice date to take any of the actions listed in subparagraphs B.1 through B.3 of this section.

D. If the permittee fails to act as required in paragraph C of this section within the prescribed time period, the town may remove the abandoned facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding

area, and repair any and all damages that occurred in connection with such removal and restoration work.

1. The town may, but shall not be obligated to, store the removed facility or any part of it, and may use, sell or otherwise dispose of it in any manner the town deems appropriate.
2. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the town in connection with its removal, restoration, repair and storage, and shall promptly reimburse the town upon receipt of a written demand, including any interest on the balance owing at the maximum lawful rate.
3. The town may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest.
4. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs for removal, restoration, repair and storage. The town shall cause the lien to be recorded with the recorder's office of the county where the facility is located. Within 60 days after the lien amount is fully satisfied including costs and interest, the town shall cause the lien to be released.

E. After a permittee fails to comply with any provision in this section, the council may elect to treat the facility as a nuisance to be abated as provided by applicable law.

17-18-15 Transfers involving a wireless facility or permit

A. Within 30 days after a permittee transfers any interest in the facility or permit(s) in connection with the facility, the permittee shall deliver written notice to the town.

B. The written notice required in this section must include all of the following:

1. The transferee's legal name
2. The transferee's full contact information, including a primary contact person, mailing address, telephone number and email address
3. A statement signed by the transferee that the transferee shall accept of all permit terms and conditions.

C. Failure to submit the notice required by this section shall be a cause for the town to revoke the applicable permits pursuant to and following the procedure set out in this chapter.

17-18-16 Limited exemption from standards

A. An applicant seeking an exemption under this section for personal wireless services facilities on the basis that a permit denial would effectively prohibit personal wireless services must demonstrate to the approval authority with clear and convincing evidence all of the following:

1. A significant gap in the applicant's service coverage exists.
2. All alternative sites identified in the application review process are either technically infeasible or not potentially available.

B. All exemptions granted under this section are subject to review and reconsideration by the council. The applicant always bears the burden to demonstrate why an exemption should be granted.

17-18-17 Independent consultant review

A. The planning director is authorized to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the planning director in connection with any permit application.

B. The planning director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:

1. Permit application completeness or accuracy;
2. Planned compliance with applicable RF exposure standards;
3. Whether technically feasible and potentially available alternative locations and designs exist;
4. The applicability, reliability and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
5. Any other issue that requires expert or specialized knowledge identified by the planning director.

C. The applicant must pay for the cost of independent consultant review and for the consultant's testimony in any hearing as requested by the planning director, and must provide a reasonable advance deposit of the estimated cost of such review with the town prior to the commencement of any work by the consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the planning director. Where the advance deposit is insufficient to pay for the cost of such review and/or testimony, the planning director shall invoice the applicant and the applicant shall pay the invoice in full within ten calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee, provided any required deposit, or paid any invoice as required in the code.

17-18-18 Obligation to comply with this chapter

An applicant or permittee shall not be relieved of its obligation to comply with every provision of the code, this chapter, any permit issued hereunder, or any applicable law or regulation by reason of any failure of the town to notice, enforce, or request compliance by the applicant or permittee.

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 subparagraph 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
2015.020	12-1-2015	7-1-2015	Added new section 14-6-4 (bill adjustment for excessive water leak)
2015.021	12-15-2015	1-15-2016	Added chapters 17-1, 17-2, 17-3, 17-5, 17-6, 17-15, and 17-16
2016.005	5-17-2016	6-17-2016	Repealed chapter 12-8 (formerly "solicitation of employment, business or contributions from occupants of vehicles traveling on town streets or highways")
2016.009	6-28-2016	6-28-2016	Amended section 7-5-1 (sewage disposal)

