CITY CODE

OF THE

CITY OF BENSON, ARIZONA

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CHAPTER 1 GENERAL

ARTICLE 1-1 HOW CODE DESIGNATED AND CITED

The ordinances embraced in the following chapters and sections shall constitute and be designated "The Code of the City of Benson, Arizona," and may be so cited. Such code may also be cited as the "Benson City Code".

ARTICLE 1-2 CONSTRUCTION OF ORDINANCES

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

ARTICLE 1-3 DEFINITIONS

1-3-1 General Rule Regarding Definitions
1-3-2 Specific Definitions

Section 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. Technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

Section 1-3-2 Specific Definitions

Unless the context otherwise requires, the following definitions shall apply:

A. Acts by Agents. When an act is required to be done which may by law as well be done by an agent as by the principal, such requirements shall be construed to include all such acts when done by an authorized agent.

B. And, Or. "And" may be read "or," and "or" may be read "and," if the sense requires it.

C. City. Whenever the word "city" is used, it shall mean the City of Benson, Arizona.

D. Code. The City Code of the City of Benson, unless the context indicates otherwise.

E. Council. The city council of the City of Benson.

F. County. Cochise County, Arizona unless the context clearly requires otherwise.

G. Day. The period of time between any midnight and the midnight following.

H. Daytime, Nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

I. Department, Board, Commission, Office, Officer or Employee. Whenever any "department, board, commission, office, officer or employee" is referred to, it shall mean a department, board, commission, office, officer or employee of the city unless the context requires otherwise.

J. Gender: Singular and Plural. Words of the masculine gender include the feminine; words in the singular include the plural and words in the plural include the singular.

K. Joint Authority. All words purporting to give a joint authority to three or more city officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be expressly otherwise declared in the law giving the authority.

L. Keeper, Proprietor. Includes persons, firms, associations, corporations, clubs and partnerships, whether acting by themselves or through an agent, servant or employee.

M. Manager. The word "manager" shall mean the city manager of the City of Benson, unless the context clearly indicates otherwise.

N. Month. A calendar month.

O. Oath. "Oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath. In such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed".

P. Owner. The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of part of such building or land.

Q. Person. Includes a corporation, company, partnership, association or society as well as a natural person.

R. Personal Property. Every species of property, except real property as defined in this section.

S. Preceding, Following. Next before and next after, respectively.

T. Property. Includes lands, tenements and hereditaments and personal property.

U. Public Place. Any thoroughfare, park, open space or building not privately owned or controlled.

V. Real Property. Lands, tenements and hereditaments.

W. Shall, May. "Shall" is mandatory and "may" is permissive.

X. Shall Have Been. Includes past and future tenses.

Y. Sidewalk. “Sidewalk” means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

Z. Signature or Subscription by Mark. "Signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

AA. State. The State of Arizona unless the context clearly requires otherwise.

BB. Street. “Street” means any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and the approaches thereto within the city.

CC. Tenant or Occupant. The word "tenant" or "occupant" applied to a building or land shall include any person holding a written or an oral lease of, or who occupies the whole or part of, such building or land, either alone or with others.

DD. Tenses. The present tense includes the past and future tenses, and the future includes the present.

EE. Time: Computation. 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. When such time is expressed in hours, the whole of Saturday, Sunday or a holiday, from midnight to midnight, shall be excluded.

FF. Time: Reasonable. In all cases where any section of this code shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty or compliance with such notice.

GG. Week. A week consists of seven consecutive days.

HH. Writing. Any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language unless expressly provided otherwise.

II. Year. A calendar year unless otherwise provided.

ARTICLE 1-4 REFERENCE TO CHAPTERS, ARTICLES OR SECTIONS: CONFLICTING PROVISIONS

1-4-1 Additional Rules of Construction
1-4-2 References to this Code
1-4-3 Conflicting Provisions

GENERAL

Section 1-4-1 Additional Rules of Construction

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

Section 1-4-2 References to this Code

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

Section 1-4-3 Conflicting Provisions

A. If the provisions of different chapters of this code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.

B. If conflicting provisions are found in different sections of the same chapter, the provisions of the section that is last in numerical order shall prevail unless such construction is inconsistent with the meaning of such chapter.

ARTICLE 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.

ARTICLE 1-6 EFFECT OF REPEAL

When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

ARTICLE 1-7 SEVERABILITY OF PARTS OF CODE

It is hereby declared to be the intention of the council that 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, such unconstitutionality shall not affect any of the remaining provisions of the code.

GENERAL

ARTICLE 1-8 PENALTY

A. Any person found guilty of violating any provisions of this code, except as otherwise provided in this code, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

B. Any violation of or failure or refusal to do or perform any act required by Chapter 12 of this code constitutes a civil traffic violation. Civil traffic violations are subject to the provisions of A.R.S. Title 28, Chapter 4 and amendments thereto.

ARTICLE 1-9 REPEAL OF EXISTING ORDINANCES

1-9-1 Effective Date of Repeal
1-9-2 Ordinances Exempt from Repeal

Section 1-9-1 Effective Date of Repeal

All ordinances of the City of Benson except those specially exempted in this article, now in force and effect are hereby repealed effective at twelve o'clock noon on the 18th day of December, 2002, but all rights, duties and obligations created by said ordinances shall continue and exist in all respects as if this code had not been adopted and enacted.

Section 1-9-2 Ordinances Exempt from Repeal

The adoption and enactment of this code shall not be construed to repeal or in any way to affect or modify:

A. Any special ordinance or ordinances regarding franchises, annexations, dedications or zoning.

B. Any ordinance making an appropriation.

C. Any ordinance affecting any bond issue or by which any bond issue may have been authorized.

D. The running of the statute of limitations in force at the time this code becomes effective.

E. The continued existence and operation of any department, agency, commission or office heretofore legally established or held.

F. Any bond of any public officer.

G. Any taxes, fees, assessments or other charges incurred or imposed.

H. Any ordinances authorizing, ratifying, confirming, approving or accepting any compact or contract with any other municipality, the State of Arizona, or any county or subdivision thereof, or with the United States or any agency or instrumentality thereof.

ARTICLE 1-10 EFFECTIVE DATE OF CODE

Each section of this code as herein contained and hereby enacted shall take effect and be in force on and after twelve o'clock noon on the 18th day of December, 2002, except that where a later effective date is provided it shall prevail.

CHAPTER 2 MAYOR AND COUNCIL

ARTICLE 2-1 COUNCIL [1]

2-1-1 Elected Officers
2-1-2 Corporate Powers
2-1-3 Duties of Mayor, Vice Mayor and Council
2-1-4 Vacancies in Council
2-1-5 Compensation
2-1-6 Oath of Office
2-1-7 Bond
2-1-8 Financial Disclosure Statements

Section 2-1-1 Elected Officers

The elected officers of the city shall be a Mayor, directly elected by the people pursuant to Article 2-3 of this code, and six councilmembers, one of whom shall be designated as the vice mayor in accordance with Section 2-2-1. The mayor, vice mayor and the other five councilmembers shall constitute the council and shall continue in office until assumption of duties of office by their duly elected successors. The regular term of office for the Mayor shall be two (2) years and the regular term of office for the other six councilmembers shall be four (4) years.

Section 2-1-2 Corporate Powers

The corporate powers of the city 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.

Section 2-1-3 Duties of Mayor, Vice Mayor and Council

The mayor, vice mayor and council shall meet regularly to carry on the business of the city including but not limited to:

A. Passage of ordinances, resolutions and motions.

B. Preparing and overseeing the city's budget.

C. Appointing officers of the City and members of commissions and committees.

D. Hearing of reports and recommendations of city employees and officers.

E. Such other activities concerning the general welfare of the citizens of the city.

[1] Modified by Ordinance 541

Section 2-1-4 Vacancies in Council [1, 2]

A. The Council shall fill any vacancy that may occur, by appointment until the next regularly scheduled Council election if the vacancy occurs more than thirty days before the nomination petition deadline, otherwise the appointment is for the unexpired term. The appointment shall be made within thirty days of the date the vacancy occurs.

B. City residence, for the purpose of qualification to serve on the city council, shall consist of maintaining, by the councilmember, a principal place of abode for the councilmember and the councilmember's family within the city. In the event that a councilmember removes their principal place of abode to a location outside the city limits for a period of more than fifty consecutive days, the council seat to which such councilmember was elected shall be deemed vacant by operation of law. In the event that a councilmember resides outside the city temporarily, the remaining members of the council, upon finding such residence to be temporary may, by a majority vote thereof, authorize such temporary residence and not declare the council seat vacant for up to an additional fifty days.

Section 2-1-5 Compensation [3]

The mayor and members of the council shall be paid four hundred dollars ($400.00), and two hundred dollars ($200.00) per month respectively. If the mayor or members of the council miss two consecutive meetings, the pay shall be withheld for those meetings, based upon a monthly schedule of two regular meetings, unless the absence is excused by the council.

Section 2-1-6 Oath of Office

Prior to the assumption of the duties of office, and at or prior to the commencement of the term of office, the Mayor and each Councilmember shall, in public, take and subscribe to the oath of office after receiving the officer's certificate of election.

Section 2-1-7 Bond

Prior to taking office, every councilmember shall execute and file an official bond, enforceable against the principal and his sureties, conditioned on the due and faithful performance of his official duties, payable to the state and to and for the use and benefit of the city or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. A person so injured or aggrieved may bring suit on such bond under provisions identical to those contained in A.R.S. §38-260. Bonds shall be in such sum as shall be provided by resolution and the premium for such bonds shall be paid by the city. Nothing in this section shall preclude the city from obtaining a blanket bond pursuant to the provisions of A.R.S. §9-302.

Section 2-1-8 Financial Disclosure Statements

The mayor and each member of the council shall file by January 31 of each year, on a form prescribed by the clerk, a financial disclosure statement, setting forth such information as determined by resolution of the council.

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[1] Modified by Ordinance No. 265
[2] Modified by Ordinance 572
[3] Modified by Resolution 2-2007

Section 2-1-9 Attendance [1]

The Mayor and Councilmembers, to discharge their duties of office, shall be physically present at regular and special meetings. The Mayor and Councilmembers can, however, cumulatively attend up to and no more than 8 of these meetings, whether regular or special, by phone or other available electronic means in a calendar year. The Mayor and Councilmembers can consecutively attend up to and no more than 4 of these meetings, whether regular or special, by phone or other available electronic means in a calendar year. The number of times the Mayor and any Councilmember can consecutively and/or cumulatively attend meetings, whether regular or special, by telephone or other available electronic means in a calendar year can only be increased by a majority vote of a quorum of the Mayor and Council, in their full discretion, so long as this vote occurs before any above restrictions are violated. The individual about whom a vote is taken to increase the number of times that he or she can consecutively and/or cumulatively attend meetings, whether regular or special, by telephone or other available electronic means in a calendar year cannot vote on that matter.

ARTICLE 2-2 MAYOR AND VICE MAYOR

2-2-1 Selection of Mayor and Vice Mayor
2-2-2 Acting Mayor
2-2-3 Powers and Duties of the Mayor
2-2-4 Failure to Sign Documents

Section 2-2-1 Selection of Mayor and Vice Mayor

The Mayor shall be directly elected by the people by a majority vote of the qualified electors pursuant to Article 2-3 of this code. Each year in which an election to Council is held, the councilmembers shall at the first regular meeting after taking the oath of office, choose a vice mayor from among their number. The council may, at any regularly scheduled meeting at which all seven councilmembers are present, upon proper motion, second and majority vote, reselect the position of vice mayor.

Section 2-2-2 Acting Mayor

In the absence or disability of the Mayor, the Vice Mayor will serve as the Acting Mayor. In the absence or disability of the Mayor and Vice Mayor, the Council may designate another of its members to serve as Acting Mayor. The Acting Mayor shall have all the powers, duties and responsibilities of the Mayor during such absence or disability.

Section 2-2-3 Powers and Duties of the Mayor

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

A. Shall be the chief executive officer of the city.

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

[1] Created by Ordinance 576

C. Shall enforce the provisions of this code.

D. Shall execute and authenticate by his signature such instruments as the council, or any statutes, ordinances, resolutions, or this code shall require.

E. Shall make such recommendations and suggestions to the council as may be considered proper.

F. 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 in the event of the threat or occurrence of riot, rout or affray or other acts of civil disobedience which endanger life or property within the city. After declaration of such emergency, the mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the city, including but not limited to:

1. Imposition of a curfew in all or any portion of the city.

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.

G. Shall perform such other duties required by state statute and this code as well as those duties required as chief executive officer of the city.

Section 2-2-4 Failure to Sign Documents [1]

If the mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring a signature for two business days consecutively, then the Vice Mayor shall be authorized to sign such 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.

ARTICLE 2-3 COUNCIL ELECTION

2-3-1 Candidate Financial Disclosure
2-3-2 Non-Partisan Elections
2-3-3 Optional Municipal Election Procedure
2-3-4 Direct Election of the Mayor

Section 2-3-1 Candidate Financial Disclosure

Each candidate for the office of councilmember shall file a financial disclosure statement on a form prescribed by the clerk when such candidate files a nomination paper. The statement shall contain such information as required by resolution of the council.

Section 2-3-2 Non-Partisan Elections

[1] Modified by Ord. No. 548

No paper or document, including the ballot, used in the procedures for the election of members of the council shall identify any candidate by partisan party affiliation.

Section 2-3-3 Optional Municipal Election Procedure [1, 2]

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

B. Nothing on the ballot in any election shall be indicative of the support of the candidate.

C. If at any primary election held as above provided, there be any office for which no candidate is elected, then as to such office, the primary election shall be considered to be a primary election for nomination of candidates for such office, and the general municipal election shall be held to vote for candidates to fill such office. Candidates to be placed on the ballot at the general municipal 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 be less than that number of candidates running for that office during the primary election. Candidates, to include any candidate who qualified and ran during the primary election as a write-in candidate pursuant to A.R.S. §16-312 as amended, who receive the highest number of votes for the respective offices at such first election shall be the only candidates nominated to run at such second election, provided that if there be 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 therefore, then all such persons receiving an equal number of votes shall likewise become nominated candidates for such office.

D. At the general election, the candidates equal in number to the offices to be filled who receive the highest number of votes shall be declared elected.

Section 2-3-4 Direct Election of the Mayor [3]

A. Commencing with the next regularly scheduled Primary and/or General Election after approval by a majority vote of qualified electors voting at the next regularly scheduled election, the Mayor shall be directly elected by the people by a majority vote of the qualified electors.

B. The term of the Mayor shall be for two (2) years.

C. Any candidate who shall receive at the Primary Election held by the City of Benson, a majority of all votes cast for Mayor at such Primary Election shall be declared to be elected to the office of Mayor effective as of the date of the General Election for the City of Benson and,

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[1] Added by Ordinance No. 272

[2] Modified by Ordinance No. 556

[3] Added by Ordinance No. 444, 445

said candidate shall not be required to run for Mayor at the General Election.

D. The provisions of sections 2-3-1, 2-3-2 and 2-3-3 are applicable under this section.

E. A candidate cannot run for both Mayor and Councilmember at the same election.

F. Councilmembers who desire to run for Mayor must resign their position on the Council as of the day they submit their nomination papers, unless they are in the last year of their term.

G. All other provisions of the Code of the City of Benson and Arizona State Statutes dealing with municipal elections are hereby declared to be applicable to the direct election of the Mayor for the City of Benson.

ARTICLE 2-4 COUNCIL PROCEDURE

2-4-1 Regular Meetings
2-4-2 Special Meetings
2-4-3 Meetings to be Public
2-4-4 Quorum
2-4-5 Agenda
2-4-6 Order of Business
2-4-7 Committees and Commissions
2-4-8 Voting
2-4-9 Suspension of Rules

Section 2-4-1 Regular Meetings[1, 2]

The council shall hold regular meetings on the second and fourth Monday of each month at seven o'clock p.m., provided that when the day fixed for any regular meeting of the council falls upon a day designated by law as a legal holiday, such meeting may be held at the same hour of the next succeeding day not a holiday if the council so elects upon motion at a prior meeting. All regular meetings of the council shall be held at the city hall. Council may, upon motion at any regular meeting, elect to cancel the succeeding meeting if it appears in its sole discretion that the items to be considered at the succeeding meeting may properly be postponed to the next regular meeting.

Section 2-4-2 Special Meetings

The mayor or a quorum of the council may convene the council at any time after giving at least twenty-four hours notice of such meeting to members of the council and the general public. The notice shall include the date, hour and purpose of such special meeting. In the case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

Section 2-4-3 Meetings to be Public

[1]Modified by Ordinance No. 325

[2]Modified by Ordinance No. 494

A. All official meetings of the council at which any legal action is taken shall be open to the public. Notice of meetings shall be given in a manner consistent with state statutes. Upon approval by a majority vote of the council, the council may meet in a closed executive session as provided by state law.

B. Minutes of executive sessions shall be kept confidential except from members of the council.

C. No executive session may be held for the purpose of taking any final action or making any final decision.

Section 2-4-4 Quorum

A majority of the councilmembers shall constitute a quorum for transacting business but a lesser number may adjourn from time to time and compel the attendance of absent members.

Section 2-4-5 Agenda

Prior to each council meeting, or on or before a time fixed by the council for preparation and distribution of an agenda, whichever is earlier, the clerk shall collect all written reports, communications, ordinances, resolutions, contracts and other documents to be submitted to the council, and prepare an agenda according to the order of business and shall furnish each council member, the mayor and the attorney with a copy of the agenda and any material pertinent thereto.

Section 2-4-6 Order of Business[1]

The business of the council shall be taken up for consideration and disposition in the following order:

A. Call to Order. The mayor shall take the chair precisely at the hour appointed for the meeting and shall immediately call the council to order. The Mayor or his designee shall then lead those present in the pledge of allegiance before introducing the invocation speaker, who will offer the invocation. In the absence of the mayor and vice mayor, the clerk shall call the council to order and an acting mayor shall be selected to chair the meeting. Upon the arrival of the mayor or vice mayor, the acting mayor shall immediately relinquish the chair upon the conclusion of the business immediately before the council. The mayor shall preserve order and decorum and conduct the proceedings of the meetings.

B. Roll Call. Before proceeding with the business of the council, the clerk or deputy shall call the roll of the members, and the names of those present shall be entered in the minutes. If a quorum is not present, the members present may adjourn pursuant to Section 2-4-4 of this code.

C. Employee Recognition. The Mayor shall use this time to present employment awards to those City employees accumulating five (5) years of employment with the City and every five (5) years thereafter or to present recognition awards for specific acts regarding public service, if any.

[1]Modified by Ordinance No. 470

D. Proclamations. The Mayor or his designee shall read any proclamations which may be present on the agenda.

E. Public Hearings. The Mayor will open the public hearing, if listed on the agenda, to receive comments from the public in opposition or support of the proposed subject of the public hearing. After comments from the public are received, the Mayor shall close the public hearing. The Mayor may impose reasonable time limits for each speaker and may apportion time between those speaking in favor and those speaking against the matter which is the subject of the public hearing.

F. Call to the Public. Communications and comments from citizens regarding the City of Benson or other matters properly addressed to the City Council shall be heard by the Council. Such remarks shall be addressed to the Council as a whole and shall be limited to five (5) minutes unless additional time is granted by the Council. If the presiding officer so elects, and the speaker consents, public comments may be deferred until the specific item comes before the Council for action. No questions shall be asked of a Councilperson except through the presiding officer.

G. City Manager Report. The City Manager will update and inform the public of specific items of interest regarding City matters.

H. New Business. The council shall consider any business not heretofore considered including the introduction of ordinances and resolutions and may provide for a consent agenda in accordance with procedural rules adopted by the Council.

1. Consent Agenda. The consent agenda will be the first item under this category and shall list separately distinct items requiring action by the City Council that are generally routine items not requiring council discussion. A single motion will approve all items on the consent agenda, including any resolutions or ordinances, or claims/invoices that are of a routine nature. A Council Member may remove any issue from the consent agenda, and that issue will be discussed and voted upon separately, immediately following the consent agenda under its proper regular category of New Business.

2. Action Items Listed for Discussion. New Business shall also include ordinances, resolutions, motions, contracts or other matters listed as separate action items, which shall be voted upon separately and in the order presented on the agenda unless a motion to deviate from the listed order on the agenda is made and passed. City staff or an applicant may address the Council regarding the action item, to include taking questions from Councilmembers, after which Council shall entertain such discussion that it deems proper. Such discussion may include a motion to amend or motion to table, which takes precedence over the motion to consider the item and which shall be voted upon as part of the discussion of the item if there is a second to the motion. At the end of the discussion, the Mayor shall call for a motion and the Clerk shall record the results thereof in the official minutes.

3. Updates of On-Going Projects and City Activities. New Business may also include updates by Staff on current issues facing the City that have been or may be the subject of Council action.

I. Department Reports. Written Department Reports will be provided to councilmembers as

part of the council packet.

J. Adjournment. The council may, by a majority vote of those present, adjourn from time to time to a specific date and hour. A motion to adjourn shall always be in order and decided without debate.

Section 2-4-7 Committees and Commissions

The council may create such committees and commissions, standing or special, as it deems necessary. They shall consist of as many members and shall perform such duties as the council may require and shall exist at the pleasure of the council.

Section 2-4-8 Voting

A. The mayor may vote as a member of the council.

B. Upon the request of any member, the ayes and nays upon any question shall be taken and entered in the minutes.

Section 2-4-9 Suspension of Rules

Any of the provisions of this article may be temporarily suspended in connection with any matter under consideration by a recorded vote of three-fourths of the members present, except that this section shall not be construed to permit any action that is contrary to state statutes.

ARTICLE 2-5 ORDINANCES, RESOLUTIONS AND CONTRACTS

2-5-1 Prior Approval
2-5-2 Introduction
2-5-3 Passage of Ordinances and Resolutions
2-5-4 Requirements for an Ordinance
2-5-5 Signatures Required
2-5-6 Publishing Required
2-5-7 Posting Required

Section 2-5-1 Prior Approval

All ordinances, resolutions and contract documents shall, before presentation to the council, have been reviewed as to form by the attorney. When there are substantive matters of administration involved, all ordinances, resolutions and contract documents shall be referred to the person who will be charged with the administration of such ordinance, resolution or contract. Such person shall have an opportunity to present comments, suggestions and objections, if any, prior to the passage of the ordinance, resolution or acceptance of the contract.

Section 2-5-2 Introduction

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 attorney, the manager or the clerk may present ordinances, resolutions and other matters or subjects to the council, and any councilmember may assume sponsorship thereof by moving that such ordinance, resolution, matter or subject be adopted; otherwise they shall not be considered.

Section 2-5-3 Passage of Ordinances and Resolutions[1]

A. All ordinances and resolutions shall be declared passed and in full force and effect from and after their passage by the affirmative vote of a majority of councilmembers present at any legally convened city council meeting subject to the provisions of Section 2-5-5 and 2-5-7 of this code.

B. The reading and passage of all ordinances and resolutions may be made by title only, providing that each member of the council in attendance has in his or her possession, written copies of said ordinance or resolution at the time of consideration and voting thereon.

C. The clerk shall certify the minutes of any council meeting at which an ordinance, resolution or franchise, except an emergency ordinance, is passed.

Section 2-5-4 Requirements for an Ordinance

Each ordinance may have only 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 such case, the title of the sections to be amended shall be included in the ordinance.

Section 2-5-5 Signatures Required

Every ordinance passed by the council shall, before it becomes effective, be signed by the mayor and attested by the clerk.

Section 2-5-6 Publishing Required

Only such orders, resolutions, motions, regulations or proceedings of the council shall be published as may be required by state statutes or expressly ordered by the council. All notices of election, invitation for bids, notices of letting contracts, laws and ordinances approved or issued by the council must be published pursuant to A.R.S. §9-812, as provided in A.R.S. §39-204, in a newspaper of general circulation printed in English. If published in a weekly newspaper, publication shall be for two consecutive weeks; if a daily publication is used, publication shall be for four consecutive times unless otherwise required by law.

[1]Modified by Ordinance No. 278

Section 2-5-7 Posting Required [1]

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

ARTICLE 2-6 LEGAL ADVICE FROM THE CITY ATTORNEY[2]

Not withstanding the provisions of Article 3-3, the Mayor and members of the City Council may individually make inquiries requesting legal advice from the City Attorney in matters of law pertaining to their offices.

[1] Modified by Ordinance No. 278

[2] Modified by Ordinance No. 522

CHAPTER 3 ADMINISTRATION

ARTICLE 3-1 OFFICERS IN GENERAL

3-1-1 Officers
3-1-2 Appointment of Officers and Employees
3-1-3 Bond
3-1-4 Vacancies; Holding More Than One Office
3-1-5 Additional Powers and Duties
3-1-6 Compensation

Section 3-1-1 Officers[1, 2]

There are hereby created the offices of city manager, city clerk/treasurer, city magistrate, police chief, fire chief, city engineer and city attorney.

Section 3-1-2 Appointment of Officers and Employees[1, 2]

The city manager and the city attorney shall be appointed by the mayor and council. The city clerk/treasurer, city magistrate, city engineer, police chief and fire chief shall be appointed by the city manager with the consent and approval of mayor and council. All employees other than the officers named in the foregoing section shall be appointed solely by the city manager.

Section 3-1-3 Bond

The council may require any officer of the city to give bond for the due discharge of his duties in such sums and with such security as it may direct and approve, and the city shall pay the costs of such bond, if so authorized by city resolution.

Section 3-1-4 Vacancies; Holding More Than One Office[1]

One person may hold more than one office, and the functions of any city officer may be validly performed and discharged by a deputy or another city official or by an otherwise qualified person appointed by the city manager.

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[1]Modified by Ordinance No. 283

[2]Modified by Ordinance 542

Section 3-1-5 Additional Powers and Duties

In addition to any powers and duties prescribed in this code, each officer shall have such further powers, perform such further duties and hold such other office as may be provided by the council through ordinance, resolution or order.

Section 3-1-6 Compensation

The officers of the city shall be paid a salary in accordance with the wishes of the mayor and council.

ARTICLE 3-2 OFFICERS

3-2-1 Manager
3-2-2 Clerk/Treasurer
3-2-3 Deputy Clerk
3-2-4 Chief of Police
3-2-5 Attorney
3-2-6 Magistrate
3-2-7 Deputy Magistrate
3-2-8 Zoning Administrator
3-2-9 Building Inspector
3-2-10 Emergency Services Director

Section 3-2-1 Manager[1]

A. There shall be created and established the office of the city manager for the city.

B. The city manager shall be appointed by the city council wholly on the basis of administrative and executive ability and qualifications and shall hold office for and at the pleasure of the city council. However, the city manager shall reside within the city or within fifty days after appointment shall establish residence within the city. The term residence shall include the maintenance of the principal place of abode for the manager and the manager's family, within the city limits. The city council may, from time to time, by a majority vote thereof, extend the period for establishment of such residence for such additional periods as it sees fit.

C. The city manager shall receive such compensation as the city council shall fix from time to time.

[1]Modified by Ordinances No. 283, 266, 535 and 564

D. The city manager shall furnish a corporate surety bond to be approved by the city council in such sum as may be determined by the council and shall be conditioned upon the faithful performance of the duties imposed upon the city manager as herein prescribed. Any premium for such bond shall be a proper charge against the city.

E. The city manager may be removed from office by a vote of four members of the city council at a regularly scheduled meeting of the council.

F. The city manager shall have the following powers and duties:

1. The city manager shall be the administrative head of the city government under the direction and control of the city council except as otherwise provided in this section. The manager shall be responsible to the council for the proper administration of all affairs of the city. In addition to the general powers as administrative head and not as a limitation thereon, the manager shall have the following additional powers and duties:

   a. The city manager shall prepare the city budget annually and submit it to the council together with a message describing the important features contained therein. The manager shall also be responsible for its administration after adoption.

   b. The city manager shall prepare and submit to the council at the end of each fiscal year a complete report on the finances and administrative activities of the city during the preceding year.

   c. The city manager shall keep the city council advised of the financial condition and future needs of the city and make such recommendations as may be deemed desirable.

   d. The city manager shall recommend to the council a standard schedule of pay for each appointive office and position in the city service, including minimum, intermediate and maximum rates. The manager shall also authorize the payment of overtime pay for such employees as may work in excess of a normal work period. All rates of pay and periods of work shall be in conformance with wages and salaries enacted by the council.

   e. The city manager shall recommend to the council from time to time the adoption of such measures which may be deemed necessary or expedient for the health, safety or welfare of the community or for the improvement and safeguard of administrative services and functions.

   f. The city manager shall consolidate or combine offices, positions, departments or units under his jurisdiction with the approval of the council. The manager may be the head of one or more departments.

   g. The city manager shall attend all meetings of the council unless excused therefrom and take part in the discussion of all matters coming before the council. The manager shall be entitled to receive notice of all regular and special meetings of the council.

   h. The city manager shall supervise and safeguard the purchase and use of all materials, supplies and equipment for which funds are provided in the budget; let

contracts necessary for operation or maintenance of city services for amounts up to and including twenty thousand dollars ($**20,000**); receive bids for purchases or contracts in excess of twenty thousand dollars ($**20,000**) and present them to the council for approval, and advise the council on the advantages or disadvantages of contract and bid proposals. No contract in excess of twenty thousand dollars ($**20,000**) and no contract for new construction shall be let except by the council. The manager may issue such rules governing purchasing procedures within the administrative organization as the council shall approve. [1]

i. In case of accident, disaster or other circumstances creating a public emergency, the city manager may award contracts and make purchases for the purpose of meeting said emergency; but the manager shall file promptly with the council a certificate showing such emergency and the necessity for such actions, together with an itemized account of all expenditures.

j. The city manager shall see that all laws and ordinances are duly enforced.

k. The city manager shall investigate the affairs of the city and any department or division thereof; investigate all complaints in relation to matters concerning the administration of the city government and in regard to service maintained by the public utilities in the city, and see that all franchises, permits and privileges granted by the city are faithfully observed.

l. The council shall deal with the administrative services of the city only through the city manager, and neither the council nor any members thereof shall give orders to any subordinates of the city manager. It shall be the responsibility of the council and its members to aid and assist in any advisory capacity any department head, individually or collectively, on any phase of policy or public relations, such association not to conflict with the administrative duties of the city manager.

m. The city manager shall not exercise any legislative function whatsoever, nor shall the manager engage in policy making or institute programs which require official action of the council. The policy making power of the city manager shall be implementative only. It is not intended by this article to grant any authority to, or impose any duty upon the city manager which is vested in or imposed by general law or city ordinances on any other city commission, board, officer or employee except as herein specifically set forth.

n. In the discharge of the duties as city manager, the person holding such position shall endeavor at all times to exercise the highest degree of tact, patience and courtesy in contacts with the public and with all city boards, departments and employees and shall use best efforts to establish and maintain a harmonious relationship between all personnel employed in the government of the city to the end that the highest possible standards of public service shall be continuously maintained.

o. The city manager shall appoint and when necessary for the good of the city, suspend and remove all officers and employees of the city not appointed by the

[1]Modified by Ordinance No. 471

Council. The manager may authorize the head of a department or office to appoint, suspend or remove subordinates in such office or department.

2. The city manager shall perform such other duties as may be required by the council which are not inconsistent with state law or city ordinances.

Section 3-2-2 Clerk/Treasurer

A. Records. The clerk/treasurer must keep in proper fashion and make available to the public upon request, copies of all ordinances passed by the mayor and council and shall file copies of all correspondence, reports or other documents pertinent to the general operations of the city in addition to the minute book pertaining to the meetings of the mayor and council. The clerk/treasurer shall maintain other books or records as shall be deemed necessary for the fulfillment of the duties and shall report to the mayor and council quarterly, in writing, by means of a detailed statement.

B. Public Inspection of Records. The clerk/treasurer shall keep convenient for public inspection all public records and public documents under the clerk/treasurer's control, as provided by state statute.

C. Reports. The clerk/treasurer shall prepare and collect from city officers and employees such reports prepared in such manner and to include such information as may be directed by the council.

D. Minutes. The clerk/treasurer shall prepare or cause to be prepared all minutes of council proceedings and shall be responsible for distribution of the minutes to members of the council and for making the minutes available to the public.

E. Ordinances, Resolutions, Budgets and Notices. The clerk/treasurer shall process, record, file, publish and, if required by state statute, post all ordinances, resolutions, budgets and notices that may be passed by the council.

F. Duties of Treasurer. The clerk/treasurer shall hold the office of city treasurer and receive and safely keep all monies that shall come to the city and shall give receipts therefor. The treasurer shall keep a separate record and account of each different fund provided by the council, apportion the monies received among the different funds as prescribed by the council and keep a complete set of books showing: every money transaction of the city, the state of each fund, from what source the money in each fund was derived and for what purpose expended and shall make quarterly reports to the council of all receipts and disbursements and the balance in each fund. At the end of the fiscal year, the treasurer shall make a full and detailed statement of the receipts and expenditures of the city during the year, specifying the different sources or revenue and the amount received from each, all appropriations made by the mayor and council, and the object for which they were made, and the amount of money expended under each, the evidences of indebtedness issued, and what portion remains thereof outstanding, with the rate and amount of interest due thereon, and the amount of cash on hand. The treasurer shall countersign all warrants issued by order of the mayor and council and attach thereto the seal of the city.

G. Duties as Tax Collector. The clerk/treasurer or the clerk/treasurer's appointee shall be the collector of all taxes, licenses and assessments of the city.

H. Attendance at Council Meetings. The clerk/treasurer shall attend all regular and special meetings of the council for the purpose of recording the official minutes, providing information as requested and other duties as directed by the council.

I. Supervision. The clerk/treasurer shall be present during normal working hours to supervise the routine operations of the clerk/treasurer's office.

J. Election Official. The clerk/treasurer shall be the city election official and perform those duties required by state statute.

K. Licenses. The clerk/treasurer shall issue or cause to be issued all licenses, receipts and forms that may be prescribed by this code.

L. Administrative Duties. The clerk/treasurer shall perform those administrative responsibilities and duties that are conferred upon the office of the clerk/treasurer by the council in addition to those specified in this code.

Section 3-2-3 Deputy Clerk

A. There is hereby created the office of deputy clerk for the city. The deputy clerk shall be appointed by the city manager and shall receive such salary as the mayor and council shall from time to time set.

B. The deputy clerk shall work with the city clerk/treasurer doing the work of the office that is assigned and, in the absence of the clerk/treasurer, fulfilling the duties of the city clerk/treasurer.

Section 3-2-4 Chief of Police

The chief of police shall perform such duties as may be required of him by state law, this code and as the council and city manager may deem necessary.

Section 3-2-5 Attorney

The attorney shall act as the legal counselor and advisor of the council and other city officials, and as such shall give an opinion in writing when requested. The city attorney shall draft all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments when required by the council and shall approve as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the council. The city attorney shall return all ordinances and resolutions submitted for consideration by the council, with approval or disapproval as to form noted thereon, together with reasons therefore. The city attorney shall be responsible for prosecuting and defending all suits, actions or causes where the city is a party, including those matters actually being handled by outside counsel, and as to such matters, shall periodically report to the council the status of each matter.

Section 3-2-6 Magistrate[1]

A. The city magistrate shall be the presiding officer of the magistrate's court and shall perform those functions necessary to maintenance of the magistrate's court as provided by state statute.

B. The city magistrate shall serve a two year term of office.

C. Upon appointment, the city council shall set the magistrate's salary for the two year term of office.

Section 3-2-7 Deputy Magistrate

A. There is hereby created the office of deputy magistrate for the city. The deputy magistrate shall be appointed by the city manager and shall receive such salary as the mayor and council shall from time to time set.

B. The deputy magistrate shall work with the city magistrate doing the work of the office that is assigned and, in the absence of the magistrate, fulfilling the duties of the magistrate.

Section 3-2-8 Zoning Administrator

A. There is hereby created the office of zoning administrator for the city. The zoning administrator shall be appointed by the city manager and shall receive such salary as the mayor and council shall from time to time set.

B. The zoning administrator shall be charged with the enforcement of the city zoning ordinance, subdivision control ordinance and other duties as may be assigned.

Section 3-2-9 Building Inspector

A. There is hereby created the office of building inspector for the city. The building inspector shall be appointed by the city manager and shall receive such salary as the mayor and council shall from time to time set.

B. The building inspector shall be charged with the enforcement of the city building, electrical, plumbing, mechanical and fire life safety codes and shall perform other duties as may be assigned.

[1]Modified by Ordinances No. 283 and 291

Section 3-2-10 Emergency Services Director

There is hereby created the office of emergency services director. The emergency services director shall be the city manager or designee.

ARTICLE 3-3 COUNCIL AND ADMINISTRATION RELATIONSHIPS [1, 2]

A. Council - City Manager - Staff Relations. The council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the council, nor any member thereof, shall give orders or instructions to any employee or officer other than the city manager. The city manager shall take orders and instructions from the council only when expressed at a duly convened meeting of the council, either a work session, special meeting or a regular meeting, and no individual councilmember may otherwise give any orders or instructions to the city manager, except for purposes of inquiry. Nothing in this section shall be construed as prohibiting the council members from fully and freely discussing with or suggesting to the City Manager anything pertaining to city affairs or the interests of the City.

B. For the purposes of this Section, "administrative services of the city" shall mean those employees under the authority of the city manager in the performance of their day-to-day duties, and shall not include the city attorney, city clerk/treasurer or the city magistrate.

[1] Modified by Ordinance No. 519
[2] Modified by Ordinance 542

Article 3-4 DOWNTOWN BUSINESS REVITALIZATION DISTRICT PROGRAM[1]

3-4-1 Revitalization Program Designation
3-4-2 District Defined
3-4-3 Funding for the Program
3-4-4 Program Purpose
3-4-5 District Committee Established; Duties
3-4-6 Program Participation for Property Owners
3-4-7 Downtown Business Revitalization District Designation Supersedes Other District Designations

Section 3-4-1 Revitalization Program Designation

The proper designation of the revitalization program authorized under this Article shall be the "Downtown Business Revitalization District Program".

Section 3-4-2 District Defined

The Downtown Business Revitalization District shall encompass the following:

A. That area which bounds both the North and South sides of Fourth Street from Interstate 10, Exit 303 to the San Pedro River; and,

B. That area which bounds both the North and South sides of Fifth Street from Land Avenue to State Route 80.

C. All commercially zoned properties adjacent to State Route 80 lying South of Fourth Street and North of the currently existing City limit.[2]

Section 3-4-3 Funding for the Program

The Mayor and City Council shall designate a portion of the City's General Fund to be used solely for the purposes of the program.

Section 3-4-4 Program Purpose

The purpose of the revitalization program is to promote the social, economic, educational, cultural and general welfare of the Downtown Business Revitalization District by:

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[1]Modified by Ordinance No. 415

[2]Modified by Ordinance No. 443

A. Providing a mechanism to restore the cultural, political and architectural elements of the Downtown Business Revitalization District;

B. Fostering civic pride in the cultural heritage of the Downtown Business Revitalization District;

C. Conserving and improving the value of not only those properties designated as landmarks or significant buildings but all properties located within the Downtown Business Revitalization District;

D. Protecting and enhancing the attractiveness of the Downtown Business Revitalization District to property investors, business entrepreneurs, tourists, visitors and shoppers, and thereby supporting and promoting business, commerce, industry and providing a stable, long-range economic benefit to the City;

E. Fostering and encouraging, through funding, the preservation, restoration and rehabilitation of the structures and areas located within the Downtown Business Revitalization District, and thereby preventing future deterioration and blight of the City;

F. Maximizing and protecting for future generations the area's attractive and unique character and perceived authenticity for visitors of the Downtown Business Revitalization District;

G. Reflecting the early fame and reputation of the City and its place in the development of the Southwest and of the United States.

Section 3-4-5 District Committee Established; Duties

A. A Downtown Business Revitalization District Committee shall be established by the Mayor and City Council as follows:

1. The committee shall consist of seven members;

2. Said members shall be appointed by the Mayor and City Council;

3. Each member shall serve on the committee for a term of two years; and,

4. In the first year of the Committee's appointment, the Mayor and City shall designate three of the seven to serve initial one year terms which shall thereafter allow for the staggered appointment of successive Committee members.

B. The duties of the Downtown Business Revitalization District Committee are as follows:

1. The Downtown Business Revitalization District Committee shall review, consider and recommend to the Mayor and the City Council the creation of additional revitalization areas within the City Limits.

2. The Downtown Business Revitalization District Committee shall publish Design Guidelines and Sign Guidelines which shall be approved by the Mayor and City.

a. Any changes made to these Guidelines by the Downtown Business Revitalization District Committee shall be approved by the Mayor and City Council.

b. The most recent version approved by Council will be kept on file in the City Clerk's office.

3. The Design Guidelines and Sign Guidelines published by the Downtown Business Revitalization District Committee shall be drafted according to the following criteria:

a. Associated with events that have made significant contribution to the development and/or national or international image of the City; and/or

b. Embody the distinctive characteristics found in commercial districts in rural railroad towns during the time period of 1880 to 1920; and/or

c. Yield information important in the understanding of the early culture and economy of the City.

4. The Downtown Business Revitalization District Committee shall evaluate any owner's proposed exterior restoration and/or improvement plans for any real property located within the District, as well as, each parcel's demonstrated quality of significance in local or regional development, based upon the guideline criteria set forth above.

5. Following its determinations, the Downtown Business Revitalization District Committee shall transmit to the Mayor and City Council its report and recommendations based on its consideration of a District property owner's submitted exterior restoration and/or improvement plans.

Section 3-4-6 Program Participation for Property Owners[1]

A. Any Downtown Business Revitalization District commercial property owner wishing to receive funding to participate in the Downtown Business Revitalization District Program shall submit to the Downtown Business Revitalization District Committee and the Building Inspector all exterior restoration and/or property improvement plans, based upon the Committee's published guidelines, for the Building Inspector's approval and the Committee's evaluation and recommendations to the Mayor and City Council.

B. Funding may be obtained to assist the property owner with proposed construction, building renovation, refurbish, repair, remodeling, additions, etc., to be done to the property involving any change to the exterior of any structure or building, or other structural appurtenance, or to any open space or yard or sign, now in existence or to be built hereafter within the Downtown Business Revitalization District.

C. Any Downtown Business Revitalization District commercial property owner receiving funding must contribute, at a minimum, twenty-five percent (25%) of the total cost of the project and said contribution shall be specifically set forth in the program application. Program participation shall be limited to one project for a single individual every five (5) years.

[1]Modified by Ordinance No. 469

D. All projects must be completed within ninety (90) days of notification of Council approval or funding for the project will be withdrawn. In the event of extenuating circumstances, owners may submit a request for an extension of time for project completion and, in that event, each request will be individually evaluated. All project construction must be closely monitored by the Building Inspector.

Section 3-4-7 Downtown Business Revitalization District Designation Supersedes Other District Designations

The area designated as the Downtown Business Revitalization District shall be under the exclusive control and jurisdiction of the Downtown Business Revitalization District Committee and the Mayor and City Council, all in accordance with the provisions of this Article, and any property owner or organization desiring to modify the exterior of any building located within the District using City funding, in whole or in part, shall submit the proposed modification or refurbishing plans to the Committee, and obtain the Committee's approval and recommendation prior to seeking consideration for any other public funding.

Article 3-5 EMPLOYMENT BACKGROUND INVESTIGATION

Section 3-5-1 Employees Involved with Minors[1]

As a condition of employment, all current and prospective employees whose duties involve working with minors shall be required to submit a full set of fingerprints to the City for the purpose of conducting a background check on the employee. The fingerprints will only be used for the purpose of obtaining a state and federal criminal records check pursuant to Arizona Revised Statutes §41-1750 and Public Law 92-544. The Arizona Department of Public Safety is hereby authorized to exchange this fingerprint data with the Federal Bureau of Investigation and all information communicated to the City of Benson will remain confidential.

[1]Modified by Ordinance No. 468

CHAPTER 4 PUBLIC SAFETY

ARTICLE 4-1 POLICE DEPARTMENT

4-1-1 Created; Composition
4-1-2 Appointment of Chief of Police
4-1-3 Compensation of Officers
4-1-4 Duties of Chief of Police
4-1-5 Maintenance, Upkeep and Extension of Department

Section 4-1-1 Created; Composition

There is hereby created a police department for the city which shall consist of the chief of police and such lieutenants, sergeants and other police officers as shall be deemed necessary in order to enforce the laws and maintain the order within the city. The chief of police, acting chief of police and any officer holding the rank of sergeant or higher shall be deemed to be an executive or administrative officer within the police department and whenever possible all overtime shall be handled by these officers.

Section 4-1-2 Appointment of Chief of Police

The chief of police shall be appointed by the city manager with the consent and approval of the council. The chief shall not accept any gifts or compensation for services in any capacity except such as the mayor and council shall, by resolution, prescribe.

Section 4-1-3 Compensation of Officers

Monthly salaries shall be paid to the officers of the police department as approved by the council as recommended from time to time by the chief of police and the city manager.

Section 4-1-4 Duties of Chief of Police

The chief of police shall have the following duties:

A. Exercise entire charge of the police department and all apparatus and property used by said department and full and complete charge of all police officers and other employees of the police department.

B. Be responsible for the enforcement of all the laws of the State of Arizona and the ordinances and code of the city within the city limits and shall arrest any person for the violation of such laws and deliver such person to the magistrate for trial.

C. Recommend to the council in conjunction with the city manager the number of police officers and other employees necessary to fulfill the above duties and provide the names of all candidates for those positions along with recommendations as to their acceptance or rejection.

D. Cooperate with the city manager regarding the purchase of any and all police equipment or apparatus utilized by the police department and assist in the preparation of the annual budget for consideration of the council.

E. Assist the council at its request in other city business appropriately handled by the police department.

F. Undertake to protect the safety, health and welfare of the citizens of the city and all others within its limits to the best of the chief's ability.

Section 4-1-5 Maintenance, Upkeep and Extension of Department

The council shall make such allowances for the maintenance, upkeep and extension of the police department as it deems necessary.

ARTICLE 4-2 POLICE RESERVE

4-2-1 Established
4-2-2 Definitions
4-2-3 Purpose
4-2-4 Appointment of Reserve Officers
4-2-5 Powers of Reserve Officers
4-2-6 Oath of Office
4-2-7 Relationship of Reserve Officers to Other Police Officers

Section 4-2-1 Established

A police reserve system for the city is hereby established.

Section 4-2-2 Definitions

In this article unless the context otherwise requires:

A. "Chief of police" means the chief of police of the city.

B. "Reserve police officer" means an adult person appointed by the chief of police as a reserve police officer, who is certified by the Arizona Law Enforcement Officer Advisory Council (ALEOAC) or enrolled in an ALEOAC certified training program.

Section 4-2-3 Purpose

The purpose of the reserve police system is to preserve the public peace and promote the general welfare of the city by giving authority to certain qualified persons to assist regular police officers in enforcing state law, city ordinances and this code, as well as performing other duties as may be assigned to reserve officers by the chief of police from time to time.

Section 4-2-4 Appointment of Reserve Officers

A. The chief of police is hereby authorized to establish a police reserve system within the structure of the police department. The chief is further authorized to appoint reserve police officers who will serve under the rules, regulations and conditions established by the chief of police.

B. The chief of police shall determine the qualifications necessary for appointment as a reserve police officer and shall approve all applications prior to appointment.

Section 4-2-5 Powers of Reserve Officers

Reserve police officers shall have general police powers when performing in an active duty capacity under the supervision of the chief of police. At all other times, the reserve police officer shall possess only those powers granted to private citizens.

Section 4-2-6 Oath of Office

Every person appointed by the chief of police as a reserve officer shall be sworn to faithful performance of required duties as established by the chief of police.

Section 4-2-7 Relationship of Reserve Officers to Other Police Officers

The provisions of this article shall not be construed as altering, limiting or expanding the powers, duties and authority of either regular police officers or special police officers of the city.

ARTICLE 4-3 FIRE DEPARTMENT

4-3-1 Created; Composition
4-3-2 Departmental Rules and Regulations
4-3-3 Appointment, Powers and Duties of Chief
4-3-4 Appointment and Duties of Firefighters
4-3-5 Entry upon Adjacent Property
4-3-6 Equipment
4-3-7 Providing Fire Protection Outside City

4-3-8 Acknowledgment of Right of Way
4-3-9 Fire Alarms
4-3-10 Water Utility
4-3-11 Incorporation
4-3-12 Income Continuation for Volunteer Firefighters

Section 4-3-1 Created; Composition

There is hereby created a fire department for the city which shall consist of a chief, an assistant chief and as many officers and firefighters as may be deemed necessary from time to time upon recommendation of the fire chief and city manager to the council. The fire department shall remain volunteer unless a change to a partially or fully compensated fire department is deemed necessary.

Section 4-3-2 Departmental Rules and Regulations

The fire department shall be operated and managed in accordance with such departmental rules and regulations as may, from time to time, be adopted by the council.

Section 4-3-3 Appointment, Powers and Duties of Chief

A. The chief of the fire department shall be appointed by the city manager and confirmed by the mayor and council.

B. It shall be the duty of the chief to:

1. Be accountable to the city manager and common council for the personnel, morale and general efficiency of the department. The chief shall exercise entire charge of the fire department and all apparatus and property used by said department and shall have full and complete charge of all officers and firefighters.

2. Direct the operations of the fire department, subject to the rules and regulations thereof.

3. Be present at all fires, if possible, and plan the attack and direct subordinates. During the progress of a fire, the authority of the fire chief in all matters connected with the management or direction thereof, or the disposition of property endangered by it, shall be absolute. All orders issued by the chief on such occasions must be respected, and any firefighter or citizen refusing to obey the same shall be guilty of a misdemeanor.

4. Conduct suitable drills or instruction in the operation and handling of equipment, first aid and rescue work, salvage, a study of buildings in the city, water supplies and all other matters generally considered essential to good firemanship and safety of life and property from fire.

5. Assist the proper authorities in suppressing the crime of arson by investigating or causing to be investigated the cause, origin and circumstances of all fires.