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2016.010	6-28-2016	7-29-2016	Amended section 9-4-9 (massage establishment license application; separate license; husband and wife; additional requirements), paragraph 21
2016.015	8-2-2016	9-2-2016	Amended title 17 (land development), chapter 17-5 (subdivisions), section 17-5-2 (procedure)
2016.017	9-6-2016	9-6-2016	Amended the definitions of fire chief and fire department in section 1-3-2 (definitions and interpretation)
2016.019	9-6-2016	9-6-2016	Amended title 10 (health and sanitation), sections 10-2-6 (Appeal) and 10-2-7 (removal by town; costs assessed; appeal; recording of assessment) by replacing "council" with "board of adjustment"
2017.001	1-3-2017	2-3-2017	Amended title 10 (health and sanitation), section 10-6-6 (application review) subparagraph J (insurance) and section 10-6-8 (grounds for denial) revising subparagraph E and adding subparagraphs H through L
2017.003	1-3-2017	2-3-2017	Added subparagraph 17-15-2 (A)(3) for subdivisions with ten or fewer lots
2017.006	3-21-2017	4-20-2017	Revised title 13 (parks & recreation) by amending section 13-1-3 (use and occupancy rules and regulations) subparagraph 12 and adding section 13-1-4 (model aircraft operation; definition; prohibitions; exceptions)
2017.011	5-16-2017	7-1-2017	Comprehensively revised title 6 (animal control)
2017.015	6-20-2017	7-21-2017	Comprehensively revised title 15 (Marana regional airport)
2017.022	11-7-2017	12-8-2017	Comprehensively revised chapter 3-4 (procurement)
2017.025	12-5-2017	1-5-2018	Revised title 6 (animal control) by amending section 6-3-7 (now license fees; rebate; penalty fees)
2017.027	12-5-2017	1-5-2018	Revised title 17 (land development) by amending section 17-1-4 (definitions) to add a definition of micro-hospital
2017.029	12-19-2017	1-19-2018	Revised title 15 (land development) by amending chapter 17 (development impact fee ordinance) to modify the definitions of general office land use category and medical facilities land use category in section 17-17-3 (definitions)
2018.002	1-16-2018	2-16-2018	Revised title 12 (traffic and highways) by adding a new chapter 12-8 (wireless communication facilities in the right-of-way); and revised title 12 (land development) by adding chapter 17-18 (wireless communication facilities)
2018.003	2-6-2018	3-9-2018	Revised title 10 (health and sanitation) by revising the definition of "refuse" in section 10-2-1 (definitions)
2018.004	2-6-2018	3-9-2018	Revised title 6 (animal control) by renaming chapter 6-5 (now animal waste removal); revising sections 6-1-1 (definitions), 6-2-2 (appointment of animal control officers; authority), 6-2-4 (commencement of action), 6-2-6 (enforcement; continuing violations), 6-3-4 (license required; classification), 6-3-5 (vaccination certificate prerequisite to license), 6-3-9 (now transfer of license; classification), 6-3-13 (counterfeiting or transferring of tags prohibited; classification), 6-5-1 (now animal waste removal; exceptions; classification), 6-7-1 (keeping vicious or destructive animals prohibited; exceptions; classification), 6-7-2

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
			(now prohibited acts; classification; defenses; findings and orders), 6-7-4 (quarantine of biting animals; reporting; handling and destruction; exception; classification), and 6-8-3 (now impoundment of animals subject to cruelty and neglect and vicious or destructive animals; evaluation); and adding new sections 6-7-5 (evaluation of animals) and 6-7-6 (duty to report animal's status; effect)
2018.007	3-20-2018	4-20-2018	Revised title 12 (traffic and highways) by revising sections 12-7-5 (now permit process; grounds for denial); 12-7-8 (construction requirements), and 12-7-9 (now additional requirements for specified asphalt pavements)
2018.008	3-20-2018	4-20-2018	Revised title 12 (traffic and highways) by adding a new chapter 12-9 (overdimensional vehicles) and renumbering the following chapter (now 12-10, other penalties) to conform
2018.010	4-4-2018	5-4-2018	Adopted chapter 17-4 (zoning), including only the downtown and mixed-use zones
2018.013	6-19-2018	6-19-2018	Amended title 13 (parks & recreation) by amending section 13-1-4 (model aircraft operation; definition; prohibitions; exceptions)
2018.016	9-4-2018	10-5-2018	Amended title 6 (animal control) by amending section 6-2-2 (appointment of animal control officers; authority) and section 6-4-1 (dogs at large prohibited; exceptions; classification)
2018.019	10-16-2018	11-16-2018	Rewrote section 17-6-4 (height of buildings and structures)
2018.022	12-4-2018	1-4-2019	Revised title 14 (utilities) chapter 14-4 (construction and financing of utility facilities) to modify the "oversizing recovery charge" provision of section 4-4-3 (capacity requirements) and to add new sections 14-4-4 (refund of cost of facilities funded and installed by the town) and 14-4-5 (notice of protected facility and associated charge)
N/A	N/A	1-15-2019	Town attorney's scrivener's error correction of the first line of section 14-4-4 to add the word "is"
2019.001	1-15-2019	2-15-2019	Amended title 9 (business regulations) by adding new chapter 9-12 (commercial filming and photography permits)
2019.002	1-15-2019	2-15-2019	Amended title 15 (Marana regional airport) chapter 15-2 (general use of airport) by revising section 15-2-20 (commercial photography or filming)
N/A	N/A	1-19-2019	Town attorney's scrivener's error correction of section 9-12-10 (road closures), paragraph B
2019.004	2-5-2019	3-8-2019	Amended title 17 (land development) to add chapter 17-10 (signs)
2019.005	2-5-2019	3-8-2019	Amended title 6 (animal control) chapter 6-8 (removal, impoundment, forfeiture and disposition of animals) by revising section 6-8-6 (hearing; rules of hearing; remedies; testimony of defendant; appeal; costs) to reduce time for appeal, and revising section 6-8-7 (findings after court hearing) to eliminate tattooing as an option the town magistrate can order