6. Inspect buildings and premises and serve written notice upon the owner or occupant to abate, within a specified time, any and all fire hazards that may be found. For the purpose of conducting such inspection, the chief is hereby empowered to enter any and all buildings and premises within the city at any reasonable hour. Any person served with a notice to abate any fire hazard or hazards shall comply therewith and promptly notify the chief. This duty, in its entirety or in part, may be transferred to the building inspection section or exercised concurrently with the building inspection section.

7. Keep complete records of all fires, inspections, apparatus and equipment, personnel and other information about the work of the department. The fire chief shall furnish the city manager and council with such information as may be requested and such records shall be open to inspection by the city manager at any time.

8. If requested, make a complete annual report in writing to the city manager and council within one month after the close of the fiscal year, such report to include the information specified in this section, together with comparative data for previous years and recommendations for improving the effectiveness of the department.

9. Demote, dismiss or expel any officer or member of the department for neglect or refusal to perform departmental duties.

10. Enforce or cause to be enforced all ordinances, laws and regulations of the city and state insofar as they pertain to fire and safety. This duty, in its entirety or in part, may be transferred to the building inspection section.

11. Appoint assistant chief and other officers from the membership of the department.

12. Have a working knowledge of the public protection class rating procedure and maintain the best rating possible for the city.

13. Provide educational fire prevention services to the schools, service organizations, business community and private citizens of the city.

14. Provide mutual cooperation with other department heads and the city manager in expediting emergency services other than those activities common to firefighting.

Section 4-3-4 Appointment and Duties of Firefighters

Firefighters shall be appointed at such time and in such manner as the council and the fire chief may deem necessary. Such appointees shall be able-bodied citizens. The firefighters shall be subject to supervision by the fire chief, the assistant fire chief, officer or other firefighter in charge.

Section 4-3-5 Entry Upon Adjacent Property

It shall be lawful for any firefighter, acting under the direction of the chief or another officer in command, to enter upon the premises adjacent to or in the vicinity of any building or other property that is on fire, for the purpose of extinguishing such fire or preventing the spread of a fire, and no person shall hinder, resist or obstruct any firefighter in the discharge of their duty as hereinbefore provided.

Section 4-3-6 Equipment

The department shall be equipped with such apparatus and other equipment as may be required from time to time to maintain its efficiency and properly protect life and property from fire. Recommendations of apparatus and equipment needed shall be made by the chief to the city manager and, after approval by the council, shall be purchased in such manner as may be designated by the council. All equipment of the department shall be safely and conveniently housed in such place as may be designated by the council. No person shall use any fire apparatus or equipment for any private purpose, nor shall any person willfully take away or conceal any article used in any way by the department. No person shall enter any place where fire apparatus is housed or handle any apparatus or equipment belonging to the department unless accompanied by, or having special permission of, an officer or authorized member of the department. No fire apparatus or equipment shall be hired out or permitted to leave the fire station, except in response to a call for aid at a fire or official fire department activities within the corporate limits of the city, or in response to a call for aid at a fire or official fire department activities in an area authorized for fire protection service or mutual aid under provisions of Section 4-3-7.

Section 4-3-7 Providing Fire Protection Outside City

A. The city is hereby authorized to enter into agreements or contracts to furnish fire protection outside the city in accordance with mutual aid agreements or intergovernmental agreements approved by the council. The members of the fire department are authorized and directed to render firefighting service to communities, organizations, owners or occupants of premises outside the corporate limits of the city as herein provided. Such service shall only be rendered subject to the terms of the agreement or contract entered into by the city.

B. The members of the fire department are authorized and directed to render firefighting services near the close proximity of the corporate limits when human life is endangered or a public nuisance hazard may be created. Such a service may be rendered without an agreement or contract, providing that the municipal limits of the city are fire protected with firefighters and apparatus.

C. The members of the fire department are authorized to render emergency assistance and firefighting services outside the corporate limits when the request for assistance is provided by another public body or agency. The city shall not be liable for any civil or other damages as a result of any act or omission by the fire department or its members in rendering emergency firefighting services, unless the fire department is guilty of gross negligence. Such a service may be rendered, providing the response area is near the close proximity of the corporate limits and providing the municipal limits of the city are fire protected with firefighters and apparatus.

D. Members of the fire department are authorized to provide assistance and use city equipment to accomplish extrication of vehicular accident victims outside the city limits in accordance with policies established by the fire chief and city manager.

Section 4-3-8 Acknowledgment of Right of Way

A. Each member of the fire department driving a vehicle shall be issued suitable insignias to be attached to the front and rear of the vehicle.

B. All motor equipment of the fire department shall have right of way over all other persons when responding to an alarm. Upon the approach of the fire department vehicles, the driver of any other vehicle shall immediately stop such vehicle as far as possible to the right hand side of the road, and it is unlawful for any such driver to cause or permit the vehicle to be moved until the fire department vehicles have safely passed the driver's own vehicle.

C. It is unlawful for any person to drive any vehicle of any kind across the hose of the fire department while the hose is being used for the purpose of fire suppression, unless a firefighter has granted permission to cross the hose.

D. It is unlawful for any person to interfere in any way with any firefighter while said firefighter is engaged in suppression of any fire.

E. All provisions within the city relating to the regulation of speed of moving vehicles shall not apply to fire department vehicles when actually being operated in a fire suppression capacity.

F. It is unlawful for any vehicle to stand or remain standing or for any vehicle to park within one block of any fire or fire fighting equipment being utilized to suppress a fire.

G. It is unlawful for any vehicle to be parked or otherwise cause any obstruction to be placed within twenty feet of the entrance to any fire station or other place where fire apparatus is stored, or within fifteen feet of any fire hydrant.

H. It is unlawful for a driver of an unauthorized vehicle to follow within five hundred feet of any fire apparatus responding to a fire.

I. It is unlawful for any person to congregate within two hundred feet of any fire or Natural Gas leak. It shall be the duty of the police to act as guards and prevent any and all persons, except owners and occupants and employees of buildings threatened by the existing fire, from entering the limits as designated by the police. It is unlawful for any person to enter those limits and refuse to leave when directed by officers or members of the fire department.

Section 4-3-9 Fire Alarms

Suitable arrangements or equipment shall be provided for citizens to turn in an alarm at any time, and for notifying all members of the department so that they may promptly respond. Telephone alarms reporting to the Police Department or 9-1-1 (the emergency telephone number) shall constitute the primary fire alarm reporting system. It is unlawful for any person to maliciously turn in or cause to be turned in a false alarm.

Section 4-3-10 Water Utility

A. An adequate water utility with properly maintained fire hydrants shall be available.

B. Water companies not owned by the city, but operating within the corporate limits, shall provide the fire department adequate volumes of water without cost for use during fire suppression or fire training activities.

Section 4-3-11 Incorporation

The council may cause to have created a nonprofit corporation should it be necessary to contract a part or all of the functions of the fire department and the city may elect to contract with other firefighting organizations, including fire districts and corporations, whether organized for profit or not.

Section 4-3-12 Income Continuation for Volunteer Firefighters[1]

A. Any city firefighter physically injured in the course of performance of official duties as a city firefighter shall be entitled to be compensated for all lost income and wages in the same manner as if said injured firefighter were a regular full-time city employee injured in the course of non-firefighting city employment, and in the event an injured firefighter's employment is terminated as a direct result of an injury covered by this section, the city council may elect to continue lost income compensation in the same manner as could occur if the injury caused the loss.

B. The city manager shall develop appropriate policies and procedures for the filing of lost wage claims and timely payment of compensation due an injured firefighter and there shall be established an appeals board to review and determine disputed lost wage claims and decisions of the appeals board shall be subject to timely review by the mayor and council whose determination shall be conclusive.

C. There shall be established in each of the city's fiscal years, a reserve account for payment of injured firefighter wage claims, and said account shall receive appropriate annual funding: however, said reserve account shall not limit the city's liability for payment of amounts due an injured firefighter.

D. The policy for administration of Income Continuation to Firefighters Injured in the Course of Official Duties on Behalf of the City of Benson is adopted by reference.

[1]Established by Ordinance No. 378

PUBLIC SAFETY

Section 4-3-13 Fire Department Response Guidelines [1, 2] (Enacted by Ordinance No. 486)

4-3-13-1 Purpose
4-3-13-2 Definitions
4-3-13-3 Extrication
4-3-13-4 Roadside Emergencies
4-3-13-5 Building Fires
4-3-13-6 Natural Gas Leaks
4-3-13-7 Calls for Other Types of Service
4-3-13-8 Mutual Aid Calls
4-3-13-9 Joint Training Operations

4-3-13-10 Call outside of City Limits

Section 4-3-13-1 PURPOSE

To better serve the citizens of the City of Benson and the residents of the San Pedro Valley the following are the response guidelines for the Benson Fire Department.

Sections 4-3-13-2 DEFINITIONS

A. "Golden Hour" is the one (1) hour time period occurring from the moment of injury until such time as the patient receives definitive care. If a patient does not receive definitive care within one (1) hour after sustaining a life threatening injury, the patient's odds of survival diminish extensively.

B. "Jaws of Life" means equipment used for extrication.

C. "Life Safety Issue" means anything that involves imminent physical injury or death.

D, "All-Weather Access Roadway" means a road with, at a minimum, a compacted aggregate base that is properly graded, crowned to allow drainage and maintained on a regular basis to permit City of Benson emergency equipment access without causing damage to the emergency equipment.

E. "Emergency Medical Services" means providing medical services through the practice of Basic and Advanced Life Support to preserve life, prevent further injury and promote recovery to patients with out-of-hospital medical illnesses and injuries.

Section 4-3-13-3 EXTRICATION

Due to the time limit of the "Golden Hour," it is imperative that the use of the "Jaws of Life" and medical treatment not be delayed. With this in mind, dispatching and response for vehicle accidents will be as follows:

A. The Fire Department will be dispatched to all unknown injury, injury and fatal accidents within the City limits. This will also apply to any accident where there is a possible Life Safety concern or the well being of the community.

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[1] Enacted by Ordinance No. 486
[2] Modified by Ordinance No. 531

B. Outside of the City Limits, the Fire Department shall be dispatched simultaneously with any Emergency Medical Service dispatch for vehicle accidents occurring within the designated sections of the following roads/highways:

1. On Interstate 10 from the Benson City Limits to Milepost 322 (Johnson Rd).
2. On Highway 90 from Interstate 10 to Milepost 300.
3. On Highway 80 from the City Limits to Milepost 298.
4. On Ocotillo Road from the City Limits to Alamo Lane.
5. On Cascabel Road from the City Limits to mile post 7.
6. On Dragoon Road from Interstate 10 to the Community of Dragoon to include Johnson Road.

C. In the event there is a question regarding whether or not to dispatch the Fire Department, THE FIRE DEPARTMENT SHALL BE DISPATCHED.

Section 4-3-13-4 ROADSIDE EMERGENCIES

Because of the immediate threat of a life safety issue during a roadside emergency (vehicle fires, trapped subjects, etc.) the response guidelines shall be as follows:

1. Any incident within the Benson City Limits.
2. All roadside emergencies on Interstate 10 from the Benson City Limits to Milepost 322 (Johnson Rd.) not to include brush fires unless a Life Safety issue exists.
3. All roadside emergencies on Highway 80 to Milepost 298.
4. All roadside emergencies on Ocotillo Road from the City Limits to Willow Lakes.
5. All roadside emergencies on Highway 90 to Milepost 300.

Section 4-3-13-5 BUILDING FIRES (STRUCTURE ASSIGNMENTS)

A. Calls for structure assignments are minimal for the Benson Fire Department however; these types of calls have the greatest potential for loss of life or property. The response guideline shall be as follows:

1. Any structure assignment within the Benson City Limits.
2. Any structure assignment that the City of Benson provides utilities.
3. Any structure assignment on Jenella Drive not receiving City utilities. (The area South and East of the upper water tank on Ridge Drive.)
4. Any structure assignment on both Interstate 10 Frontage Roads (North and South side) traveling East from Pomerene Road.
5. Any structure assignment on Airport Road to and including Astronomer Road.
6. Any structure assignment directly adjacent to the Interstate 10 Frontage Roads (North and South sides) West of Highway 90.
7. Any structure assignment on Ocotillo Road to Milepost 2.
8. Any structure assignment on Highway 80 to A.P. Polston Road.

B. If a structure is not accessible for an Engine Company by means of an all-weather access roadway, the Fire Department will not respond.

4-3-13-6 NATURAL GAS LEAKS

The presence of natural gas, even an odor is a very serious matter. This is due to the small amount needed for the gas to become a dangerous hazard. For that reason the following response guidelines will be implemented:

1. Any reported gas leak in a commercial or residential area within the City limits at any time. The City Utilities Department can cancel the Fire Department if the situation is determined to be safe.

2. Any reported gas leak West of Easy Street and on Highway 90 with the City Limits (Southwest Gas Service Area).

Section 4-3-13-7 CALLS FOR OTHER TYPES OF SERVICE

A. The Fire Department is called out for many types of non-fire related incidents. These include bee calls, trapped victims and many more. The Fire Department will also be dispatched to any situation where there may be a Life Safety concern or the well being of the community. If an emergency situation arises and a question is raised regarding whether or not to dispatch the Fire Department, the Fire Department should respond. A non-emergency response question can be handled by paging a Senior Officer utilizing Pager 51.

B. The Fire Department will be dispatched to all requests for Emergency Medical Services (EMS) within the City Limits of Benson. This is to include public assists and any other call for service where there may be a medical need.

C. The Fire Department will be dispatched as soon as the call is received by dispatch for any reported fire, smell of smoke, any type of fire alarm (including Carbon Monoxide CO) detectors, sprinkler alarm, smoke alarm or any other alarm (i.e. panic alarm, medical assistance alarm or residential fire alarm) called in by a Citizen or Alarm Company, water rescue, structural hazards (building collapse, roof blown off structures, etc.) or any other Life Safety issue.

Section 4-3-13-8 MUTUAL AID AGREEMENTS

A. Once a Mutual Aid Agreement is executed, Mutual Aid will be given only if there is enough fire personnel remaining within the City Limits to man an Engine Company Mutual Aid will only be given when another agency is on scene or it is a dual dispatch.

B. When a structure assignment for Benson Fire Department is paged out, the Pomerene Fire Department shall be automatically dispatched. The need for other fire departments shall be determined by the situation and location.

C. Mutual Aid will be given as long as the assistance is required.

Section 4-3-13-9 JOINT TRAINING OPERATIONS

When conducting joint training operations with surrounding fire departments, the Benson Fire Department shall have available an Engine Company and personnel to answer any calls for service during said training.

Section 4-3-13-10 CALLS OUTSIDE OF CITY LIMITS

A. When responding outside of the Benson City Limits for mutual aid, roadside emergencies, structure assignments and other calls for service, excluding extrication calls, the responding apparatus shall wait at the station until there are enough personnel to man an engine company and standby at the station while the call is ongoing.

B. Any apparatus responding to an extrication assignment will respond as soon as there are enough personnel to man the responding apparatus.

ARTICLE 4-4 EMERGENCY SERVICES

A. The Fire Chief shall serve as the Emergency Services Director.

B. The major responsibility of the emergency services director will be to assure coordination among the operating departments of the city with non-governmental agencies, with county, state and federal levels of government and adjacent governmental agencies to preserve life, prevent injuries and protect property.

C. The emergency services director shall report directly to the City Manager and shall take all actions necessary to return the community to a state of normalcy.

D. The emergency services director shall develop a local disaster plan and conduct such training exercises as may be deemed necessary.

E. Upon approval of the mayor and city council, the emergency services director shall enter into grants, mutual aid and training agreements with other governmental and non-governmental agencies.

CHAPTER 5 MAGISTRATE

ARTICLE 5-1 MAGISTRATE COURT ESTABLISHED; JURISDICTION

There is hereby established in the city a magistrate's court which shall have jurisdiction of all violations of this code, and jurisdiction concurrently with justices of the peace of precincts in which the city is located of violation of laws of the state committed within the limits of the city. The city council may enter into an intergovernmental agreement with Cochise County to consolidate the magistrate's duties with the Office of the Justice of the Peace, and said intergovernmental agreement may provide for issuance of criminal and civil citations for violations of state law to the Justice of the Peace Court and may also provide for payment of rent for facilities and/or equipment furnished by the County as agreed upon by the parties to the intergovernmental agreement.

ARTICLE 5-2 PRESIDING OFFICER

5-2-1 Powers and Duties of City Magistrate
5-2-2 Deputy Magistrate

Section 5-2-1 Powers and Duties of City Magistrate and Deputy Magistrate

The powers and duties of the magistrate and deputy magistrate shall include:

A. The powers and duties set forth under the provisions of the state constitution and statutes, this code and the ordinances and resolutions of the city.

B. The keeping of a docket in which shall be entered each action and the proceedings of the court therein.

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

D. Payment of all fees, fines, penalties and other monies collected by the court to the treasurer.

E. Submission of recommendations to the city manager and council regarding all personnel and equipment necessary to carry out judicial responsibilities.

F. Maintenance of all court records regarding the filing of complaints and the judicial or other disposition of all said complaints or claims involving the city.

G. Becoming familiar with the city ordinances, state criminal statutes and other laws coming within the court's jurisdiction.

H. Conduct of court in a manner designed to protect the rights of the accused, safeguard the public and maintain the respect and decorum expected in a court of law.

I. Assisting the city manager in preparing and presenting the annual budget to the council specifically regarding all allocations designed for the judicial department within the city.

MAGISTRATE

Section 5-2-2 Deputy Magistrate

A. There is hereby created the office of deputy magistrate for the city. The deputy magistrate shall be appointed by the city manager and shall receive such salary as the mayor and council shall from time to time set.

B. The deputy magistrate shall work with the city magistrate doing the work of the office that is assigned and, in the absence of the magistrate, fulfilling the duties of the magistrate.

CHAPTER 6 ANIMALS

ARTICLE 6-1 GENERAL RULES AND REGULATIONS[1]

6-1-1 Dangerous Animals
6-1-2 Noises
6-1-3 Animals Running Loose; Housing; Impoundment
6-1-4 Cruelty to Animals Prohibited
6-1-5 Neglect of Animals Prohibited
6-1-6 Keeping of Livestock
6-1-7 Citations and Penalties

Section 6-1-1 Dangerous Animals

A. It is unlawful to permit any dangerous, vicious animal of any kind, including livestock, to run at large within the city, and such animals shall be immediately impounded by the humane officer. Exhibitions or parades of animals which are ferae naturae in the eyes of the law may be conducted only upon securing a permit from the chief of police.

B. Members of the police department are authorized to kill any dangerous animals of any kind when it is necessary for the protection of any person or property.

Section 6-1-2 Noises

It is unlawful to harbor or keep any animals which disturb the peace by loud noises at any time of the day or night.

Section 6-1-3 Animals Running Loose; Housing; Impoundment

A. Regardless of any zoning or other regulations, provisions of this code or ordinances permitting the owning or possessing of animals within the city limits, it is unlawful for anyone to allow any animals of whatsoever kind to run loose and uncontrolled within the city.

B. Any person who keeps or causes to be kept any horses or poultry shall keep such livestock or poultry in a pen or similar enclosure to prevent their roaming at large within the corporate limits of the city. It is unlawful to cause or allow any stable or place where any animal is or may be kept to become unclean or a health hazard.

C. In the event any animals shall be found running loose and uncontrolled within the city limits, the city, acting through any of its authorized representatives such as the police, humane officer, enforcement agent or any other city employee, shall have the authority to seize and impound such animal and all costs and expenses incurred by the city as a result shall be assessed against the owner of the animal and shall be paid in full before the animal is released.

[1]Amended by Ordinance No. 311

D. In the event that it is impossible to identify the true owner of an impounded animal, or should the owner, after proper notification, refuse or fail within a reasonable time to retrieve his animal, the city may take appropriate steps to auction at public auction any animal determined to be of sufficient value to warrant such auction, or may dispose of the animal in the most humane manner possible, or may deal with the animal as with any other stray animal acquired by the city. In the event of an auction, the city shall subtract from the proceeds all costs and expenses incurred in the seizure, impoundment, care and upkeep of the animal and the costs of the auction and shall return any remainder to the owner of the animal.

Section 6-1-4 Cruelty to Animals Prohibited

It is unlawful as is herein provided, except as otherwise authorized by law, for any person to recklessly, intentionally or by neglect:

A. Subject any animal or poultry under human custody or control to cruel mistreatment by maiming, wounding, torturing, mutilating or inflicting or causing needless suffering; or,

B. Subjecting any animal or poultry under his custody or control to cruel neglect or abandonment; or,

C. Killing any animal or poultry under the custody or control of another without either legal privilege or consent of the owner.

Section 6-1-5 Neglect of Animals Prohibited

It is unlawful as herein provided for any person owning or having the care, custody or control of any animal to fail to insure or arrange for by agreement with another:

A. 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; and,

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

C. 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 suffering or injury inflicted by the elements, and of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. Any shelter, or the lack thereof, which does not reasonably protect the animal from the usual temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, is in violation of this section. Any shelter, all bedding and any spaces intended to be 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; and,

D. 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; and,

E. That an animal, other than livestock, be given adequate exercise space by either:

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

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

F. That the animal has adequate ventilation and is protected from temperature extremes at all times. In this connection, it is unlawful for any person to keep any animal in a vehicle or other enclosed space in which the temperature is either so high or so low, or the ventilation is so inadequate, as to clearly endanger the animal's life or health. The city enforcement agent and all state certified police officers are authorized to use whatever force is reasonable and necessary to remove any animal from a vehicle or other enclosed space whenever it appears that the animal's life or health is endangered by extreme temperatures or lack of ventilation within the vehicle or other enclosed space.

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

Section 6-1-6 Keeping of Livestock

In those areas where the city's zoning law permits the keeping of any livestock, the owner of said livestock shall be liable for any damage caused to another, or to the property of another, as a result of the livestock entering upon property of another or upon any public property or roadway. It shall not be a defense to any claim or action for damages resulting from livestock when said livestock is on property not the property or lease hold of the livestock owner, to claim lack of negligence, that proper and adequate fencing was maintained by the owner, that gates to the owner's livestock enclosure were opened by a third party or that the owner has a grandfathered right to allow livestock to run at large.

Section 6-1-7 Citations and Penalties

A. The certified city police officers and the city animal control enforcement agents are hereby authorized to issue written warnings or citations of a civil or criminal nature to any animal owner or person having possession, custody or control of an animal within the city for any violation of this article.

B. A person who violates the provisions of this article shall be issued a warning for the first two such violations within a twenty-four month period provided that the conduct involved is not deliberate, intentional or willful, and the condition complained of is subject to reasonable

corrective action. A third or subsequent violation of this article which is not deemed to be deliberate, intentional or willful, within a twenty-four consecutive month period, shall be a petty offense subject to a fine of up to $300.00, and all other violations shall be a Class 3 misdemeanor punishable by a fine of not to exceed $500.00 or a sentence of imprisonment not to exceed thirty days, or both such fine and imprisonment.

C. City police officers and animal control enforcement officers are authorized to capture and impound livestock found upon the lands of another without permission, and all costs of collecting, capturing, keeping and treating any livestock shall constitute a lien therein which shall be paid by the owner as a condition of release of the livestock. Livestock which is not claimed within thirty days and all costs paid in full shall be deemed abandoned and thereafter offered at public sale and the proceeds realized from said sale shall be applied to the costs incurred by the city in conjunction with said livestock and any amount remaining after deducting said amounts shall be returned to the owner, if said ownership is known, and if not, shall become part of the city general fund.

ARTICLE 6-2 VACCINATION, LICENSING AND CONTROL OF DOGS[1]

6-2-1 Definitions
6-2-2 Licenses and Fees; Dog Tags
6-2-3 Anti-Rabies Vaccination
6-2-4 Rabies Control and Quarantine
6-2-5 Running at Large - Nuisance
6-2-6 Impoundment of Dogs
6-2-7 Interference with Enforcement Agent
6-2-8 Citations
6-2-9 Penalties

Section 6-2-1 Definitions

In this article, unless the context otherwise requires:

A. "At large" means off the premises of the owner and not under the control of the owner or other persons acting on behalf of the owner.

B. "City animal shelter or pound" means the facility maintained by the city for the confinement, maintenance, safekeeping and control of animals which come into the custody of the city animal enforcement officer during the course of official duties.

C. "City enforcement agent" means persons designated by the city who are responsible for the enforcement of this article and the regulations promulgated hereunder.

D. "Collar" means a band, chain, harness or suitable device worn around the neck of a dog to which a license may be affixed.

E. "Dog" means a member of the canis familiaris family.

F. "Owner" means any person owning, keeping, possessing, harboring or maintaining a dog.

[1]Amended by Ordinances No. 312 and 402

G. "Vaccination" means an anti-rabies vaccination using a type of vaccine approved by the state veterinarian.

H. "Veterinarian" means any person licensed to practice veterinary medicine in Arizona or any person employed within the State of Arizona by a governmental agency to practice veterinary medicine.

I. "Veterinary hospital" means any establishment operated by a veterinarian licensed to practice in Arizona which provides clinical facilities and houses animals or birds for dental, medical or surgical treatment including all pens, stalls, cages or kennels connected with it and used for quarantine, observation or boarding.

Section 6-2-2 Licenses and Fees; Dog Tags [1]

A. 1. An annual license fee of ten dollars ($10.00) shall be paid for each spayed or neutered dog older than four months of age kept, harbored or maintained within the boundaries of the City for at least sixty (60) days during any calendar year.

2. An annual license fee of twenty dollars ($20.00) shall be paid for each dog which is not spayed or neutered and older than four months of age kept, harbored or maintained within the boundaries of the City for at least sixty (60) days during any calendar year.

3. Five dollars ($5.00) of each license for a spayed or neutered dog and ten dollars ($10.00) of each license fee for a non spayed or neutered dog shall be used for a fund to help cover the rising costs of having adoptable animals spayed or neutered.

B. License fees shall be due on January 1st of each year, and the license fee shall be paid **on or before March 31st of each calendar year to the City of Benson enforcement agent or his or her authorized representative. Any person who fails to obtain a dog license prior to April 1st of each calendar year will be assessed a penalty of fifty percent (50%) of the original licensing fee and said penalty shall be in addition to the original licensing fee.** [2] This penalty shall not be assessed against applicants who furnish adequate proof that the dog to be licensed has been in their possession in the city for less than sixty (60) days.

C. A guide dog belonging to a blind person who is a resident of this state or any bona fide non-profit organization which is in the business of breeding, raising or training dogs that are to be used for guiding the blind shall, upon application by the owner or organization and presentation of proper proof, be vaccinated and licensed pursuant to this article without payment of a fee.

D. Each dog licensed under the terms of this article shall receive at the time of licensing a tag on which shall be inscribed the name of the city, the number of the license and the year in which it expires. The tag shall be attached to a collar or a harness which shall be worn by

[1] Amended by Ordinance No. 513

[2] Amended by Ordinance No. 462

the dog at all times except as otherwise provided in this article. When a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a one dollar fee to the city enforcement agent or his authorized representative.

E. It is unlawful for any person to counterfeit or attempt to counterfeit an official dog tag or remove such tag from any dog for the purpose of willful and malicious mischief or place a dog tag upon a dog other than the dog to which it was properly issued.

F. Whenever the ownership of a dog has been changed, the new owner of the dog must secure a transfer of license to such owner. A transfer fee of one dollar shall be charged to transfer any license.

G. Dogs while being used for hunting or dogs while being exhibited at bona fide pet shows, or dogs while engaged in racing approved by the Arizona Racing Commission and such dogs while being transported to and from such events need not wear a collar or harness with a valid license attached, provided that they are properly vaccinated and licensed.

H. The city enforcement agent shall apprehend and impound any dog found without a current valid license tag.

I. As an alternative to the individual licensing provisions set forth in subsection A of this section, a kennel license may be issued upon payment of the fees set forth herein above and said license shall be subject to the following conditions:

1. The applicant must be engaged in the business of breeding, buying and/or selling of dogs of a purebred nature and each such breed must be recognized by the American Kennel Club.

2. The applicant must maintain a current state and city sales tax license.

3. Prior to issuance of kennel license, the humane officer shall inspect the applicant's kennel facilities and shall find them to be safe, sanitary and secure.

4. An applicant for a kennel license, upon issuance of said license shall consent to random and unannounced inspections of the licensed kennel facilities by the city humane officer, officers of the health department and/or licensed city police officers and said inspection shall extend to the records maintained by the licensee who shall exhibit, upon request, any health certificates and/or breeding or show records compiled in connection with dogs housed in the licensed kennel.

The issuance of a kennel license shall in no manner affect the licensee's obligation to control a dog owned in accordance therewith, or to obtain and maintain required vaccinations and certificates or in any other manner fail to comply with the provisions of this article, except that the provisions of subsection D of this section requiring the issuance of individual numbered tags and attachment to a collar or harness worn by said dog shall not apply. A kennel license shall not be construed to authorize the keeping of mixed-breed dogs and any such dog over the age of seven months of age must be individually licensed and comply with the provisions herein above set forth in this section.

Section 6-2-3 Anti-Rabies Vaccination

A. Before a license is issued for any dog, the owner must present a vaccination certificate signed by a veterinarian stating the owner's name and address and giving the dog's description, date of vaccination and type, manufacturer and serial number of the vaccine and date revaccination is due. A duplicate of each rabies vaccination certificate issued shall be transmitted to the city enforcement agent on or before the tenth day of the month following the month during which the dog was vaccinated. No dog shall be licensed unless it is vaccinated in accordance with the provisions of this article and regulations promulgated hereunder.

B. A dog vaccinated in any other place prior to entry into the city may be licensed in the city provided that, at the time of licensing, the owner of such dog presents a vaccination certificate signed by a veterinarian licensed to practice in that place or a veterinarian employed by a governmental agency in that place, stating the owner's name and address, giving the dog's description, date of vaccination, and type, manufacturer and serial number of the vaccine used. The vaccination must be in conformity with the provisions of this article and the regulations promulgated hereunder.

C. The city enforcement agent may make provisions for low cost vaccination clinics as deemed necessary. The vaccination shall be performed by a veterinarian.

Section 6-2-4 Rabies Control and Quarantine

A. If a dog is impounded and found to be unvaccinated, the city animal enforcement agent is hereby authorized to cause the dog to be vaccinated at the city animal shelter at a cost to be borne by the owner. The vaccination shall be administered by an Arizona licensed veterinarian, or a person legally authorized to administer such vaccinations, and a certificate of vaccination shall be issued and delivered to the owner upon payment of the fees assessed in conjunction with the impoundment.

B. Whenever a dog bites any person, the incident shall be reported to the city enforcement agent immediately by any person having direct knowledge of the incident.

C. Any dog that bites any person shall be quarantined and impounded or, at the request and expense of the owner, placed in a veterinary hospital for a period of not less than ten days. The owner of any dog that has bitten a person may voluntarily deliver the dog to the city animal enforcement agent at the city animal shelter; otherwise a five dollar fee shall be charged if the city enforcement agent must pick up the dog for confinement. If a dog is impounded at the city animal shelter for observation under this provision, the owner shall be charged the then current daily boarding fee as set by the city council.

D. Any dog or other animal suspected of rabies or exhibiting any of the clinical symptoms of rabies, as determined by a licensed veterinarian, shall be placed under observation in the pound or other designated place for a period of fourteen days. It is unlawful for any person to destroy or dispose of an animal suspected of rabies or which shows any clinical symptoms of rabies without immediately delivering the carcass to the health department or city enforcement agent.

E. It is unlawful for a person to rescue or attempt to rescue an animal which has been impounded or which is in the possession of the city enforcement agent.

Section 6-2-5 Running at Large - Nuisance

A. No person owning, keeping, possessing, harboring or maintaining a dog shall allow said dog to be at large. A dog is not deemed to be at large:

1. If said dog is restrained by a leash, chain, rope or cord of sufficient strength and length to control the actions of said dog.

2. While said dog is actively engaged in dog obedience training, accompanied by and under the control of his owner or trainer, provided that the person training said dog has in his possession a dog leash of sufficient strength and length to control said dog, and, further, that said dog is actually enrolled in or has graduated from a dog obedience training school.

3. While said dog is being used for hunting purposes.

4. While said dog is being exhibited at a bona fide dog show.

5. While said dog is engaged in racing approved by the Arizona Racing Commission.

B. No person shall maintain a dog, or any other animal or group of animals, in such a manner as to deprive others of the enjoyment of their lives or property due to noise, barking, inflicting damage or injury by jumping upon, biting or scratching, pollution of vegetation or air, including the owner's premises, or by permitting nauseous or foul odors offensive to another person's senses or constituting an actual or potential public health hazard.

C. The city enforcement agent shall apprehend and impound any dog running at large contrary to the provisions of this section.

D. When a dog is found running at large and the dog's owner is known to the enforcement agent, the dog need not be impounded if a citation can be immediately issued to the owner and the owner agrees to properly confine the dog.

Section 6-2-6 Impoundment of Dogs

A. Upon impounding any licensed dog, the owner shall be promptly notified. Each unlicenced dog impounded shall be kept and maintained at the pound for a minimum of three days. At the expiration of the impoundment period, anyone may claim the dog provided such person pays all established pound fees and complies with the licensing provisions of this chapter within seventy-two hours. If no person claims the dog, the city enforcement agent may dispose of the dog in a humane manner.

B. Any impounded licensed dog may be reclaimed provided that the person reclaiming the dog furnishes proof of right to do so and pays all established pound fees. If the dog is not reclaimed within six days, the city enforcement agent shall take possession and may place the dog for adoption or may dispose of the dog in a humane manner. Any person adopting such a dog shall pay all established pound fees.

C. Impoundment charges shall be as follows:

1. First impoundment of an adult dog which has not been spayed or neutered, fifty dollars, plus the cost of boarding the dog at the daily rate, set by city council, for each day, or portion thereof, the dog is held at the city animal shelter. As an alternative to impoundment charge and the boarding fees, the owner may elect to have the dog spayed or neutered, by a licensed veterinarian at the owner's expense, and in the event of such election, owner shall provide the enforcement officer satisfactory evidence of non-refundable pre-payment of the veterinary charges to be incurred.

2. First impoundment of a spayed or neutered dog, twenty-five dollars, plus the costs of boarding as set forth in paragraph 1 of this subsection. Satisfactory evidence that a dog has been spayed or neutered shall be provided to the animal enforcement agent prior to the dog's release under this provision.

3. Second impoundment of a dog, which has not been spayed or neutered, within a single twelve consecutive month period, seventy-five dollars, plus the costs of boarding, as set forth above. As an alternative to impoundment charge and the boarding fees, the owner may elect to have the dog spayed or neutered by a licensed veterinarian at the owner's expense, and in the event of such election, owner shall provide the animal enforcement agent satisfactory evidence of non-refundable pre-payment of the veterinary charges to be incurred.

4. Second impoundment of a spayed or neutered dog within a single twelve consecutive month period, fifty dollars, plus the cost of boarding as set forth above.

5. Third and all subsequent impoundments within a single twelve consecutive month period, one hundred dollars, plus the applicable daily boarding fee, regardless of whether or not the dog has been spayed or neutered.

D. Any licensed or unlicensed dog which apparently is suffering from serious injuries and is in great pain and probably would not recover, or which has evidence of any infectious disease which is a danger to other dogs or to man, may be destroyed by the city enforcement agent in as humane a manner as possible after reasonable efforts to notify the owner have failed.

E. The fee charged for boarding of dogs and other animals, for whatever reason, shall be set by the mayor and city council by resolution.

Section 6-2-7 Interference with Enforcement Agent

It is unlawful for any person to interfere with the city enforcement agent in the performance of his duties.

Section 6-2-8 Citations

The city enforcement agent is hereby authorized to issue written warnings or signed complaints to any dog owner for any violation of this article.

Section 6-2-9 Penalties

A. Any owner or other person who violates Section 6-2-5 by allowing his animal to run at large shall be guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine not to exceed five hundred dollars.

B. Any owner or other person who fails to comply with any other of the requirements of this article or who violates any of its provisions shall be guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine not to exceed five hundred dollars.

CHAPTER 7 BUILDING

ARTICLE 7-1 UNIFORM CODES[1]

7-1-1 Adoption
7-1-2 Board of Appeals
7-1-3 Annual Review

Section 7-1-1 Adoption

A. Those certain documents known as: the International Building Code, the International Residential Code, the International Mechanical Code, the International Plumbing Code, the International Fuel Gas Code, the International Fire Code, the International Energy Conservation Code, the International Existing Building Code, and the International Code Council Electrical Code – Administrative Provisions, all of which are the 2006 editions, as amended, published by the International Code Council, Inc.; the National Electrical Code, 2005 Edition, published by the National Fire Protection Association, as amended; and the Uniform Code for the Abatement of Dangerous Buildings, 1997 edition, as published by the International Conference of Building Officials, as amended; three copies of which are on file with the city clerk's office, are hereby referred to, adopted and made a part hereof as if fully set forth in this code.

B. That certain document, known as AAmendments to the Uniform Plumbing Code - Standards for Low Flow Plumbing Fixtures@, three copies of which are on file with the city clerk's office, is hereby referred to, adopted and made a part hereof as if fully set forth in this code.

Section 7-1-2 Board of Appeals

A. In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of these codes, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass upon matters pertaining to building construction. The building official shall be an ex-officio member and shall act as secretary of the board.

B. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the building official with a duplicate copy to the appellant.

Section 7-1-3 Annual Review

The documents adopted pursuant to this article shall be reviewed annually by the building inspector and the board of appeals and any discrepancies noted or changes recommended shall be provided to the council by the building inspector.

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[1]Amended by Ordinance No. 337, 375, 406, 489 and 532

ARTICLE 7-2 UNIFORM STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION

7-2-1 Adoption
7-2-2 Amendments, Modifications, Deletions and Additions
7-2-3 Minimum Standards for Material and Construction for Work in Public Right-of-Way
7-2-4 Annual Review
7-2-5 Areas of Application

Section 7-2-1 Adoption

A. The city hereby adopts and incorporates herein by reference the Uniform Standard Specifications for Public Works Construction as sponsored by the Maricopa Association of Governments, 1979 Edition with the consolidations of all subsequent supplements thereto, as well as the amendments to these specifications as set forth by the Cochise County engineer's office in their entirety, except that in those instances where said specifications conflict with the City of Benson=s Utility Construction Standards or the City of Benson Utility Department Material Specifications, said local utility construction standards and material specifications shall be applicable along with any other exceptions otherwise provided herein.

B. There shall be kept on file with the clerk or the building inspector or both, current copies of the "Uniform Standard Specifications for Public Works Construction", sponsored by the Maricopa Association of Governments and "Cochise County Standard Specifications for Public Improvements", along with modifications and amendments designated "Uniform Standard Specifications for Public Works Improvement, City of Benson". All the above documents shall be available to the public for study or examination whenever the city offices are open for business.

Section 7-2-2 Amendments, Modifications, Deletions and Additions

The city hereby adopts the following amendments, modifications, deletions and additions to the Standard Specifications for Public Works Construction:

A. Definitions and Terms (101.2)

1. “Board of Supervisors”. Wherever the term "Board of Supervisors" appears it shall be interpreted to include the City of Benson acting under the laws of the State of Arizona. In addition, 'Maricopa County" or "Cochise County" shall be construed to mean the City of Benson.

2. “City”. This shall be construed to mean the City of Benson.

3. “Engineer or city engineer”. This shall be construed to mean that person or persons duly authorized by the city to act as the city's representative in the engineering field.

B. Bidding Requirements and Contracts (Section 102)

Additional Requirements: This section is not applicable to projects other than those administered under the City of Benson construction contracts.

C. Award and Execution of Contracts (Section 103)

Additional Requirements: This section is not applicable to projects other than those administered under the City of Benson construction contracts.

D. Scope and Work (Section 104)

Cleanup and Dust Control (104.6)

The following provision shall supersede that presently found in the reference and entitled "Basis for Dust Control":

"Dust control requirements shall be those of the Arizona Health Department Rules and Regulations for Air Pollution as Applicable for Cochise County and the City of Benson, Arizona".

E. Control of Work (Section 105)

1. Authority of the Engineer (105.1)

Additional Requirements: On all projects other than city contract projects, a professional engineer shall be employed by the subdivider or permittee who, subject to the approval of the city, shall provide the plans, construction surveys and the inspection of work specified herein and shall give certification to the city that such services have been property performed. Final inspection and acceptance of the work shall be made by the city.

F. Control of Materials (Section 106)

1. Samples and Tests of Materials (106.2)

Additional Requirements: The sampling and testing of materials and work in all projects other than city contract projects shall be the responsibility of the subdivider or permittee who shall retain a professional engineer or recognized material testing laboratory, approved by the city, to perform such tests as specified herein and certify the results to the city.

G. Commencement, Prosecution and Progress (Section 108)

1. Failure to Complete on Time (108.9)
Additional Requirements: The foregoing provision for assessment of liquidated damages shall not be applicable to projects other than city contract projects. In the event of failure of a subdivider or permittee to satisfactorily complete the work within the time specified in the permit or construction authorization, then the city may proceed to obtain completion and/or corrections in accordance with the procedures set forth for forfeiture or default of contract.

H. Measurement and Payments (Section 109)

Additional Requirements: This section is not applicable to projects other than those administered under city construction contracts unless specifically provided for in the special provisions for the work.

Section 7-2-3 Minimum Standards for Materials and Construction for Work in Public Right-of-Way

The documents adopted pursuant to this article, all of which taken together shall comprise the "Uniform Standard Specifications for the Public Works Improvement, City of Benson", shall establish minimum standards for material and construction for work in any public right-of-way not a state highway and not a county road within the city limits of the city and compliance with the same shall be required on all new subdivision work or installation authorized on public right-of-way by permit in the city.

Section 7-2-4 Annual Review

The documents adopted pursuant to this article shall be reviewed annually by the general services supervisor and any discrepancies noted or changes recommended shall be provided to the council by the general services supervisor.

Section 7-2-5 Areas of Application

The standards and regulations contained within the documents adopted pursuant to this article shall be established for the improvements and construction of streets and utilities within the rights-of-way of public roads, streets, alleys and easements of the city.

ARTICLE 7-3 MOBILE HOMES/MANUFACTURED HOUSING

7-3-1 Inspection Fees
7-3-2 Installation Standards

Section 7-3-1 Inspection Fees

The inspection fee schedule shall be in accordance with paragraph (A)(5) of A.R.S. Section 41-2144 and shall be subject to an administrative fee of $20.00.

Section 7-3-2 Installation Standards

A. The following standards described in this article are the minimum standards to cover all mobile manufactured housing installations, not covered by contract #6 between the State of Arizona and the City of Benson.

B. All manufactured homes manufactured after July 31, 1977, shall be installed according to the manufacturer's instructions, but in all cases, they must meet these minimum standards.

1. Load bearing support: Prefabricated and permanent.

   a. Supports shall be located under the main beams of the chassis at intervals no greater than six feet and no more than two feet from the ends of each main beam, except, where running gear is in conflict, then as close as possible to gear.

   b. Supports shall bear no more than 8,000 pounds.

   c. The supports shall have a minimum vertical concentrated load failure rating of 14,000 pounds.

2. Prefabricated support heights.

   a. No more than twenty-five percent of the supports along the main beams, including footings, shall have a height in excess of 36 inches or less than 12 inches.

   b. The minimum height of the bottom of the floor joist shall be 18 inches above the soil base unless otherwise specified by manufacturer of same.

3. Permanent support heights and design.

   a. The maximum height shall be compatible with the construction of the support.

   b. The minimum height shall be compatible with the requirements for clearance above soil in paragraph 2b of this subsection.

4. Footings.

   a. Prefabricated footings:

      (1) Each footing shall be of such design and construction to withstand the transferred load from the load bearing support to the earth.

      (2) Footings shall be placed only on surfaces adequately prepared to distribute equalized transfer of applied loads and to minimize settling of the footings.

      (3) The minimum size of each footing shall be compatible with local soil conditions.

   b. Permanent footings per Uniform Building Code.

5. Wedges.

   a. Wedges may be placed only between the load bearing supports and main beams.

   b. Wedges shall be capable of transfer of applied load.

c. Wedges shall be limited to two on any one bearing support.

6. Utility hookups shall be pursuant to:

a. Uniform Plumbing Code, edition adopted by Council.

b. National Electrical Code in force.

c. The inspection of gas connections shall be as follows:

(1) With appliance gas valves removed from piping system and piping capped at those areas, piping systems shall stand a pressure of at least three P.S.I. gage for a period of not less than ten minutes without showing any drop in pressure.

(2) Remove caps and reinstall gas valves and appliance connectors. Retest connections at line pressure with soapy water.

ARTICLE 7-4 FIRE PREVENTION

7-4-1 Establishment and Duties of Bureau of Fire Prevention
7-4-2 Duties of Building Inspector Related to Bureau of Fire Prevention
7-4-3 Amendments to Fire Prevention Codes and Standards
7-4-4 Storage of Hazardous Liquids, Gases or Materials
7-4-5 Modifications to Fire Prevention Codes and Standards
7-4-6 Appeals
7-4-7 Fire Hydrant Installation

Section 7-4-1 Establishment and Duties of Bureau of Fire Prevention

A. The Bureau of Fire Prevention is hereby established within the building inspection division and shall be operated under the supervision of the building inspector. The fire chief or fire department designate shall be an active consultant in the bureau activities.

B. The duties of the Bureau of Fire Prevention shall be those set out in the codes and standards as adopted in Section 7-1-1.

Section 7-4-2 Duties of Building Inspector Related to Bureau of Fire Prevention

The building inspector shall have the following duties related to the bureau of fire prevention:

A. Detail employees of the building inspection section as inspectors as may be necessary.

B. Recommend to the city manager the employment of technical inspectors who, when such authorization is made, shall be selected through a process as adopted by the city to determine their fitness for the position.

C. Make reports of the bureau of fire prevention upon request to the city manager.

D. Review all building and structure plans and specifications presented by permit applicants to determine whether the plans and specifications meet the requirements as specified in the adopted codes and standards of Section 7-1-1.

E. Allow the fire chief and utilities supervisor to review said plans and specifications to provide recommendations for fire hydrant placement and water main size.

Section 7-4-3 Amendments to Fire Prevention Codes and Standards

Recommendations for amendments to the fire prevention codes and standards may be made by the building inspector, the fire chief or any other interested person and shall be submitted to the mayor and council for approval through the city manager.

Section 7-4-4 Storage of Hazardous Liquids, Gases or Materials

A. Districts in Which the Storage of Flammable Liquids in Outside Aboveground Tanks Shall be Prohibited. The storage of flammable or combustible liquids in outside aboveground tanks is prohibited within the areas zoned R1, R2, R3, B1, B2.

B. Districts in Which the Storage in Bulk of Liquefied Petroleum Gases is Restricted. The limits referred to in Section 82.105(a) of the Uniform Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby declared to be all areas zoned R1, R2, R3, B1, B2.

C. Districts in Which Storage of Explosives and Blasting Agents is Prohibited. The limits referred to in Section 77.106(b) of the Uniform Fire Code, in which storage of explosives and blasting agents is prohibited, are hereby declared to be all areas zoned R1, R2, R3, B1, B2, 11, 12.

Section 7-4-5 Modifications to Fire Prevention Codes and Standards

The building inspector shall have power to modify any of the provisions of the fire prevention codes or standards upon application in writing by the owner or lessee desiring the modification or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code or standard, provided that the spirit of the code or standard shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed, and the decision of the building inspector thereon, shall be entered upon the records of the bureau of fire prevention and a signed copy shall be furnished the applicant.

Section 7-4-6 Appeals

Whenever an application for modification of a fire prevention code or standard is not approved, or application of a permit is refused, or when it is claimed that the provisions of the code or standard do not apply or that the true intent and meaning of the code or standard have been misconstrued or wrongly interpreted, the applicant may appeal from that decision to the Board of Appeals as described in Section 7-1-2 of the city code.

Section 7-4-7 Fire Hydrant Installation[2]

A. Definitions: For the purposes of this article:

1. "Commercial developer" means a person, firm, corporation, partnership, association syndicate, trust or other legal entity filing an application for a building permit for any nonresidential development.

2. "Development" means construction of one or more new structures for nonresidential purposes or the construction of new residential structures requiring subdivision approval in accordance with Chapter 14 of the Code. Modification of an existing nonresidential structure by construction work and materials valued at more than $250,000 shall be considered a new structure for purposes of this section.

3. " Fire hydrant" means a mechanical device approved by the Benson Fire Chief and the Benson City Manager and specifically manufactured for the purpose of supplying water from a water main to fire pumping apparatus along with the appropriately sized valve which shall be installed between the hydrant device and the water main line.

4. "Primary feeder" means the arterial mains that form the skeleton of the water distribution system.

5. "Secondary feeder" means the mainline that carries water from the primary feeders to other points in the system in order to provide normal service supply and fire suppression.

6. "Subdivider" shall be as defined in Section 14-1-2.

B. Application:

Fire protection facilities, including fire hydrants and water mains, installed after November 5, 1993 shall conform to the minimum standards hereinafter set forth.

C. Installation Standards:

1. Hydrant Spacing. The maximum lineal distance between hydrants along streets in congested area shall be 300 ft. and 500 ft. in all other districts or as otherwise specified by the fire chief and city manager taking into consideration the nature of the planned uses for the area, proximity to other hydrants and the sizing and the fire flow capability of the hydrant being considered.

[2]Established by Ordinance No. 351

2. Hydrant Locations. Hydrants shall be located at intersections and in the middle of long blocks and at the end of dead-end streets. Hydrants may be at locations designated by the fire chief or his representative within large properties so as to be accessible to fire apparatus.

3. Water Mains and Valves. Primary feeders shall form a loop of about 3,000 feet in length or two-thirds of distance from the center of a development to the outskirts of a development. Primary feeders shall be a minimum of twelve inches in diameter or larger when necessary to achieve required fire flow and maintain residual pressure specified. Valves on primary feeders shall not be over 1000 feet apart, and the mains connecting to them shall be valved where connected.