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2019.008	3-19-2019	3-19-2019	Amended section 12-5-3 (return of impounded vehicle) paragraph A by deleting a sentence about vehicle storage on town property
2019.011	4-16-2019	5-17-2019	Amended title 7 (building) chapter 7-1 (building codes), section 7-1-2 (building codes adopted) by updating and revising the list of code documents incorporated by reference, and section 7-1-6 (administrative appeal process) by changing the appeal body from the board of appeals to the board of adjustment
2019.012	6-4-2019	7-5-2019	Amended title 9 (business regulations) by adding new chapter 9-1 (general provisions); renumbering and replacing chapter 9-2 (business licenses), renumbering and replacing chapter 9-3 (formerly peddlers, solicitors and transient merchants; now peddlers); renumbering and replacing chapter 9-4 (swap meets); renumbering chapter 9-5 (massage establishments) and making minor revisions to sections 9-5-3 (duties of license inspector; appeals) and 9-5-24 (licenses; cumulative regulation); renumbering chapter 9-6 (clothing and conduct for qualified establishments); renumbering chapter 9-7 (liquor licenses) and amending sections 9-7-5 (license application), 9-7-6 (issuance of license; denial; annual renewal required), and 9-7-9 (expiration of license), and adding new section 9-7-17 (additional reporting requirements); renumbering chapter 9-9 (cable television); deleting former chapter 9-9 (penalty); amending chapter 9-10 (surface mining and land reclamation) by revising section 9-10-6 (fees); and adding chapter 9-13 (mobile food vendors)
2019.013	6-18-2019	7-19-2019	Repealed and replaced former chapter 9-9 (cable television) with new chapter 9-9 (video service)
N/A	N/A	7-26-2019	Town attorney's scrivener's error correction of section 9-1-5 paragraph A
2019.016	8-6-2019	8-6-2019	Amended title 9 (business regulations) by modifying section 9-1-2 (definitions) to delete short-term rentals for a period of 29 days or less from the definition of "residential real property rental" and to add a definition for vacation rental or short-term rental; added section 9-2-4 (vacation rental or short-term rental contact information) and renumbered the remaining sections in chapter 9-2 to conform; modified section 9-3-3 (exemptions) to add an exemption for soliciting orders for goods or services; and modifying section 9-13-5 (additional application requirements) to delete a requirement to provide a copy of the state-issued mobile food unit license
2019.018	8-6-2019	9-6-2019	Amended title 17 (land development) to add chapter 17-9 (parking)
2019.022	10-15-2019	11-15-2019	Amended section 17-6-14 (medical marijuana dispensary) to add new paragraphs G and H
2019.024	12-17-2019	1-17-2020	Amended subparagraph (C)(7) of section 17-6-14 (medical marijuana dispensary) to expand the permissible operating hours to 10 p.m.

ORDINANCE	ADOPTED	EFFECTIVE	DESCRIPTION
2020.004	1-21-2020	2-21-2020	Amended paragraph A of section 2-2-1 (primary election…) to set the primary election on the first Tuesday in August of even-numbered years; and amended section 2-2-7 (initiative and referendum) to clarify the number of signatures needed