   Secondary feeders shall form smaller loops within the loops of the primary mains by running from one primary feeder to another. Secondary feeders shall be spaced one block apart. Secondary feeders shall be a minimum of eight inches in diameter. Valves on secondary feeders shall be installed in the following manner: Four at crosses, three at tees, and one on each hydrant branch.

   Inline valve spacing shall not exceed 500 feet in long blocks.

   All water pipe size, class and/or wall thickness or pressure rating, such as schedule or standard dimension ratio (SDR) shall be specified by the utilities manager and approved by the fire chief.

   In newly platted subdivisions, the fire chief or the utility manager may require the installation of primary water feeder mains, i.e., water mains supplying eight inch mains of such larger size as is appropriate for adequate fire flow to the area being platted or future subdivisions deemed likely to occur within the subsequent thirty year term.

4. Hydrant Specification. Fire hydrants shall have two two and one-half inch outlets and one four and one-half inch outlet. The four and one-half inch outlet shall be installed so that the outlet faces the street and the bottom of the outlet shall be no less than one foot above the surface of existing or proposed streets or sidewalks. Threads on all outlets shall be National Standard Hose Threads. Hydrant type, size and brand shall be specified by Benson utility department.

5. In cases where it is infeasible to loop the water system, the water mains supplying water to fire hydrants shall be of an appropriate size pipe designated by the fire chief or his authorized representative, however, the size of pipe so designated shall not be less than eight inches in diameter.

D. Installation Responsibility:

The fire protection facilities required by this section shall be installed by, and at the expense of, the subdivider or commercial developer and upon completion of said installation, and the approval thereof by the fire chief and the utility department, the title to all such facilities shall pass to the city free of any liens and thereafter shall be maintained by the city.

E. Site Plan Approval:

Site plans will be approved by the planning and zoning commission only after the plans have been certified by the fire chief or his authorized representative as conforming to the foregoing standards or approved deviations and the design and specifications for the fire protection facilities and water mains approved by the utility department supervisor. In the event that plans have not been returned with required changes noted within ten days after submission to the fire chief or the utility department, the planning and zoning commission shall proceed to act upon the site plan as if the required certification and approval had been granted.

F. Limits on New Construction:

No new development, as defined herein above, involving combustible materials shall be undertaken until such time as the building site is in compliance with the minimum standard set forth hereinafter in Section 7-4-7 (G).

G. Minimum Standard:

In the event the council, the fire chief or his authorized representative determines it is infeasible to construct hydrants to meet the spacing requirements stated herein a minimum of one hydrant shall be installed no greater than five hundred feet from the furthest point of any proposed new building in all districts.

H. Waiver by Council Action:

Any provision of this article may be waived by a two-thirds vote of the mayor and council present at a duly noticed regular or special meeting attended by quorum.

CHAPTER 8 BUSINESS REGULATIONS

ARTICLE 8-1 BUSINESS LICENSES[1]

8-1-1 Definitions
8-1-2 License Required
8-1-3 Fees
8-1-4 Multiple Businesses
8-1-5 Non-Assignability of Licenses
8-1-6 Information Required
8-1-7 Receipt for License
8-1-8 Display of License
8-1-9 Renewal of License
8-1-10 Violations and Evidence of Violations

Section 8-1-1 Definitions

In this article, unless the context otherwise requires:

A. "Business" means all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of pecuniary gain, benefit or advantage, such as selling, trading or rendering services but shall not include:

1. Casual activities such as yard sales occurring not more than four (4) times during a single calendar year,

2. Consignments to a reseller or dealer holding a current city license issued for the consignee's resale business, or

3. Rental of a single residential unit by the owner.

B. "Business license application" means that application form provided by the office of the city clerk and completed as a prerequisite for obtaining a city business license.

C. "Home occupation" means a business conducted from a residential property or from a property in a residentially zoned district. A home occupation permit must be approved by the planning and zoning commission before a business license may be issued.

D. "Solicitor" means any person, whether a resident of the city or not, traveling on foot or by any type of conveyance, from place to place, house to house, or street to street, selling, taking or attempting to take orders for sale of goods or services of any nature whatsoever, for either immediate or future delivery or performance, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale, or whether advance payment is collected on such sales or not. The term "solicitor" shall also include any person who might be referred to as a "peddler" and does not permit the described activities to occur at a fixed or stationary location without compliance with all appropriate requirements of the zoning ordinances applicable to business locations.

[1]Modified by Ordinances No. 359, 368 and 388

E. "Yard sale" means the casual sale of excess personal property conducted from a residential property on an infrequent basis not to exceed four times per year. A single yard sale may begin on Friday and be continued through Sunday or a single yard sale may last up to four days if held in conjunction with a national holiday. In no event may a single yard sale continue for longer than four consecutive days. All signs, including temporary yard sale direction signs, shall be removed or collected immediately upon conclusion of the yard sale. Failure to collect or remove yard sale signs constitutes a violation.

Section 8-1-2 License Required

A city business license is required by all persons, partnerships, associations, companies, corporations or other entities conducting, operating or engaging in any business pursuit, enterprise, trade or profession within the city. This business license is required in addition to an Arizona Privilege Tax (sales tax) License.

Section 8-1-3 Fees

The city business license fee is established at $25.00 per year, however, the city council may periodically adjust the business license fee. The city clerk may prorate this fee for a one-half year license. This fee shall be collected from each and every type of business operating within the city. The business license fee shall be an annual fee due in July of each year.

Section 8-1-4 Multiple Businesses

In the event that any person or organization doing business within the city shall be engaged in more than one business, such person or organization shall obtain a separate business license for each non-contiguous business location. In the event a person conducts more than one business on a single property or on contiguous properties, only one business license fee shall be charged, unless a separate state sales tax license or federal identification number has been issued in conjunction therewith in which event a separate business license shall be issued and a fee collected for each business whether on single or contiguous properties.

Section 8-1-5 Non-Assignability of Licenses

No license granted or issued under any of the provisions of this article shall be in any manner assignable or transferable, nor shall it authorize any person other than is named therein to do business, or authorize the same to be done in any other place than is therein named or designated.

Section 8-1-6 Information Required

It shall be the duty of the city clerk to require and obtain from every applicant for a license under this article, a signed and completed business license application. The business license application shall specify the name of the person, firm, association or corporation to whom the license is to be issued,

the location of the business, the nature of the business and other information about the business or the business owner determined to be necessary.

Section 8-1-7 Receipt for License

Upon payment of the appropriate license fee, the applicant shall receive a license receipt which shall affirm compliance with this article, shall set forth the amount paid and the date of expiration of the license and shall be signed by the clerk or a duly authorized agent thereof.

Section 8-1-8 Display of License

A. Any person having obtained a license pursuant to this article shall exhibit the same at all times while in force in some conspicuous part of the place of business and shall produce the same when required to do so by any officer of the police department or other duly authorized agent of the city.

B. Any peddler, solicitor or mobile merchant while engaged in peddling, shall carry their license and exhibit the same when requested to do so by any municipal officer or any citizen of the community. In the event a business licensee has more than one employee who is soliciting at different locations, such as a door to door solicitor, each such employee shall carry a copy of the business license and shall display the same upon request from any person, whether or not such person is a city employee.

Section 8-1-9 Renewal of License

Business licenses acquired pursuant to this article may be renewed at their expiration date by appearing in person at the office of the city clerk or by mailing the completed renewal application which shall be mailed to the licensee at the mailing address shown in the city records. The renewal shall provide for verification of the facts on file at the city clerk's office and payment of the appropriate fee. No application for renewal of a business license will be unreasonably denied. Failure to receive the renewal form by mail shall not excuse compliance with the renewal requirement after August 1st of the year due.

Section 8-1-10 Violations and Evidence of Violations

A. The fact that a person or organization is engaged in any business which, pursuant to this article, requires a license, or that such person or organization has exhibited a sign indicating such business is being pursued, shall be prima facie evidence of the liability of such person or organization to pay a license fee.

B. In any legal action initiated by the city for the violation of any of the provisions of this article, in the absence of proof by the defendant otherwise, it shall be presumed that no license has been issued and the burden of proof as to the issuance of the license shall be upon the defendant.

C. Each day of failure to obtain a required business license or renew an expired business license shall constitute a single offense punishable as provided in the city code or by injunction or both.

D. Any person, partnership or other entity believed to be conducting a Abusiness@ as defined in Section 8-1-1, shall be mailed, or personally delivered, a copy of this chapter, including any subsequent amendments thereto, and not less than ten calendar days thereafter, may be found guilty of a violation of these requirements if not then in possession of a currently issued business license.

E. A violation of this article shall constitute a civil offense punishable by a penalty of up to twenty-five dollars for each offense or occurrence determined by the court to have occurred plus court and related enforcement costs.

ARTICLE 8-2 LIQUOR LICENSE FEES

A. All persons, organizations or other entities desirous of manufacturing or selling alcoholic beverages within the city shall obtain a license to do so from the State of Arizona and also from the city. Applications for said license shall be made with the clerk and shall be in accordance with those rules and regulations adopted and promulgated by the council in regular session.

B. All licenses issued by the city shall be for the calendar year commencing January 1 and ending December 31. If application is made on or after July 1, only one-half of the annual fee shall be collected by the city and said license shall expire on the first day of the following year.

The following fees shall be charged by the clerk:

1. Wholesaler's license to sell all alcoholic beverages - two hundred fifty dollars.

2. Wholesaler's license to sell only wine and beer - one hundred dollars.

3. Hotel or on-sale retailer's license to sell all alcoholic beverages by individual portions and in the original containers - one hundred fifty dollars.

4. Hotel or on-sale retailer's license to sell only wine and beer by individual portions and in the original containers - seventy-five dollars.

5. On-sale retailer's license to sell only beer by individual portion and in the original container - twenty-five dollars.

6. Off-sale retailer's license to sell all alcoholic beverages - fifty dollars.

7. Off -sale retailer's license to sell wine and beer only - fifty dollars.

8. Off -sale retailer's license to sell beer only - twenty-five dollars.

BUSINESS: LICENSES AND TAXES

ARTICLE 8-3 MISCELLANEOUS BUSINESS REGULATIONS

8-3-1 Billboards
8-3-2 Communication Services

Section 8-3-1 Billboards

The erection and maintenance of signs, billboards and similar structures on the streets, alleys and public thoroughfares of the city is prohibited.

Section 8-3-2 Communication Services

A. The mayor and council shall have the right to enter into negotiations and discussions resulting in agreements, franchises or other contractual relations with organizations or individuals pertaining to the installation of all types of communication services, including but not limited to fiber-optic systems, cable television, wired and/or wireless internet connections, satellite services and radio services. A public hearing shall be held prior to acceptance of any proposals for said services.

B. No individual or organization dealing in any communication service subject to the provisions of subsection A of this section shall be allowed to operate within the city limits without first obtaining a license, permit, franchise or other authorization from the council. Said license, permit, franchise or other authorization shall not be transferable to any other individual or organization or entity without the express consent of the council.

ARTICLE 8-4 INTENT

It is the purpose and intention of the council to encourage and, whenever possible, stimulate private enterprise within the city. Consequently, whenever the city must impose restrictions or limitations, those restrictions or limitations are to be construed narrowly in order to minimize the imposition upon the citizens. This statement must be read, however, in connection with this code and all the city ordinances and also in conjunction with the obligation of the council to safeguard the overall welfare of all the members of the community.

ARTICLE 8-5 SOLICITORS[1]

8-5-1 Application for License
8-5-2 Special License Required
8-5-3 Fees
8-5-4 Exemptions
8-5-5 Prohibited Activities

[1]Modified by Ordinances No. 359, 368 and 388

Section 8-5-1 Application for License

Applications for licenses by solicitors shall be made to the office of the city clerk on a city license application that requires the following minimum information:

A. Arizona privilege tax license information.

B. Benson business license number.

C. Name of applicant.

D. Permanent and/or local address of applicant.

E. A brief description of the nature of the business to be conducted and the goods to be sold and if the goods are farm or orchard products, a statement whether they are produced or grown by applicant.

F. If applicant is an employee and not the owner of the business, the name and address of the employer, together with credentials establishing exact relationship.

G. The length of time for which the right to do business is desired.

H. If a vehicle is to be used, a description of the same, together with Arizona state vehicle number or other means of identification.

I. The name of all individuals working with or for the applicant.

J. Such other information as the city clerk may deem necessary for the proper protection of the city.

Section 8-5-2 Special License Required

Licenses are required for all solicitors, except those exempted in Section 8-5-4 prior to conducting any business within the city limits. All applications shall be acted upon and a license issued, where appropriate, as soon as reasonably possible. Appeals from the denial of a soliciting license shall be brought before the mayor and council at the next regularly scheduled meeting by having the city clerk place the matter on the agenda for that meeting.

Section 8-5-3 Fees

The fee for solicitors shall be: $25 dollars per day; $50 dollars per quarter or $75 dollars per year, as the applicant elects at the time of purchasing said license.

Section 8-5-4 Exemptions

All non-profit organizations represented by persons permanently residing within the local area, delivery vehicles making delivery for sales made elsewhere and out-of-town businesses supporting a special event approved by the city council, such as the Benson-San Pedro Valley Chamber of Commerce or the Benson Merchants Association, are not required to obtain a solicitor's license.

Section 8-5-5 Prohibited Activities

A solicitor shall not:

A. Shout, make any outcry, blow a horn, ring a bell or use any sound device or musical instrument, including any loudspeaking radio or sound amplifying system, in excess, for the purposes of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

B. Conduct business from any city-owned or city-controlled property and shall not be permitted to operate in any congested area where his operation might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

C. Sell or offer for sale goods, wares or merchandise from vehicles on any of the public streets of the city provided, however, that the prohibition herein contained shall not include the peddling of fresh food products of farm or garden, nor bona fide deliveries of goods, wares, merchandise or food made on a regular route to regular customers.

D. Solicit or peddle from 8:00 o'clock p.m. to 8:00 o'clock a.m., or at any time when a sign has been posted on a building stating "No solicitors or peddlers", or words to that effect, except that a licensed solicitor may call upon the occupant of a residence at other times when the solicitor has received express prior permission from that occupant to do so.

E. A violation of this article shall constitute a civil offense punishable by a penalty of up to twenty-five dollars for each offense or occurrence determined by the court to have occurred.

CHAPTER 8A TAX CODE [1]

ARTICLE 8A-1 ADOPTION OF TAX CODE

That certain document known as "The Tax Code of the City of Benson, Arizona", three copies of which are on file in the office of the city clerk of the City of Benson, Arizona is hereby referred to, adopted and made a part hereof as if fully set out in this chapter.

1 Modified by Ordinance 453 – 2002 Amendments
Modified by Ordinance 463, 477, 482
Modified by Ordinance 501 – 2006 Amendments
Modified by Ordinance 508 – 2007 Amendments
Modified by Ordinance 526 – 2008 Amendments
Modified by Ordinance 538 – 2009 Amendments
Modified by Ordinance 560 – 2011 Amendments

TAX CODE

OF THE

CITY OF BENSON

(2011 Edition)

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CHAPTER 8A - PRIVILEGE AND EXCISE TAXES

Article I - General Conditions and Definitions

Sec. 8A-1. Words of tense, number and gender; code references.

(a) For the purposes of this Chapter, all words of tense, number, and gender shall comply with A.R.S. Section 1-214 as amended.

(b) For the purposes of this Chapter, all code references, unless specified otherwise, shall:
(1) refer to this City Code.
(2) be deemed to include all amendments to such code references.

Sec. 8A-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, 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.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, 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 to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

"Equivalent Excise Tax" means either:

(1) a Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or
(2) an excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or
(3) an excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. Under no circumstances shall “food” include an edible product, beverage, or ingredient infused, mixed, or in any way combined with medical marijuana or an active ingredient of medical marijuana.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"Medical Marijuana" means "marijuana" used for a "medical use" as those terms are defined in A.R.S. Section 36-2801.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 8A-432 for such use. This definition shall not include:

(1) janitorial equipment and supplies.
(2) office equipment, office furniture, and office supplies.
(3) motor vehicles licensed for use upon the highways of the State.

"Modifier" means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) transference of title and possession occur without the City; and
(2) the stock from which such personal property was taken was not within the corporate limits of the City; and
(3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) The order is placed from without the State of Arizona; and
(2) the property is delivered to the buyer at a location outside the State; and
(3) the property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

(1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
(2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.
(3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
(4) drugs or medicine, including oxygen.
(5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

(6) durable medical equipment which has a federal Health Care Financing Administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

(7) under no circumstances shall "prosthetic" include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person.

"Qualifying Community Health Center"

(1) means an entity that is recognized as nonprofit under Section 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(a) the sole provider of primary care in the community.

(b) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(2) includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

(1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(2) a licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(3) a hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.

(4) a facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

"Receipt (of Notice) by the Taxpayer" means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

"Remediation" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

"Rental Equipment" means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

(1) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(2) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Rental Supply" means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

(1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and

(2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Repairer" means a person who restores or renews products, wares, or articles of manufacture.

"Resides within the City" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"Solar Daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

“Solar Energy Device” means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

"Speculative Builder" means either:

(1) an owner-builder who sells or contracts to sell, at any time, improved real property (as provided in Section 8A-416) consisting of:
    (a) custom, model, or inventory homes, regardless of the stage of completion of such homes; or
    (b) improved residential or commercial lots without a structure; or
(2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:
    (a) prior to completion; or
    (b) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

"Substantially Complete" means the construction contracting or reconstruction contracting:

(1) has passed final inspection or its equivalent; or
(2) certificate of occupancy or its equivalent has been issued; or
(3) is ready for immediate occupancy or use.

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

"Tax Collector" means the City Council or its designee or agent for all purposes under this Chapter.

"Taxpayer" means any person liable for any tax under this Chapter.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.
"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

Sec. 8A-110. Definitions: Income-producing capital equipment

(a) The following tangible personal property, other than items excluded in subsection (d) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:
    (1) machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining", and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.
    (2) Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.
    (3) Tangible personal property, sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including optical fiber, coaxial cable, and other transmission media which are components of carrier systems.
    (4) machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

(5) pipes or valves four inches (4") in diameter or larger and related equipment, used to transport oil, natural gas, artificial gas, water, or coal slurry. For the purpose of this section, related equipment includes: compressor units, regulators, machinery and equipment, fittings, seals and any other parts that are used in operating the pipes or valves.

(6) aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

(A) a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(B) any foreign government for use by such government outside of this State.

(C) persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.

(7) machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

(8) railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

(9) machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

(10) buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

(11) metering, monitoring, receiving, and transmitting equipment acquired by persons engaged in the business of providing utility services or telecommunications services; but only to the extent that such equipment is to be used by the customers of such persons and such persons separately charge or bill their customers for use of such equipment.

(12) groundwater measuring devices required under A.R.S. § 45-604.

(13) machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this Section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

(14) (Reserved)

(15) Included in income producing capital equipment are liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This subsection does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this Code. Chemicals meeting the requirements of this subsection are deemed not to be expendable under subsection (d) of this Section.

(16) cleanrooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph (13) of this subsection, of semiconductor products. For purposes of this paragraph, “cleanroom” means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom:

(A) includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment.

(B) does not include the building or other permanent, nonremovable component of the building that houses the cleanroom environment.

(17) machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five years after the start of initial construction. For purposes of this paragraph:

(A) “motion picture, multimedia or interactive video production” includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, cd-rom, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.

(B) “soundstage complex” means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.

(18) tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(A) any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

(B) any satellite television or data transmission facility, if both of the following conditions are met:

(i) over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations parts 25 and 100.

(ii) over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For purposes of subdivision (B) of this paragraph, “test period” means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

(19) machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

(20) machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

(21) machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission Order issued April 21, 1997, 47 Code of Federal Regulations Part 73. This paragraph does not exempt any of the following:
   (A) repair or replacement parts purchased for the machinery or equipment described in this paragraph.
   (B) machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.
   (C) any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

(b) The term "income-producing capital equipment" shall further include ancillary machinery and equipment used for the treatment of waste products created by the business activities which are allowed to purchase "income-producing capital equipment" defined in subsection (a) above.

(c) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in subsection (d) below, where the property is acquired to become an integral part of another item itemized in subsections (a) or (b) above.

(d) The tangible personal property defined as income-producing capital equipment in this Section shall <u>not</u> include:
   (1) expendable materials. For purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsections (a), (b) or (c) of this Section regardless of the cost or useful life of that property.
   (2) janitorial equipment and hand tools.
   (3) office equipment, furniture, and supplies.
   (4) tangible personal property used in selling or distributing activities.
   (5) motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection (a)(10) above without regard to the use of such motor vehicles.
   (6) shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt.
   (7) motors and pumps used in drip irrigation systems.

(e) For the purposes of this Section:
   (1) "aircraft" includes:
      (A) an airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121.
      (B) tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.
   (2) "other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

Sec. 8A-115. Definitions: computer software; custom computer programming.

(a) "<u>Computer Software</u>" means any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not "custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter, regardless of the method by which title, possession, or right to use the software is transferred to the user.

(b) "Custom Computer Programming" means any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.

(1) The term does not include a prewritten program which is held or existing for general or repeated sale, lease, or license, even if the program was initially developed on a custom basis for in-house, or for a single customer's, use.

(2) Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the customer.

Sec. 8A-120. (Reserved)

Article II - Determination of Gross Income

Sec. 8A-200. Determination of gross income: in general.

(a) Gross income includes:
  (1) the value proceeding or accruing from the sale of property, the providing of service, or both.
  (2) the total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.
  (3) all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.
  (4) all other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

(b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.

(c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

Sec. 8A-210. Determination of gross income: transactions between affiliated companies or persons.

In transactions between affiliated companies or persons, or in other circumstances where the relationship between the parties is such that the gross income from the transaction is not indicative of the market value of the subject matter of the transaction, the Tax Collector shall determine the "market value" upon which the City Privilege and Use Taxes shall be levied. "Market value" shall correspond as nearly as possible to the gross income from similar transactions of like quality or character by other taxpayers where no common interest exists between the parties, but otherwise under similar circumstances and conditions.

Sec. 8A-220. Determination of gross income: artificially contrived transactions.

The Tax Collector may examine any transaction, reported or unreported, if, in his opinion, there has been or may be an evasion of the taxes imposed by this Chapter and to estimate the amount subject to tax in cases where such evasion has occurred. The Tax Collector shall disregard any transaction which has been undertaken in an artificial manner in order to evade the taxes imposed by this Chapter.

Sec. 8A-230. Determination of gross income based upon method of reporting.

The method of reporting chosen by a taxpayer, as provided in Section 8A-520, necessitates the following adjustments to gross income for all purposes under this Chapter:

(a) <u>Cash basis</u> - When a person elects to report and pay taxes on a cash basis, gross income for the reporting period shall include:
  (1) the total amounts received on "paid in full" transactions, against which are allowed all applicable deductions and exclusions; and
  (2) all amounts received on accounts receivable, conditional sales contract, or other similar transactions, against which no deductions and no exclusions from gross income are allowed. Interest on finance contracts may be deducted if separately itemized on all books and records.

(b) Accrual basis - When a person elects to report and pay taxes on an accrual basis, gross income shall include all gross income for the applicable period regardless of whether receipts are for cash, credit,
conditional, or partially deferred transactions, and regardless of whether or not any security document or instrument is sold, assigned, or otherwise transferred to another. Persons reporting on the accrual basis may deduct bad debts, provided that:

(1) the amount deducted for the bad debt must be deducted from gross income of the month in which the actual charge-off was made, and only to the extent that such amount was actually charged-off, and also only to the extent that such amount is or was included as taxable gross income; and

(2) if any amount is subsequently collected on such charged-off account, it shall be included in gross income for the month in which it was collected, without deduction for expense of collection.

Sec. 8A-240. Exclusion of cash discounts, returns, refunds, trade-in values, vendor-issued coupons, and rebates from gross income.

(a) The following items are not included in gross income:

(1) Cash discounts allowed by the vendor for timely payment, but only discounts allowed against taxable gross income.

(2) The value of property returned by customers to the extent of the amount actually refunded either in cash or by credit and the amount refunded was included in taxable gross income.

(3) The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold, when the full sales price is included in taxable gross income. Trade-in allowances are not allowed for manufactured buildings taxable under Section 8A-427.

(4) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.

(5) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.

(6) In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

(b) If the amount specified in subsection (a) above is credited by a vendor subsequent to the reporting period in which the original transaction occurs, such amount may be excluded from the taxable gross income of that subsequent reporting period, but only to the extent that the excludable amount was reported as taxable gross income in that prior reporting period.

Sec. 8A-250. Exclusion of combined taxes from gross income; itemization; notice; limitations.

(a) When tax is separately charged and/or collected. The total amount of gross income shall be exclusive of combined taxes only when the person upon whom the tax is imposed shall establish to the satisfaction of the Tax Collector that such tax has been added to the total price of the transaction. The taxpayer must provide to his customer and also keep a reliable record of the actual tax charged or collected, shown by cash register tapes, sales tickets, or other accurate record, separating net transaction price and combined tax. If at any time the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts billed or collected on account of combined taxes, the claimed taxes collected may not be excluded from gross income, unless such records are completed and/or clarified to the satisfaction of the Tax Collector.

(1) Remittance of all tax charged and/or collected. When an added charge is made to cover City (or combined) Privilege and Use Taxes, the person upon whom the tax is imposed shall pay the full amount of the City taxes due, whether collected by him or not, and in the event he
collects more than the amount due he shall remit the excess to the Tax Collector. In the event the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts of taxes collected by him, and the Tax Collector is satisfied that the taxpayer has collected taxes in an amount in excess of the tax assessed under this Chapter, the Tax Collector may determine the amount collected and collect the tax so determined in the manner provided in this Chapter.

(2) Itemization. A taxpayer, in order to be entitled to exclude from his gross income any amounts paid to him by customers for combined taxes passed on to the customer, must prove that he has provided his customer with a written record of the transaction showing at a minimum the price before the tax, the combined taxes, and the total cost. This shall be addition to the record required to be kept under subsection (a) above.

(b) When tax has been neither separately charged nor separately collected. When the person upon whom the tax is imposed shall establish by means of invoices, sales tickets, or other reliable evidence, that no added charge was made to cover combined taxes, the taxpayer may exclude tax collected from such income by dividing such taxable gross income by 1.00 plus a decimal figure representing the effective combined tax rate expressed as a fraction of 1.00.

Sec. 8A-260. Exclusion of fees and taxes from gross income; limitations.

(a) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met. For the purpose of the exclusion provided by this subsection only, the terms vendor and vendee shall also apply to a lessor and lessee respectively, of a motor vehicle if, in addition to all other requirements of this subsection, the lease agreement specifically requires the lessee to pay such fees or taxes, and such amounts are separately itemized in the documentation provided to the lessee.

(b) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers, the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III, relating to recordkeeping, have been met.

(c) There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met:

(1) emergency telecommunication services excise tax imposed pursuant to A.R.S. Section 42-5252. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls;
(2) the telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. Section 42-5252;
(3) federal excise taxes on communications services as imposed by 26 U.S.C. § 4251;
(4) car rental surcharge imposed pursuant to A.R.S. Section 48-4234;
(5) federal excise taxes on passenger vehicles as imposed by 26 U.S.C. §4001(.01);
(6) waste tire disposal fees, imposed pursuant to A.R.S. Section 44-1302.

(d) There shall be excluded from gross income of vendors of motor vehicles dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor.

Sec. 8A-265. (Reserved)

Sec. 8A-266. Exclusion of motor carrier revenues from gross income.

There shall be excluded from gross income the gross proceeds of sale or gross income derived from any of the following:

(a) a motor carrier's use on the public highways in this State if the motor carrier is subject to a fee prescribed in A.R.S. Title 28, Chapter 15, Article 4 or A.R.S. Title 28, Chapter 16, Article 4.

(b) Leasing, renting or licensing a motor vehicle subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16.

(c) The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting or licensing such property.

(d) for the purposes of these exclusions, "motor carrier" includes a motor vehicle weighing 26,000 pounds or more, a lightweight motor vehicle which weighs 12,001 pounds to 26,000 pounds and a light motor vehicle weighing 12,000 pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 15 or A.R.S. Title 28, Chapter 16.

Sec. 8A-270. Exclusion of gross income of persons deemed not engaged in business.

(a) For the purposes of this Section, the following definitions shall apply:
   (1) "Federally Exempt Organization" means an organization which has received a determination of exemption, or qualifies for such exemption, under 26 U.S.C. Section 501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity", "non-licensed business", or "public educational entity".
   (2) "Governmental Entity" means the Federal Government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.
   (3) "Non-Licensed Business" means any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.
   (4) "Proprietary Club" means any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. Section 501(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.
   (5) "Public Educational Entity" means any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

(b) Transactions which, if conducted by any other person, would produce gross income subject to tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a public educational entity; governmental entity, except "proprietary activities" of municipalities as provided by Regulation; or non-licensed business.

(c) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:
   (1) Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. Section 501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by Regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.

(2) Gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.

(3) (Reserved)

(d) Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or non-licensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:

(1) a statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required, to pay City Privilege Tax or an equivalent excise tax on its gross income from such transactions and does in fact file returns on same; and

(2) the Privilege License number of the otherwise exempt vendee; and

(3) such other information as the Tax Collector may require.

(e) Franchisees or concessionaires operating businesses for or on behalf of any exempt organization, governmental entity, public educational entity, proprietary club, or non-licensed business shall not be considered to be such an exempt organization, club, entity, or non-licensed business, but shall be deemed to be a taxpayer subject to the provisions of this Chapter, except as provided in the definition of governmental entity, regarding urban mass transit.

(f) (Reserved)

Sec. 8A-280. (Reserved)

Sec. 8A-285. (Reserved)

Sec. 8A-290. (Reserved)

Article III - Licensing and Recordkeeping

Sec. 8A-300. Licensing requirements.

(a) The following persons shall make application to the Tax Collector for a Privilege License, accompanied by a non-refundable fee of five dollar ($5.00), and no person shall engage or continue in business or engage in such activities until he shall have such a license:
   (1) every person desiring to engage or continue in business activities within the City upon which a Privilege Tax is imposed by this Chapter.
   (2) (Reserved)
   (3) (Reserved)

(b) A person engaged in more than one activity subject to City Privilege and Use Taxes at any one business location is not required to obtain a separate license for each activity; provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.

(c) Limitation. The issuance of a Privilege License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

Sec. 8A-305. Special licensing requirements.

(a) Partnerships. Application for a Privilege License for a partnership engaging or continuing in business in the City shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaged in business as partners, limited or general, shall be in the name of the partnership.

(b) Corporations. Application for a Privilege License for a corporation engaging or continuing in business in the City shall provide, as a minimum, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation. Licenses issued to persons engaged in business as corporations shall be in the name of the corporation.

(c) Multiple Locations or Multiple Business Names. A person engaged in or conducting one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment.

(d) (Reserved)

Sec. 8A-310. Licensing: duration of license; transferability; display.

(a) Except as provided in Section 8A-320, the Privilege License shall be valid until request for cancellation and/or surrender of the license by the licensee or expiration through cessation by the licensee of the business activity for which it was issued.

(b) The Privilege License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee's place of business.

(c) Any licensee who permits his license to expire through cancellation as provided in Section 8A-320, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for license, shall be granted a new license as an original applicant and shall pay the current license fee. Any licensee who loses or misplaces his Privilege License which is still in effect shall be charged the current license fee for each reissuance of a license.

(d) (Reserved)

(e) (Reserved)

(f) (Reserved)

(g) (Reserved)

(h) (Reserved)

(i) (Reserved)

(j) (Reserved)

Sec. 8A-315. (Reserved)

Sec. 8A-320. Licensing: cancellation; revocation.

(a) Cancellation. The Tax Collector shall be authorized to cancel the City Privilege License of any licensee as "inactive" if the taxpayer, required to report monthly to the City, has neither filed any return nor remitted to the City any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.

(b) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid to the City under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector shall be authorized to revoke the City Privilege License of said licensee.

(c) Notice and Hearing. The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Privilege License. If within twenty (20) days the licensee so notified requests a hearing, he shall be granted a hearing before the Tax Collector.

(d) After cancellation or revocation of a taxpayer's license, the taxpayer shall not be relicensed until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with the provisions of this Chapter.

Sec. 8A-330. Operating without a license.

It shall be unlawful for any person who is required by this Chapter to obtain a Privilege License to engage in or continue in business within the City without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter.

Sec. 8A-350. Recordkeeping requirements.

(a) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by Regulation; or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day.

(b) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:
   (1) only for future reporting periods, and
   (2) only by express determination of the Tax Collector that such specific recordkeeping is necessary due to the inability of the City to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

Sec. 8A-360. Recordkeeping: claim of exclusion, exemption, deduction, or credit; documentation; liability.

(a) All deductions, exclusions, exemptions and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required under A.R.S. Section 42-5022 or by this Chapter or Regulation.

(b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

Sec. 8A-370. Inadequate or unsuitable records.

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either:
   (1) to provide such other records required by this Chapter or Regulation; or
   (2) to correct or to reconstruct his records, to the satisfaction of the Tax Collector.

Article IV - Privilege Taxes

Sec. 8A-400. Imposition of Privilege Taxes; presumption.

(a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

(1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not, or whether derived from within the City or from without.

(2) (Reserved)

(b) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

(c) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income is subject to the tax until the contrary is established by the taxpayer.

(d) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

Sec. 8A-405. Advertising.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "Local Advertising", except the following:

(1) the advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within the State, and in which the advertisement names either no "commonly designated business entity" within the State or more than one "commonly designated business entity". "Commonly Designated Business Entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

(2) the advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.

(3) the advertising of a product which may only be purchased from an out-of-State supplier.

(4) political advertising for United States Presidential and Vice Presidential candidates only.

(5) advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.

(6) advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(b) (Reserved)

Sec. 8A-407. (Reserved)

Sec. 8A-410. Amusements, exhibitions, and similar activities.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the city or takes place entirely within the City, which includes the following type or nature of businesses:
   (1) operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.
   (2) (Reserved)

(b) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:
   (1) (Reserved)
   (2) Amounts retained by the Arizona Exposition and State Fair Board from ride ticket sales at the annual Arizona State Fair.
   (3) Income received from a hotel business subject to tax under Section 8A-444, if all of the following apply:
      (A) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax.
      (B) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection.
      (C) The hotel business has provided an exemption certificate to the person engaging in business under this section.
   (4) Income that is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
   (5) Income from arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business.

(c) The tax imposed by this Section shall not include arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement.

Sec. 8A-415. Construction contracting: Construction contractors.

(a) The tax rate shall be at an amount equal to four percent (4%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.
   (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.
   (2) (Reserved)
   (3) gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 8A-427.
   (4) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, “direct costs” means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(b) Deductions and exemptions.

(1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

(2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

(3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(A) Section 8A-465, subsections (g) and (p)

(B) (Reserved)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 8A-110, that is deducted from the retail classification pursuant to Section 8A-465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(A) to be incorporated into real property.

(B) to become so affixed to real property that it becomes part of the real property.

(C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 8A-465, subsection (g) shall be exempt from the tax imposed under this Section.

(7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this Section.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(A) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, subsection D.

(B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.

(C) Any other information considered to be necessary.

(10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:
  (A) the attributable amount shall not exceed the value of the development fees actually imposed.
  (B) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
  (C) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(c) "Subcontractor" means a construction contractor performing work for either:
  (1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number.
  (2) an owner-builder who has provided the subcontractor with a written declaration that:
    (A) the owner-builder is improving the property for sale; and
    (B) the owner-builder is liable for the tax for such construction contracting activity; and
    (C) the owner-builder has provided the contractor his City Privilege License number.
  (3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

Sec. 8A-416. Construction contracting: speculative builders.

(a) The tax shall be equal to four percent (4%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.
  (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.
  (2) "Improved Real Property" means any real property:
    (A) upon which a structure has been constructed; or
    (B) where improvements have been made to land containing no structure (such as paving or landscaping); or
    (C) which has been reconstructed as provided by Regulation; or
    (D) where water, power, and streets have been constructed to the property line.
  (3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
  (4) "Partially Improved Residential Real Property," as used in this Section, means any improved real property, as defined in subsection (a) (2) above, being developed for sale to individual

homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) Exclusions.

(1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.

(2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.

(3) (Reserved)

(4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in (a)(4) above to another speculative builder only if all of the following conditions are satisfied:

(A) The speculative builder purchasing the partially improved residential real property has a valid City privilege license for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and

(C) The seller also:

(i) maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and

(ii) retains a copy of the written declaration provided by the buyer for the transaction; and

(iii) is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City privilege tax return where he claims the exclusion.

(5) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, “direct costs” means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 8A-465, subsections (g) and (p)

(ii) (Reserved)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 8A-465, subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer

as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 8A-110, that is deducted from the retail classification pursuant to Section 8A-465(g), that does not become a permanent attachment to a

building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) to be incorporated into real property.

(ii) to become so affixed to real property that it becomes part of the real property.

(iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

Sec. 8A-417. Construction contracting: owner-builders who are not speculative builders.

(a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to four percent (4%) of:

(1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 8A-415(c)(2); and

(2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, “direct costs” means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) <u>Exemptions</u>.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 8A-465, subsections (g) and (p)

(ii) (Reserved)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 8A-465, subsection (g) shall be exempt from the tax imposed under this Section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 8A-110, that is deducted from the retail classification pursuant to Section 8A-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) to be incorporated into real property.

(ii) to become so affixed to real property that it becomes part of the real property.

(iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(d) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 8A-540, will be based on reportable date.

(e) (Reserved)

Sec. 8A-418. (Reserved)

Sec. 8A-420. (Reserved)

Sec. 8A-425. Job printing.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

(b) The tax imposed by this Section shall not apply to:
   (1) job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.
   (2) out-of-City sales.
   (3) out-of-State sales.
   (4) (Reserved)
   (5) sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
   (6) (Reserved)

Sec. 8A-427 Manufactured buildings.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.

(b) Sales of used manufactured buildings are not taxable.

(c) The sale prices of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. Sales of such items are subject to the tax under Section 8A-460.

(d) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability.

Sec. 8A-430. Timbering and other extraction.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:
   (1) felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.
   (2) extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

(b) The rate specified in subsection (a) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(d) (Reserved)

Sec. 8A-432. Mining.

(a) The tax rate shall be at an amount equal to one tenth of one percent (.1%), not to exceed one tenth of one percent, of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.

(b) The rate specified in subsection (a) above shall be applied to the value of the entire product mined, smelted or produced for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

Sec. 8A-435. Publishing and periodicals distribution.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:

(1) publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 8A-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.

(2) distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

(b) "Location of Publication" is determined by:

(1) location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or

(2) location of either the editorial offices or the printing facilities, if the publisher performs his own physical printing.

(c) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.

(d) "Circulation," for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

(e) Allocation of taxes between cities and towns. In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the City shall include:

(1) that portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus

(2) only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

(f) The tax imposed by this Section shall not apply to sales of newspapers, magazines or other periodicals to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

Sec. 8A-440. (Reserved)

Sec. 8A-444. Hotels.

The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

(a) Person.

(b) Exclusions. The tax imposed by this Section shall not include:
- (1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility.
- (2) Gross proceeds of sales or gross income that is properly included in another business activity under this Article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.
- (3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this Article.
- (4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 8A-410 or Section 8A-475 due to an exclusion, exemption or deduction.
- (5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 8A-445 or Section 8A-450 as rental, leasing or licensing for use of real or tangible personal property.
- (6) Income from providing telephone, fax or Internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 8A-470 as telecommunication services.

Sec. 8A-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:
- (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
- (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
- (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 8A-470.

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) (Reserved)

(g) (Reserved)

(h) (Reserved)

(i) (Reserved)

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 8A-444 of this code.

(k) (Reserved)

(l) (Reserved)

(m) (Reserved)

(n) Notwithstanding the provisions of Section 8A-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.

(p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.

(q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.

(r) Income received from the rental of any “low-income unit” as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the “gross rent” defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory “low-income unit” rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the “gross rent” limitation for the unit and the rent received from that unit.

(s) The gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation. For the purposes of this paragraph:

(1) "Affiliated Corporation" means a corporation that meets one of the following conditions:

(A) the corporation owns or controls at least eighty percent of the lessor.

(B) the corporation is at least eighty percent owned or controlled by the lessor.

(C) the corporation is at least eighty percent owned or controlled by a corporation that also owns or controls at least eighty percent of the lessor.

(D) the corporation is at least eighty percent owned or controlled by a corporation that is at least eighty percent owned or controlled by a reciprocal insurer.

(2) For the purposes of subsection (1), ownership and control are determined by reference to the voting shares of a corporation.

(3) "Reciprocal Insurer" has the same meaning as prescribed in A.R.S. Section 20-762.

Sec. 8A-446. (Reserved)

Sec. 8A-447. Rental, leasing, and licensing for use of real property: additional tax upon transient lodging.

In addition to the taxes levied as provided in Section 8A-444, there is hereby levied and shall be collected an additional tax in an amount equal to two percent (2%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging space furnished to any transient.

Sec. 8A-450. Rental, leasing, and licensing for use of tangible personal property.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

(b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.

(c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

(1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

(2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

(3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 8A-410, or to a radio station, television station, or subscription television system.

(4) rental, leasing, or licensing for use of the following:

(A) prosthetics.

(B) income-producing capital equipment.

(C) mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

(5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.

(7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.

(8) the gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.

(9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.

(10) rental, leasing or licensing for use an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215.

(11) rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the department of revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the department of revenue and city, as applicable, for examination.

Sec. 8A-452. (Reserved)

Sec. 8A-455. Restaurants and Bars.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

(b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.

(c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(d) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-5061(A)49, that serves the food and beverages to its passengers, without additional charge, for consumption in flight.

(e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.

(f) For the purposes of this Section, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

Sec. 8A-460. Retail sales: measure of tax; burden of proof; exclusions.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

(b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.

(c) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:
(1) sales of stocks, bonds, options, or other similar materials.
(2) sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
(3) sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
(4) gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.
(5) sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(d) Notwithstanding the provisions of subsection (a) above, when the gross income from the sale of a single item of tangible personal property exceeds five thousand dollars ($5,000), a one percent (1%) tax rate shall apply to the first $5,000. Above $5,000, the measure of tax shall be at a rate of one percent (1%).

(e) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.

(f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.

(g) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.

Sec. 8A-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 8A-460:

(a) sales of tangible personal property to a person regularly engaged in the business of selling such property.

(b) out-of-City sales or out-of-State sales.

(c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.

(d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.

(e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.

(f) sales of prosthetics.

(g) sales of income-producing capital equipment.

(h) sales of rental equipment and rental supplies.

(i) sales of mining and metallurgical supplies.

(j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.

(l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

(m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.

(n) sales made directly to the Federal government to the extent of:
   (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
   (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.

(o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 8A-455 or the equivalent excise tax upon such income.

(p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(q) food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food.

(r) (Reserved)
   (1) (Reserved)
   (2) (Reserved)
   (3) (Reserved)
   (4) (Reserved)

(s) sales of groundwater measuring devices required by A.R.S. Section 45-604.

(t) (Reserved)

(u) sales of aircraft acquired for use outside the State, as prescribed by Regulation.

(v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(w) (Reserved)

(x) (Reserved)

(y) (Reserved)

(z) (Reserved)

(aa) the sale of tangible personal property used in remediation contracting as defined in Section 8A-100 and Regulation 8A-100.5.

(bb) sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
(1) printed or photographic materials.
(2) electronic or digital media materials.

(cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(dd) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 8A-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

(ee) for the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 8A-470 is considered to be a sale for resale in the regular course of business.

(ff) sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

(gg) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(hh) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 8A-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

(ii) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

(jj) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(kk) sales of motor vehicles that use alternative fuel was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215.

(ll) Sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the department of Revenue as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and city, as applicable, for examination.

Sec. 8A-470. Telecommunication services.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.
- (1) Telecommunication services shall include:
  - (A) two-way voice, sound, and/or video communication over a communications channel.
  - (B) one-way voice, sound, and/or video transmission or relay over a communications channel.
  - (C) facsimile transmissions.
  - (D) providing relay or repeater service.
  - (E) providing computer interface services over a communications channel.
  - (F) time-sharing activities with a computer accomplished through the use of a communications channel.
- (2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:
  - (A) all fees for connection to a telecommunication system.
  - (B) toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.
  - (C) fees charged for access to or subscription to or membership in a telecommunication system or network.
  - (D) charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.
  - (E) charges for telephone, fax or Internet access services provided at an additional charge by a hotel business subject to taxation under Section 8A-444.

(b) Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(c) Interstate transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

(d) (Reserved)

(e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in A.R.S. Section 9-505, shall be exempt from the tax imposed by this Section.

(f) Prepaid calling cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 8A-460 are exempt from the tax imposed under this Section.

(g) Internet Access Services - the gross income subject to tax under this section shall not include sales of internet access services to the person's subscribers and customers. For the purposes of this subsection:

(1) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(2) "Internet Access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

Sec. 8A-475. Transporting for hire.

The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State:

(a) transporting of persons or property by railroad; provided, however, that the tax imposed by this subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, “a single shipment” means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.

(b) transporting of oil or natural or artificial gas through pipe or conduit.

(c) transporting of property by aircraft.

(d) transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in Article VII, Chapter 14, Title 42 , Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:

(1) gross income subject to the tax imposed by Article IV, Chapter 16, Title 28, Arizona Revised Statutes.

(2) gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.

(3) (Reserved)

(4) (Reserved)

(e) (Reserved)

(f) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:

(1) income that is specifically included as the gross income of a business activity upon which another Section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.

(2) income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.

(g) The tax imposed by this Section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

Sec. 8A-480. Utility services.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:
   (1) consumers or ratepayers who reside within the City.
   (2) consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.

(b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 8A-460 and 8A-465, and not considered gross income taxable under this Section.

(c) Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

(d) Tax credit offset for franchise fees. There shall be allowed as an offset any franchise fees paid to the City pursuant to the terms of a franchise agreement. However, such offset shall not be allowed against taxes imposed by any other Section of this Chapter. Such offsets shall not be deemed in conflict with or violation of subsection 8A-400(b).

(e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(g) The tax imposed by this Section shall not apply to:
   (1) revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.
   (2) revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

(h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

Sec. 8A-485. (Reserved)

Article V - Administration

Sec. 8A-500. Administration of this Chapter; rule making.

(a) The administration of this Chapter is vested in and exercised by the City of Benson, and except as otherwise provided, and all payments shall be made to the City of Benson. The City may, pursuant to an intergovernmental agreement, contract with the State of Arizona Department of Revenue for the administration of the tax. In such cases, "Tax Collector" shall also mean the Arizona Department of Revenue, when acting as agent in administering this tax.

(b) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.

(c) Except where such Regulations would conflict with administrative regulations adopted by the City Council or with provisions of this Chapter, all regulations on the Transaction Privilege Tax adopted by the Arizona Department of Revenue under the authority of A.R.S. Section 42-1005 shall be considered Regulations of this Chapter and enforceable as such.

(d) Taxpayers shall be subject to the State taxpayer bill of rights (A.R.S. § 42-2051 et. seq).

(e) The unified audit committee shall publish uniform guidelines that interpret the model city tax code and that apply to all cities and towns that have adopted the model city tax code as provided by A.R.S. Section 42-6005.
   (1) Prior to finalization of uniform guidelines that interpret the model city tax code, the unified audit committee shall disseminate draft guidelines for public comment.
   (2) Pursuant to A.R.S. Section 42-6005(D), when the state statutes and the model city tax code are the same and where the Arizona Department of Revenue has issued written guidance, the department's interpretation is binding on cities and towns.

Sec. 8A-510. Divulging of information prohibited; exceptions allowing disclosure.

(a) Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.

(b) The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the Federal Government, the State of Arizona, or any political subdivisions.

(c) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.

(d) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.

(e) Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the City.

(f) The Tax Collector shall provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Section 42-6003, A.R.S. Section 42-6005, and A.R.S. Section 42-6056.

(g) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 8A-435 upon publishing and distribution of periodicals.

(h) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.

Sec. 8A-515. (Reserved)

Sec. 8A-516. (Reserved)

Sec. 8A-517. (Reserved)

Sec. 8A-520. Reporting and payment of tax.

(a) The taxpayer shall be required to use the report form authorized by the Tax Collector and shall mail or deliver the same, together with remittance for the amount of tax due, payable to the City of Benson, to the Tax Collector or any City representative or agent authorized to receive such payment. The tax return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return.

(b) Payment. If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.

(c) Requirement of Security. If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future payments.

(d) Method of Reporting. Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the Privilege License application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.
  (1) Taxpayers must report all gross income subject to the tax using the same basis of reporting.
  (2) Taxes imposed upon construction contracting shall be reported as follows:
    (A) Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.
    (B) Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession, whichever occurs earlier.
    (C) Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 8A-417.

Sec. 8A-530. When tax due; when delinquent; verification of return; extensions.

(a) Except as otherwise specified in this Section, the taxes levied under this Chapter shall be due, payable, and delinquent on the dates specified for the State Transaction Privilege Taxes in A.R.S. Section 42-5014. The taxpayer shall report on the taxes imposed by this Chapter at such frequency to be identical to the taxpayer's reporting frequency for the reporting of State Transaction Privilege Taxes.

(b) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) The Tax Collector may for good cause extend the date for making any return required under the provisions of this Section as prescribed by A.R.S. Section 42-1107.

Sec. 8A-540. Interest and civil penalties.

Any taxpayer who shall have failed to timely pay any taxes imposed by this Chapter, or file a report for the same in a timely manner, or fail or refuse to allow examination of records by the Tax Collector, shall be subject to any interest or civil penalties on such tax in like manner as such interest and penalties are provided in A.R.S. Sections 42-1123 and 42-1125 for the State Transaction Privilege Tax.

(a) (Reserved)

(b) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

(f) (Reserved)

(g) (Reserved)

(h) (Reserved)

(i) (Reserved)

Sec. 8A-541. (Reserved)

Sec. 8A-542. Prospective application of new law or interpretation or application of law.

(a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.

(b) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:
   (1) the change in interpretation or application applies prospectively only unless it is favorable to taxpayers.
   (2) the Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.

(c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter.

(d) Tax liabilities, penalties and interest paid before a new interpretation or application of a provision of this Chapter shall not be refunded unless the taxpayer requesting the refund provides evidence satisfactory to the Tax Collector that all such amounts will be refunded to the person who paid an added charge to cover the tax.

Sec. 8A-545. Deficiencies; when inaccurate return is filed; when no return is filed; estimates.

(a) If a taxpayer has failed to file a return or if the Tax Collector is not satisfied with the return or payment of tax required, the Tax Collector may redetermine the tax due, plus penalties and interest, and notify the taxpayer, as provided and prescribed by A.R.S. Sections 42-1108 and 42-1109.
   (1) (Reserved)
   (2) (Reserved)

(b) Estimates by the Tax Collector. Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Tax Collector's estimate. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector.

Sec. 8A-546. (Reserved)

Sec. 8A-550. Limitation periods.

(a) Except as provided elsewhere in this Chapter, deficiency assessments for the taxes imposed by this Chapter must be issued within the limitation periods prescribed in A.R.S. Section 42-1104, and must meet the provisions of A.R.S. Section 42-1108.

(b) (Reserved)

(c) In cases of failure to file a return or a false or fraudulent return, the limitation period shall be as prescribed in A.R.S. Section 42-1109.

(d) Special provisions relating to owner-builders. The limitation for an owner-builder subject to the tax as prescribed in Section 8A-417 shall be based upon the date such tax liability is reportable or was reported, as provided in Section 8A-417.

Sec. 8A-555. Tax Collector may examine books and other records; failure to provide records.

(a) The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter, for any periods available to him under Section 8A-550.

(b) (Reserved)

(c) (Reserved)

(d) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards.

(e) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. The provisions of Section 8A-545(b), concerning estimates, shall apply.

(f) (Reserved)

Sec. 8A-556. (Reserved)

Sec. 8A-560. Erroneous payment of tax; credits and refunds; limitations.

(a) Except as provided in Section 8A-565, the period within which a claim, meeting the requirements of subsection (c) of this Section, for credit may be filed, or refund allowed or made if no claim is filed, shall be as provided in A.R.S. Sections 42-1106 and 42-1118. For purposes of this Section, “claimant” means a taxpayer that has paid a tax imposed under this article and has submitted a credit or refund claim under this Section. Except where the taxpayer has granted a customer a power of attorney to pursue a credit or refund claim on the taxpayer’s behalf, claimant does not include any customer of such taxpayer, whether or not the claimant collected the tax from customers by separately stated itemization.

(b) (Reserved)

(c) A credit or refund claim submitted by a claimant for credit or refund of any taxes, penalties, or interest paid must be in writing and:
(1) Identify the name, address and city tax identification number of the taxpayer; and
(2) Identify the dollar amount of the credit or refund requested; and
(3) Identify the specific tax period involved; and
(4) Identify the specific grounds upon which the claim is based.

(d) (Reserved)

(e) (Reserved)

(f) Interest shall be allowed on the overpayment of tax for any credit or refund authorized pursuant to this Section at the rate and in the manner set forth in Section 8A-540(a). Interest shall be calculated from the date the Tax Collector receives the claimant's written claim meeting the requirements of subsection (c) of this Section.

(g) The denial of a refund by the Tax Collector is subject to the provisions of A.R.S. Section 42-1119.

(h) Claimants shall be subject to the State taxpayer bill of rights (A.R.S. Section 42-2051 et. seq.), except that reasonable fees and other costs may be awarded and are not subject to the monetary limitations of A.R.S. Section 42-2064 if the Tax Collector's position was not substantially justified or was brought for the purpose of harassing the claimant, frustrating the credit or refund process or delaying the credit or refund. For the purposes of this Section, “reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, not to exceed the amounts actually paid for expert witnesses, the cost of any study, analysis, report, test, project or computer program that is found to be necessary to prepare the claimant's case and necessary fees for attorneys or other representatives.

(i) (Reserved)

(j) Any refund paid under the provisions of this Section shall be paid from the Privilege Tax revenue accounts.

Sec. 8A-565. Payment of tax by the incorrect taxpayer or to the incorrect Arizona city or town.

(a) When it is determined that taxes have been reported and paid to the City by the wrong taxpayer, any taxes erroneously paid shall be transferred by the City to the privilege tax account of the person who actually owes and should have paid such taxes, provided that the City receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax.

(b) An assignment and waiver provided under this Section, must:
(1) identify the name and City privilege license number of the person who erroneously paid the tax and the person who should have paid the tax.
(2) provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid.
(3) authorize the City Treasurer to transfer the erroneously paid tax to the privilege tax account of the person who should have paid the tax.

(c) When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town, provided that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. Where the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The City shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax.

(d) This Section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. Section 42-6003. The limitations and procedures set forth in A.R.S. Section 42-6003 shall apply to all payments under this Section.

(e) When reference is made in this Section to this City or an Arizona city or town, and payments made to or requested from this City or an Arizona city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of this City or an Arizona city or town.

Sec. 8A-567. (Reserved)

Sec. 8A-570. Administrative review; petition for hearing or for redetermination; finality of order.

(a) Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-1113.

(b) Administrative review.
- (1) Petitions of appeal shall be made to, and hearings shall be conducted by, the Arizona Department of Revenue, in accordance with the provisions of A.R.S. Section 42-1251, as modified by Section 8A-571.
- (2) (Reserved)
- (3) (Reserved)
- (4) (Reserved)
- (5) Hearings shall be held by the Arizona Department of Revenue in accordance with the provisions of A.R.S. Section 42-1251. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-1253.
- (6) (Reserved)
- (7) (Reserved)
- (8) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) Taxpayers shall be subject to the State taxpayer bill of rights (A.R.S. § 42-2051 et. seq.).

Sec. 8A-571. Jeopardy assessments.

(a) If the Tax Collector believes that collection of any amounts imposed by this Chapter will be jeopardized by delay, he shall issue notice to the taxpayer in accordance with the provisions of A.R.S. Section 42-1111.

(b) In cases where such jeopardy notice has been issued, the taxpayer must meet the provisions of A.R.S. Section 42-1111, concerning appeals of jeopardy assessments, before any request for administrative review shall be honored. Any bond or collateral that may be required shall meet the provisions of A.R.S. Section 42-1102.

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

Sec. 8A-572. (Reserved)

Sec. 8A-575. Judicial review.

(a) Appeal of a State Board of Tax Appeals decision to the courts is valid only if all the provisions of A.R.S. Section 42-1254 are met.

(b) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) The City has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:
(1) the taxpayer asserts a reasonable dispute regarding the issue.
(2) the taxpayer has fully cooperated with the tax collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the tax collector.
(3) the taxpayer has kept and maintained records as required by the City.

(f) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the City or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the City to recover any amounts claimed to be due to it by virtue of the original assessment.

(g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

Sec. 8A-577. (Reserved)

Sec. 8A-578. (Reserved)

Sec. 8A-580. Criminal penalties.

(a) It is unlawful for any person to knowingly or willfully:
(1) fail or refuse to make any return required by this Chapter.
(2) fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.
(3) make or cause to be made a false or fraudulent return.
(4) make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.
(5) fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.
(6) fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

(7) advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.
(8) fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.
(9) reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure, an exemption from taxes imposed by this Chapter.

(b) The violation of any provision of subsection (a) above shall constitute a Class One Misdemeanor.

(c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

Sec. 8A-590. Civil actions.

(a) Liens.

(1) Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the City perfects a notice and claim of lien setting forth the name of the taxpayer, the amount of the tax, penalty, and interest, the period or periods for which the same is due, and the date of accrual thereof, the amount of the recording costs by the county recorder in any county in which the taxpayer owns real property and the documentation and lien processing fees imposed by the City council and further, stating that the City claims a lien therefor.

(2) The notice of claim of lien shall be signed by the tax collector under his official seal or the official seal of the City, and, with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.

(3) Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the City, but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.

(4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above and lien release fees imposed by the county recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the City.

(b) Actions to recover tax. The Arizona Department of Revenue, or any agent or representative authorized by that Department, may bring action, in the name of the City, to recover taxes as provided in A.R.S. Section 42-1114.

Sec. 8A-595. Collection of taxes when there is succession in and/or cessation of business.

(a) In addition to any remedy provided elsewhere in this City Code that may apply, the Tax Collector may apply the provisions of subsections (b) through (d) below concerning the collection of taxes when there is succession in and/or cessation of business.

(b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

(c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Sections 8A-416 and 8A-417.

(1) Any person who is a creditor or an affiliate of creditor, who acquires improved real property directly or indirectly from the creditor's debtor by any means set forth in this subsection, shall pay the tax based on the amount received by the creditor or its affiliate in a subsequent sale of such improved real property to a party unrelated to the creditor, regardless of when such subsequent sale takes place. Such tax shall be due in the month following the month in which the sale of the improved real property by the creditor or its affiliate occurs. Notwithstanding the foregoing, if the real property meets the definition of partially improved residential real property in Section 8A-416(a)(4) and all of the requirements of Section 8A-416(b)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale.

(2) In the event a creditor or its affiliate uses the acquired improved real property for any business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated, before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 8A-416 and 8A-417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the month in which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition.

(3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this subsection, neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate.

(4) If the tax liability imposed by either Section 8A-416 or Section 8A-417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the tax collector by the debtor subsequent to payment of the tax by the creditor or its affiliate, the amount so paid may constitute a credit, as equitably determined by the tax collector in good faith, against the tax imposed on the creditor or its affiliate by either paragraph 1 or paragraph 2 of this subsection.

(5) Notwithstanding anything in this chapter to the contrary, if a creditor or its affiliate is subject to tax as described in paragraph 1 or paragraph 2 of this subsection and such creditor or affiliate has not previously been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which the tax is due.

(d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

(1) If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.

(2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

Sec. 8A-596. (Reserved)

Sec. 8A-597. (Reserved)

Article VI - (Reserved)

Sec. 8A-600. (Reserved)

Sec. 8A-601. (Reserved)

Sec. 8A-602. (Reserved)

Sec. 8A-610. (Reserved)

Sec. 8A-620. (Reserved)

Sec. 8A-630. (Reserved)

Sec. 8A-640. (Reserved)

Sec. 8A-650. (Reserved)

Sec. 8A-660. (Reserved)

REGULATIONS - PRIVILEGE AND EXCISE TAXES

Reg. 8A-100.1. Brokers

(a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 8A-405, relating to advertising commissions.

(b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:

(1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.

(2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.

(c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.

(d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

(e) (Reserved)

(f) Location of Business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine "out-of-City sales"; provided, however, that an auctioneer is deemed to be engaged in business at the site of each auction.

Reg. 8A-100.2. Delivery, installation, or other direct customer services.

(a) "Delivery Charges" exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges.

(1) Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge. Only the separately stated charge for the delivery shall be deemed a "delivery charge".

(2) Freight in. Charges for delivery from place of production or the manufacturer to the vendor either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight -in" and are not considered delivery.

(b) "Installation", as used in this definition, relates only to tangible personal property. Installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sun screens on the windows of a boat; installing cabinets, carpeting, or "built-in appliances" to a camper or motorized recreational vehicle.

(c) Repair of tangible personal property is not included in this definition. See Regulation 8A-465.1.

(d) "Direct Customer Services" means services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of subsection (e) below are referred to by the words "identify" or "identification."

(1) A retailer sells a customer a $100 "plug-in" appliance, with a $25 delivery and installation charge. If the retailer identifies the $25 delivery and installation charge, it is a charge for direct customer services.

(2) A caterer charges his customer $1,000 for the food and drink served, $300 for setup and site cleanup, and $500 for bartender and waiters. If all charges are properly identified, only the $300 for set up and cleanup is a charge for direct customer services, and the $1,500 for food and service is restauranting gross income.

(3) Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges for labor as direct customer services.

(4) All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.

(5) An equipment rental company charging $25 for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.

(6) Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.

(e) Recordkeeping requirements.

(1) Any person who engages in transactions involving these services must:

(A) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge; and

(B) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified, to the satisfaction of the Tax Collector.

(2) Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or similar a expression does not satisfy the requirements of this subsection.

Reg. 8A-100.3. Retailers.

When in the opinion of the Tax Collector it is necessary for efficient administration of this Chapter, he may regard any salesman, representative, peddler, canvasser, or agent of any dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property for sale, rental, lease, or license as a retailer for the purposes of this Chapter, irrespective of whether he is making sales, rentals, leases, or licenses on his own behalf or on behalf of others. The Tax Collector may also regard such dealer, distributor, supervisor, or employer as a retailer for the purposes of this Chapter.

Reg. 8A-100.4. Out-of-City/Out-of-State Sales: Sales to Native Americans.

Sales to Native Americans or tribal councils by vendors located within the City shall be deemed sales within the City, unless all of the following conditions exist:

(1) the vendor has properly accounted for such sales, in a manner similar to the recordkeeping requirements for out-of-City sales; and,

(2) all of the following elements of the sale exist:

(a) solicitation and placement of the order occurs on the reservation; and

(b) delivery is made to the reservation; and

(c) payment originates from the reservation.

Reg. 8A-100.5. Remediation Contracting.

The following activities are considered remediation contracting and are exempt:

(1) excavation, transportation, treatment, and/or disposal of contaminated soil for purposes of site remediation (rather than characterization);
(2) installation of groundwater extraction and/or injection wells for purposes of groundwater remediation;
(3) installation of pumps and piping into groundwater extraction wells for remediation purposes;
(4) installation of vapor extraction wells for the purpose of soil or groundwater remediation;
(5) construction of remediation systems, such as groundwater treatment plants, vapor extraction systems, or air injection systems;
(6) connection of remediation systems to utilities;
(7) abandonment of groundwater or vapor extraction wells;
(8) removal/demolition of remediation systems;
(9) capping/closure construction activities; and
(10) service or handling charges for subcontracted remediation contracting activities.

Reg. 8A-115.1. Computer hardware, software, and data services.

(a) Definitions.

(1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.

(2) "Computer Software" (also called "computer program") is tangible personal property, and includes:

(A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.

(B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

(3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.

(4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.

(5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.

(b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

(1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.

(2) Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:

(A) the entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.

(B) the entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.

(C) license fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.

(D) the entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.

(E) any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:

(i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.

(c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

(1) statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.

(2) additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

(d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.

(e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 8A-100.2(e):

(1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

(A) Custom computer programming is deemed a professional service regardless of the form in which the programming is transferred.

(B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

(C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.

(2) Training services related to computer hardware or software, provided further that:
  (A) the provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.
  (B) training deemed a direct customer service does not include:
    (i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.
    (ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.
(3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).
(4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(f) (Reserved)

Reg. 8A-120.1. (Reserved)

Reg. 8A-200.1. When deposits are includable in gross income.

(a) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee.

(b) Nonrefundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt.

Reg. 8A-250.1. Excess tax collected.

If a taxpayer collects taxes in excess of the combined tax rate from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. Tax paid on an activity that is not subject to tax or that qualifies for an exemption, deduction, exclusion or credit is not excess tax collected.

Reg. 8A-270.1. Proprietary activities of municipalities are not considered activities of a governmental entity.

The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 8A-270:

(a) rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.

(b) producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

(c) sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

Reg. 8A-270.2. Proprietary clubs.

(a) Equity requirements. In order to qualify for exclusion under Section 8A-270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member -owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one or more of its employees and it is not engaged in any business activity connected with the operation of the club.

(b) Gross revenue requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of subsection 8A -270(c)(1),

(1) the following shall be excluded:

(A) membership dues.

(B) membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.

(C) assessments.

(D) special fund raising events, raffles, etc.

(E) donations, gifts, or bequests.

(F) gate receipts, admissions, and program advertising for not more than one tournament in any calendar year.

(2) the following must be included:

(A) green fees, court use fees, and similar charges for the actual use of a facility or part thereof.

(B) pro shop sales if the shop is owned by the club.

(C) golf cart rental if the carts are owned by the club.

(D) rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.

(E) all receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and similar receipts.

(F) locker and locker room fees and attendants charges if paid to the club.

(G) tournament entry fees other than entry fees for the one annual tournament exempt under subsection (b)(1)(F) above.

Reg. 8A-300.1. Who must apply for a license.

(a) For the purposes of determining whether a license is required under Section 8A-300, a person shall be deemed to be "engaged in or continuing in business" within the City, if he meets any of the following conditions:

(1) He is engaged in any activity subject to the City's Privilege Taxes as principal or broker.

(2) He has or maintains within the City directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this City under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this City.

(3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City from customers, consumers, or users located within the City, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City.

(4) (Reserved)

(5) (Reserved)

(b) (Reserved)

Reg. 8A-300.2. (Reserved)

Reg. 8A-310.1. (Reserved)

Reg. 8A-310.2. (Reserved)

Reg. 8A-310.3. (Reserved)

Reg. 8A-350.1. Recordkeeping: income.

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

(a) the gross income of the taxpayer attributable to any activity occurring in whole or in part in the City.

(b) the gross income taxable under this Chapter, divided into categories as stated in the official City tax return.

(c) the gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.

(d) the gross income claimed to be exempt, and with respect to each activity or transaction so claimed:
- (1) if the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:
  - (A) the City Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer resides), and
  - (B) the name, business address, and business activity of the customer, and
  - (C) evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.
- (2) if the transaction is claimed to be exempt for any other reason:
  - (A) the name, business address, and business activity of the customer, and
  - (B) evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.

(e) with respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.

(f) with respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.

(g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

Reg. 8A-350.2. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

(a) the total price of all goods acquired for use or storage in the City.

(b) the date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.

(c) documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.

(d) the gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.

(e) as applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
- (1) all construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
- (2) disbursement of collected gratuities and related payroll information required of restaurants.
- (3) franchise and license fee payments and computations thereto which relate to:
  - (A) utility service
  - (B) (Reserved)
- (4) the validity of any claims of proof of exemption, as provided by Regulation.
- (5) a claimed alternative prior value for reconstruction.
- (6) (Reserved)
- (7) (Reserved)
- (8) payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.
- (9) (Reserved)

(f) any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.

(g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

Reg. 8A-350.3. Recordkeeping: out-of-City and out-of-State sales.

(a) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.

(b) Out-of-State sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:
- (1) documentation of location of the buyer at the time of order placement; and
- (2) shipping, delivery, or freight documents showing where the buyer took delivery; and
- (3) documentation of intended location of use or storage of the tangible personal property sold to such buyer.

Reg. 8A-360.1. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

Reg. 8A-360.2. Proof of exemption: exemption certificate.

For the purpose of proof of exemption, in transactions other than those in which the proof is set by standard documentation as detailed in Regulations 8A-350.1 and 8A-360.1, the minimum acceptable proof and documentation for each transaction shall be the completion, <u>at the time of the transaction</u>, in all material respects, of a certificate containing all the information set forth below. For the purpose of validating the vendor's claim of exemption, such certificate is sufficient if executed by any person with apparent authority to act for the customer, and the information provided validates the claim.

INVALID UNLESS COMPLETED IN FULL

VENDOR'S NAME _____ Sales Invoice No. _____

Customer's Exemption Claim
City of Benson Privilege License (Sales) Tax

Customer's Business Name: _____

Customer's Business Address: _____

Specific Business Activity: _____
(e.g., if retailer, lessor, or
manufacturer, specify items _____
leased, sold or made, i.e.,
cars, computers, clothes, etc.) _____

Customer's License Nos. _____ City: _____ State: _____

ITEMS CLAIMED AS EXEMPT FROM TAX

_____: All Items on This Invoice or Purchase Order.
or
_____: Only Those Items Marked With an "E".

REASON FOR CLAIMED EXEMPTION:

_____: The items claimed as exempt are sold, rented, leased, or licensed by the above named customer in the normal course of its business activity.
or
_____: The items claimed as exempt are exempt from the City of Benson Privilege Tax for the following specific reason(s):

CUSTOMER'S CERTIFICATE

I certify that the above information is accurate to the best of my information and belief, and that I am authorized by the Customer above to acquire the items claimed as exempt on a tax-free basis on its behalf. I further understand that the making of a false or fraudulent claim to obtain a tax exemption is a Class One Misdemeanor under City Code Section 8A-580.

_____ _____
Name Date

_____
Title

Reg. 8A-405.1. Local advertising examples.

For the purposes of illustration only, and not by way of limitation, the following are provided as examples of local advertising subject to the tax:

(1) retail sales and rental establishments doing business within the State when only one commonly designated business entity is identified by name in the advertisement.
(2) financial institutions doing business within the State whether part of a national chain or local business only.
(3) sales of real estate located within the State.
(4) health care facilities located within the State.
(5) hotels, motels, and apartments, whether a national chain or local so long as the advertisement identifies any location within the State.
(6) brokers doing business within the State whether stockbrokers, real estate brokers, insurance brokers, etc.
(7) nonprofit organizations, which even though tax exempt, have an office, whether national, local, or branch, within the State.
(8) political activity, except United States Presidential and Vice Presidential candidates.
(9) restaurants or food service establishments which have one or more branches, outlets, or franchises within the State even though the local franchisee or licensee may not be responsible for the placement of the advertisement.
(10) services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shops, counseling services, utilities, contractors, auction houses, etc.
(11) coupons redeemable only at a single commonly designated business entity within the State.
(12) theater, sports, and other entertainment events held at locations within the State.

Reg. 8A-405.2. Advertising activity within the City.

(a) In General. Except as provided elsewhere in this regulation, a person engaged in advertising activity shall be considered to be doing business entirely within the City if all or a major portion of the dissemination facilities such as broadcasting studios, printing plants, or distribution centers are located within the City limits. Remote studios patched to an in-City studio and subject to engineering modulation or control at the in-City studio are considered studios doing business in the City.

(b) Billboards and other outdoor advertising companies shall be considered to be doing business within the City to the extent they have billboards or similar displays within the City.

(c) Publishers and distributors of newspaper and other periodicals shall be subject to the tax upon advertising imposed by Section 8A-405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 8A-435.

Reg. 8A-407.1. (Reserved)

Reg. 8A-415.1. Distinction between the categories of construction contracting.

For the purposes of this Chapter, transactions involving improvements to, or sales of, real property are designated into one of the following categories, and these categorizations shall apply, whether or not a person designates himself as a contractor, construction manager, developer, or otherwise:

(a) A person performing improvements to real property is one of the following:
  (1) an "Owner-Builder" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-builder" may also be a "speculative builder".

(2) a "Construction Contractor" when performing work for the owner or lessor or lessee-in-possession of the real property, unless that person has provided a written declaration stating that:
   (A) the owner-builder is improving the property for sale; and
   (B) the owner-builder is liable for the tax for such construction contracting activity; and
   (C) the owner-builder has provided the contractor his City Privilege License number.
(3) a "Subcontractor" as provided in Section 8A-415 (c).

(b) An owner or lessor ("owner-builder") of improved real property is one of the following:
   (1) a "Speculative Builder" as provided in Section 8A-100; or
   (2) an "owner-builder who is not a speculative builder" in all other cases.

(c) The terms "owner", "lessor", and "lessee-in-possession" shall be deemed to include any authorized agent for such person.

Reg. 8A-415.2. Distinction between construction contracting and certain related activities.

(a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:
   (1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
   (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
   (3) Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with the equipment rented.

(b) Distinction between construction contracting, retail, and certain direct customer service activities.
   (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
   (2) Items attached or installed on tangible personal property are retail sales.
   (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).
   (4) Demolition, earth moving, and wrecking activities are considered construction contracting.

(c) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(d) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
   (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
   (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
   (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
   (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

Reg. 8A-415.3. Construction contracting; tax rate effective date.

A. In the event of a tax rate change, the rate imposed on gross income from construction contracting shall be computed based upon the rate in effect when the contract was executed, subject to the "enactment date" as defined in this section. Gross income from a contract executed prior to the enactment date shall not be subject to the tax rate change, provided the contract contains no provision that entitles the construction contractor to recover the amount of the tax.

B. In the event of a rate increase, in order to qualify for the lower rate, the construction contractor shall, upon request, provide sufficient documentation, in a manner and form prescribed by the tax collector, to verify that a contract was entered into before the enactment date.

C. For purposes of this section, "enactment date" shall be:
   (1) in the event an election is held, the date of election.
   (2) in the event no election is held, the date of final adoption by the mayor and council.
   (3) notwithstanding the above, nothing in this section shall be construed to prevent the town from establishing a later enactment date.

Reg. 8A-416.1. Speculative builders: homeowner's bona fide non-business sale of a family residence.

(a) A sale of a custom home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:
   (1) the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and
   (2) the seller has not sold more than two (2) such residences (or, if the residence is a vacation residence, two (2) such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and
   (3) the seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale.

(b) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner's bona fide non-business purpose and all construction contractors shall be required to report and pay the tax imposed on all such improvements.

(c) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.

(d) "<u>Owner</u>" and "<u>Homeowner</u>" as used in this Regulation shall only mean an individual, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings, for the estate of a deceased or incompetent person or a minor, may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.

Reg. 8A-416.2. Reconstruction contracting.

(a) "<u>Reconstruction (of Real Property)</u>" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:
   (1) a structure existed on said real property prior to the reconstruction activity; and
   (2) the "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and

(3) the total cost of all construction contracting activities performed on said real property in the twenty-four (24) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and

(4) the structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.

(b) Except as provided in subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s).

(c) "Alternative Prior Value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, at a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. (Only long term lending - not interim or construction financing will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below.

(d) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty) whichever is earlier, to a purchaser or grantee of any single residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens or security interests) of a share, or a sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases a person shall include a husband and wife as a community, or any co -occupants of a single unit as joint tenants.

Reg. 8A-425.1. Distinction between job printing and certain related activities.

(a) Computerized Printing. Computerized versions of all items which would be taxable under Section 8A-425 if performed without computerized assistance are considered taxable under that Section, and therefore, are not exempt services.

(b) Book publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.

(c) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

Reg. 8A-435.1. Distinction between publishing of periodicals and certain related activities.

(a) Book publishing shall not be considered publication of newspapers, magazines, or other periodicals for purposes of this Chapter. Sales of books shall be deemed retail sales. The printing of books shall be deemed job printing.

(b) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

Reg. 8A-435.2. Advertising income of publishers and distributors of newspapers and other periodicals.

Publishers and distributors of newspapers and other periodicals shall be subject to the tax upon advertising imposed by Section 8A-405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 8A-435.

Reg. 8A-445.1. (Reserved)

Reg. 8A-445.3. Rental, leasing, and licensing of real property as lodging: room and board; furnished lodging.

(a) Room and board.
   (1) Rooming houses, lodges, or other establishments providing both lodging and meals, shall maintain a record of the separate charges made for the lodging and the meals.
   (2) The charge for lodging shall be subject to the tax imposed by Section 8A-444 or Section 8A-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 8A-455.

(b) Furnished lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging, and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property, unless:
   (1) Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished; and
   (2) The lessor separately charges tenants for lodging and for furnishings; and
   (3) The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.

   If all of the above conditions are met, such person shall report both sources of income separately to the City.

Reg. 8A-450.1. Distinction between rental, leasing, and licensing for use of tangible personal property and certain related activities.

(a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:
   (1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
   (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
   (3) Rental of pumps or cranes is rental of tangible personal property, regardless of whether or not an operator is included with the equipment rented.

(b) Distinction between equipment rental, leasing, or licensing for use and transporting for hire. The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is considered rental, leasing, or licensing of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

Reg. 8A-450.2. Rental, leasing, and licensing for use of tangible personal property: membership fees; other charges.

(a) Membership, admission, or other fees charged by any rental club or limited access lessor are considered part of taxable gross income.

(b) Gross income from rental, leasing, or licensing for use of tangible personal property must include all charges by the lessor to the lessee for repair, maintenance, or other service upon the tangible personal property rented, leased, or licensed.

(c) Sale of a warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is exempt.

Reg. 8A-450.3. Rental, leasing, and licensing for use of equipment with operator.

In cases where the tangible personal property is rented, leased, or licensed with an operator provided by the lessor, the charge for the operator shall not be includable in the gross income from the rental, lease, or license of such tangible personal property if the charge for the operator and the charge for the use of the equipment are separately itemized to the lessee and separately maintained on the books and records of the lessor.

Reg. 8A-450.4. Rental, leasing, and licensing for use of tangible personal property: semi-permanently or permanently installed tangible personal property.

(a) The term "semi-permanently or permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.

(b) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.

(c) Examples of "semi-permanently or permanently installed tangible personal property" include, but are not limited to: computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.

(d) The term does not include mobile transportation equipment or tangible personal property designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.
   (1) For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.
   (2) Other similar examples include, but are not limited to: camping equipment, contracting equipment, chain saw, forklift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, towbars, sump pumps, arc welders.

(e) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi-permanently installed" in said city or town, except when the item is mobile transportation equipment or one of the other types of portable equipment or property described in subsection (d) above.

Reg. 8A-450.5 Rental, leasing, and licensing for use of tangible personal property: delivery, installation, repair, and maintenance charges.

(a) Delivery and installation charges in connection with the rental, leasing, and licensing of tangible personal property are exempt from the tax imposed by Section 8A-450; provided that the provisions of Regulation 8A-100.2 have been met.

(b) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be exempt.

(c) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property are exempt from the tax imposed by Section 8A-450; however, such income is subject to the provisions of Sections 8A-460 and 8A-465, and the provisions of Regulation 8A-465.1.

Reg. 8A-455.1. Gratuities related to restaurant activity.

Gratuities charged by or collected by persons subject to the tax imposed by Section 8A-455 may be excluded from gross income if:

(1) such charge is separately stated upon the bill, invoice, etc. provided the customer, and such amounts are maintained separately in the books and records of the taxpayer; and
(2) such gratuities are distributed in total to employees of the taxpayer in addition to customary and regular wages.

Reg. 8A-460.1. Distinction between retail sales and certain other transfers of tangible personal property.

(a) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 8A-460:
(1) tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 8A -415 through 8A-418.
(2) (Reserved)
(3) job printing, per Section 8A-425.
(4) mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 8A-430.
(5) publication of newspapers, magazines, and other periodicals, per Section 8A-435.
(6) rental, leasing, and licensing of real or tangible personal property, per Sections 8A-445 or 8A-450.
(7) restaurants and bars, per Section 8A-455.
(8) telecommunications services, per Section 8A-470.
(9) utility services, per Section 8A-480.

(b) Distinction between construction contracting, retail, and certain direct customer service activities.
(1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
(2) Items attached or installed on tangible personal property are retail sales.

(3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).
(4) Demolition, earth moving, and wrecking activities are considered construction contracting.

(c) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.

(d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
(1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
(2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
(3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
(4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

Reg. 8A-460.2. Retail sales: trading stamp company transactions.

A trading stamp transaction is defined as follows: the trading stamp company issues stamps to a vendor; the vendor then provides them to its customers; and the customer then exchanges the stamps for merchandise from the trading stamp company.

The exchange transaction for the merchandise shall be deemed a retail sale and the trading stamp company a retailer. All taxes imposed by this Chapter applicable to retail transactions are therefore applicable to such exchange transactions.

The rate of tax shall be the retail rate based upon the retail dollar value of the redeemed merchandise as expressed in the redemption dollar value per book of stamps or portion thereof. The tax imposition described herein is in lieu of any Privilege or Use Tax upon the business of issuing stamps, redeeming the same, or using or storing property redeemed.

Reg. 8A-460.3. Retail sales: membership fees of retailers.

Membership, admission, or other fees charged by limited access retailers are considered part of taxable gross income of the business activity of selling tangible personal property.

Reg. 8A-460.4. Retail sales: professional services.

(a) "Professional Services" refer to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, workpapers, reports, etc. are not in a form which would be subject to retail sales to customers. However, transfer of items in a form which would be subject to retail sales (e.g., artwork, forms, manuals, etc.) would not be considered professional services. The issue is one of fact which must be resolved in each situation.

(b) Creative ("idea") labor and design labor that do not result in tangible personal property that will be or can be sold are deemed professional services and, if charged separately and maintained separately in the taxpayer's books and records, are not includable in gross income.

(c) "Professional services" shall be deemed to include those items of tangible personal property which are incidental to the services rendered, provided such tangible personal property is "inconsequential."

(1) Incidental transfers of tangible personal property shall be regarded as "inconsequential" if,

(A) the purchase price of the tangible personal property to the person rendering the professional services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the purchaser in connection with the transaction, and

(B) the tangible personal property transferred is not itself in a form which is subject to retail sale.

(2) In cases where the tangible personal property transferred is deemed inconsequential, the provider of the tangible personal property so transferred is deemed the ultimate consumer of such tangible personal property, and subject to all applicable taxes imposed by this Chapter upon such transfer.

(d) Examples:

(1) The transfer of paper embodying the result or work product of the services rendered by an attorney or certified public accountant is regarded as inconsequential to the charges for professional services.

(2) An appraisal report issued by an appraiser, reflecting such appraiser's efforts to appraise real estate, is regarded inconsequential.

(3) Use of a hair care product on a client's hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client's use thereafter and without the professional's assistance, the transfer of the bottle of hair care product is deemed not inconsequential.

(4) If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

Reg. 8A-460.5. Retail sales: monetized bullion; numismatic value of coins.

(a) "Monetized Bullion" means coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.

(b) Any coin shall be considered to have been transferred or acquired primarily for its "Numismatic value" if the sale or acquisition price:

(1) is equal to or greater than twice (2 times) the value of the metallic content of the coin as of the date of transfer or acquisition; and

(2) is equal to or greater than twice (2 times) its face value, in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

Reg. 8A-460.6. Retail sales: consignment sales.

Sales of merchandise acquired on consignment are taxable as retail sales. In cases where the merchant is acting as an agent on behalf of another dealer, sales of the consigned merchandise are taxable to the principal, provided the merchant makes full disclosure to customers that he is acting only as an agent for the named principal. However, when the principal is not deemed to be a dealer, such sales are considered to be those of the merchant and are taxable to him.

Reg. 8A-465.1. Retail sales: repair services.

(a) Fair market value of parts and labor charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part, which ordinarily sells to the customer at $10, at $5 and including the difference as "service" or "labor". In the absence of satisfactory evidence supplied by the taxpayer as to industry or business practice, the Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit, to estimate the gross income subject to tax.

(b) (Reserved)

Reg. 8A-465.2. Retail sales: warranty, maintenance, and similar service contracts.

(a) Gross income from sales of warranty, maintenance, and service contracts is exempt from the tax imposed by Section 8A-460.

(b) Transfers of tangible personal property in connection with a service, warranty, guaranty, or maintenance agreement between a vendor and a vendee shall be subject to tax under Section 8A-460 only to the extent of gross income received from separately itemized charges made for the items of property transferred.

(c) The gross income derived from a maintenance insurance agreement, which agreement is entered into between the purchaser and any person other than the seller is not subject to tax imposed by Section 8A-460. If the provider of the maintenance insurance agreement pays for tangible personal property on behalf of the insured in the performance of the agreement, such sales are subject to all applicable taxes imposed by this Chapter.

(d) Charges for tangible personal property provided under the terms of a warranty, maintenance, or service contract exempted under Section 8A-465 are subject to tax as retail sales.

(e) However, gross income received by a dealer from a manufacturer for work performed under a manufacturer's warranty is not taxable under Section 8A-460.

Reg. 8A-465.3. Retail sales: sale of containers, paper products, and labels.

(a) The sale of a container or similar packaging material which contains personal property and which is transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such nontaxable containers include but are not limited to:
   (1) packaging materials sold to a manufacturer of video equipment for containment of the product during shipment.
   (2) cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or contained meat.
   (3) bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where such bags or containers are used to contain and measure the amount purchased by the customer.
   (4) shopping bags and similar merchandising bags sold to grocery stores, department stores or other retailers.
   (5) gift wrappings and gift boxes sold to department stores or other retailers.

(b) Sales of non-returnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks and other similar food accessories to a restaurant or others taxable under Section 8A-455 for transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink or condiment are sales for resale and not taxable.

(c) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a sale.

(d) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made.

(e) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it, and is not exempt as a sale for resale.

Reg. 8A-465.4. Retail sales: aircraft acquired for use outside the State.

"Aircraft acquired for use outside the State" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

(a) Any foreign government for use by such government outside of this State.

(b) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subsection also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.

Reg. 8A-470.1. Telecommunication services.

(a) Gross income from the business activity of providing telecommunication services to consumers within this City shall not include:
   (1) charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 8A-415, 8A-416, or 8A-417 (construction contracting); 8A-445 (real property rental); 8A-450 (tangible personal property rental); or 8A-460 (retail sales); depending upon the nature of the work performed.
   (2) separately billed advertising charges which are subject to the provisions of Section 8A-405 or 8A-435.

(b) Mobile equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones, portable hand-held two-way radios, paging devices, etc.), the provider shall, for the purposes of the tax imposed by this Section, determine whether such provider's customers are "within this City" as follows:
   (1) by the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.
   (2) in all other cases, the business location of the telecommunications provider.

Reg. 8A-475.1. Distinction between transporting for hire and certain related activities.

The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is deemed rental, leasing, or licensing for use of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

Reg. 8A-520.1. (Reserved)

Reg. 8A-520.2. Change of method of reporting.

(a) Any taxpayer electing to change his reporting method shall be permitted to do so only upon filing a written request to the Tax Collector and after receiving written approval of the Tax Collector. The approval shall state the effective date of the change.

(b) The Tax Collector may postpone such approval to allow for examination of the records of the taxpayer and may further require that all tax liability be satisfied up to the effective date of the change.

(c) Failure of the taxpayer to notify the Tax Collector and await approval before changing the method of reporting will subject the taxpayer to interest and penalties if his original method of reporting would produce higher taxes due the City. When a person makes such change without the consent of the Tax Collector, the Tax Collector may audit his books and records to verify the tax liability as of the date of the change.

(d) Any taxpayer who has failed to indicate a choice of reporting method upon the application for a Privilege License shall be deemed to have chosen the accrual method of reporting.

Reg. 8A-555.1. (Reserved)

Reg. 8A-571.1. Collection of tax in jeopardy.

Evidence that collection of tax due is in jeopardy shall include documentation that:

(a) the taxpayer is going out of business.

(b) the taxpayer has no City Privilege License or has no permanent business location in the State.

(c) the taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the City on three (3) or more occasions within the previous thirty-six (36) calendar months.

(d) the taxpayer has remitted payment by check, which has been dishonored.

(e) the taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 8A-555.1.

CHAPTER 9 HEALTH AND SANITATION

ARTICLE 9-1 SOLID WASTE COLLECTION AND DISPOSAL

9-1-1 Definitions
9-1-2 Rates
9-1-3 Garbage Containers
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9-1-6 Enforcement and Administration
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9-1-11 Prohibited Acts
9-1-12 Annual Review and Notification

Section 9-1-1 Definitions

In this article unless the context otherwise requires:

A. "Collector" means the city or its authorized representative including a contract collection service, assigned the task of the collection of solid waste within the city.

B. "Commercial" means contributors who occupy a single business location and who could or do place their normal refuse in individual containers, so constructed that require the removal of the refuse from the container rather than the dumping of the container itself. Commercial is considered any customer who cannot be classified as residential or general business and comprises mobile home parks, apartments, hotels, motels and other multi-residential activities of more than one dwelling unit under a common roof and comprises all businesses, commercial, institutional, governmental and similar activities.

C. "Contributor" means all owners, agents or tenants of properties within the city who generate solid waste. Each contributor is considered a separate account and assessed all required charges.

D. "Dwelling unit" means any residential building structure or portion thereof, whether it be attached or under common roof, which serves the purpose of providing private living quarters for more than one person comprising a family. Each dwelling unit is considered a separate residential contributor for the purpose of assigning charges. Each dwelling unit shall be allowed three containers.

E. "General business" means contributors who occupy a single business location and who could or do place their solid waste in individual containers, weighing less than fifty pounds, providing, however, that their normal refuse can be placed in not more than three containers for pick up, not more than twice per week.

F. "Owner and occupant" means every person in possession, charge or in control of any dwelling, flat, rooming house or any eating place, shop, place of business or business establishment, where garbage or other refuse is created or accumulated.

G. "Residential" means contributors who live in a dwelling unit and who could or do place their normal solid waste in individual containers, weighing less than fifty pounds. Buildings having more than one unit under a common roof are not considered residential.

H. "Solid waste" means all food putrescible waste, except sewage and body waste, including waste accumulated of animal or vegetable matter, and including meat, fish, fowl, fruit and vegetable and shall include all such waste, accumulations of vegetable matter of residents, restaurants, hotels and places where food is prepared for human consumption. It shall also include tin cans and bottles but shall not include recognized industrial by-products.

Section 9-1-2 Rates[1]

A. To assure the public health, safety and welfare of its citizens, a refuse service disposal charge shall be assessed by the council and collected from all owners, agents or tenants of developed properties located within the city.

B. There shall be an assessment monthly or any portion of a month solid waste charge for each residential dwelling.

C. There shall be an assessment monthly or any portion of a month solid waste charge for each general business contributor.

D. There shall be a monthly or any portion of a month solid waste charge for each commercial contributor. The charge shall be based on the total direct and indirect cost of providing service, and charges to be assessed to defray such cost shall be computed by the staff and adopted by the council.

E. Rental rates for containers used by commercial customers shall be determined by the collection service company which owns the containers subject to approval by the mayor and city council.

Section 9-1-3 Garbage Containers

A. City residents may only use refuse containers supplied by, or acceptable to, the city collection service company. Containers, which are not acceptable to the collector, shall be deemed unfit for use and may, at the collector=s option, be picked up and disposed of as refuse. Refusal to use the collector=s approved containers shall constitute a violation of this section and may subject the violator to a civil penalty of twenty-five dollars ($25.00) for each day the violation continues in addition to any other costs incurred by the city or the collector as a result of said action.

B. Any garbage, in or on any building or premises within the city, shall be collected and disposed of by the individual property owner or by the tenant, if rented or leased, responsible for cleanliness of the area by placing the garbage or trash in the refuse containers provided for that purpose. The refuse containers shall at all times be kept covered so as to exclude

[1]Modified by Ordinance No. 296

flies or other insects and so as to be in as nearly an airtight condition as possible. Refuse containers shall be washed as often as necessary to keep them clean, and a disinfectant shall be used in the containers during fly season.

Section 9-1-4 Responsible Authority

This article shall be enforced by the police department and any person who shall be specifically appointed for such purpose by the city manager. All persons enforcing this article shall work under the direction of the council and in coordination with the Arizona Department of Health Services or their authorized representative.

Section 9-1-5 Authority to Classify and Assess

The city manager shall have final authority to recommend, subject to appeal to the council, in all matters regarding the classification or re-evaluation of contributors or subscribers and the proper assignment of charges thereto. All contributors or subscribers shall be classified and assigned in accordance with the equitable distribution of costs as prescribed herein. Whenever a contributor cannot be properly placed in a prescribed standard classification category due to a special circumstance outside the bounds of the parameters used to establish the standard classification categories contained herein, they shall be considered a special classification and the general services supervisor shall calculate a special assessment based on the concepts used in distributing costs in an equitable manner, to all those who benefit from the solid waste services provided.

Section 9-1-6 Enforcement and Administration

A. It is unlawful for any person, firm or corporation to knowingly or intentionally violate the terms and conditions set forth in this article or fail to pay all proper assessments, fees and charges prescribed herein.

B. No certification of occupancy shall be issued by the building official of the city in applicable cases, until he shall have ascertained that an application and contractual agreement for sanitary enterprise services has been duly executed by the owner, agent or applicant. The city building official shall, in applicable cases, advise all applicants for certification of occupancy in writing of appropriate form and content of the requirements for execution of said contractual agreement.

C. The city manager shall be responsible for the enforcement and administration of all provisions of this article unless otherwise designated herein.

Section 9-1-7 Solid Waste Collection System

A. There is hereby established a system of refuse collection, transportation and disposal. It is unlawful for any person to engage in the business of collecting, transporting, hauling or

conveying any refuse over the streets or alleys of the city or to dump or dispose of the same except the city or its authorized representatives.

B. Every owner and occupant of premises within the prescribed limits of this article shall use the refuse collection and disposal system herein provided, and shall deposit or cause to be deposited in accordance with this article, all rubbish and garbage that is of such nature, that is perishable or may decompose, or may be scattered by wind or otherwise, which is accumulated on such premises.

Section 9-1-8 Collection - Business Houses

A. To ensure the health of the inhabitants of the city, the council hereby ordains that premises and businesses, such as, but not limited to, restaurants, grocery stores, hospitals, butcher shops and establishments, wherein large accumulations of garbage occur, are nuisances to the extent that the same should be and are hereby, in the manner and method hereinafter provided, designated as a separate class of premises for the collection and disposal of garbage and rubbish, and the same shall be deposited separately in suitable approved refuse containers.

B. The city may enter into a contract for the collection of such garbage or other refuse. It is unlawful for any person, except the collector, to collect or to haul or transport garbage or other refuse from any premises so designated under the provisions of this article.

C. All garbage or refuse shall be collected as deemed necessary by the council and at periods designated by the council.

Section 9-1-9 Disposal Site; Rules and Regulations

A. For the purpose of the protection and preservation of the health and welfare of the inhabitants of the city, it is hereby established that the place for the dumping and depositing of refuse and garbage shall be the Cochise County solid waste disposal transfer station located at 980 North Madison Avenue within the city and use of any other site within the city shall constitute unlawful dumping.

B. The rules and regulations governing use of the city disposal site shall be those established by the Cochise County solid waste disposal department.

Section 9-1-10 Inspection

No person shall deny the police officers or other inspection officer the right of ingress or egress to any premises for the purpose of inspecting all places and containers where rubbish or garbage is accumulated or kept.

Section 9-1-11 Prohibited Acts

A. It is unlawful for any person to permit or to suffer to accumulate in or about any yard, lot, place or premise, or upon any street, alley or sidewalk adjacent to such lot, yard, place or premise, owned or occupied by such person, any garbage or refuse so as to cause such yard, lot, premise or the street, alley or sidewalk adjacent thereto, to be or remain in such condition as to cause or create a nuisance of offensive odor or atmosphere, or thereby to become or cause or create a public nuisance.

B. No person shall burn, incinerate (except with special permit issued by the Arizona Department of Health Services and notification given to the police department), bury, dump, collect, remove or in any other manner, dispose of rubbish, garbage (except with special permit) within the limits of the city.

C. No person shall throw, discard or deposit any rubbish, garbage or refuse in or upon any street, alley, sidewalk or vacant ground, or in or upon any canal, irrigation ditch, drainage ditch or other watercourse.

Section 9-1-12 Annual Review and Notification

A. A review of the solid waste collection and disposal costs and amounts charged users shall be made annually as part of the budgeting process.

B. Revision to the user class or user rate charges as may be approved by resolution of the city council shall be made in order to accomplish the following:

1. Maintain the proportionate distribution of operation and maintenance costs among users and users classes;

2. Generate sufficient revenue to pay not less than the total cost of collection, disposal and administrative overhead assigned for the function.

C. Each user shall be notified annually of the rate or rate changes which are attributable to the solid waste services in conjunction with a regular bill.

HEALTH AND SANITATION

ARTICLE 9-2 PUBLIC NUISANCES AND PROPERTY MAINTENANCE [1]

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9-2-2 Definitions
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Section 9-2-1 Purpose

A. The purpose of this article is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City of Benson and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for maintenance of all private property, whether residential or non-residential, or structures of whatever kind, and establishing maintenance of all land, whether improved or vacant.

B. This article shall apply to all buildings, structures and lands within the City of Benson without regard to the use, the date of construction or alteration.

Section 9-2-2 Definitions

In this article unless the context requires otherwise:

A. "Attractive Nuisance" means maintaining a condition, instrumentality, machine or other agency which is dangerous to young children due to their inability to appreciate peril and which may reasonably be expected to attract them.

[1] Modified by Ordinance No. 448

B. "Debris" means junk, lumber, furniture, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, appliances, car parts, abandoned, broken, or neglected equipment, or the scatter remains of something of little or no economic value.

C. "Litter" means all putrescible and nonputrescible solid waste consisting of both combustible and noncombustible waste, including, but not limited to, ashes, street cleanings, garbage, rubbish, dead animals, abandoned or junked vehicles or parts thereof, solid market and industrial waste, paper, rags, wood, cans, bottles, empty barrels, crates, packing cases, packing materials, wrappings, cigarettes, cardboard, yard clippings, leaves, metal, mattresses, bedding, crockery, trash, boxes, glass, cartons, refuse, plaster, plastic, asphalt, tile, rock, bricks, concrete dribble, or other materials tending to create an unsightly condition and having an adverse effect upon the health, safety, economic, aesthetic, or general welfare of the adjoining properties or occupants thereof.

D. "Planning and Zoning Coordinator's designee" shall mean an individual employed by the City of Benson who has been appointed by the City Manager, in writing, to have the authority to issue City Code violations. The authorization shall be filed with the City Clerk.

E. "Private property" means any dwelling, house, building, vacant land or other structure, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any tract, lot, yard, grounds, walk, driveway, porch, steps, vestibules or mailbox belonging or appurtenant to such vacant land, dwelling, house, building or other structures, which is not owned by the federal government, state, county, city or political subdivision of the state.

F. "Public Nuisance" means any condition or use of premises or building exteriors which tends to endanger, injure or impair the health or safety of any person, or which may, directly or indirectly, cause disease or endanger, injure or damage the property of others. This definition shall include, but is not limited to:

1. Allowing premises to become unsanitary, a fire menace or a danger to health and safety of the citizens of the City through the accumulation, growth, storage or retention of rubbish, trash, animal or vegetable matter, metal, glass, grass or other cuttings, or other accumulation of filth or debris;

2. Creating an environment favorable to the harboring of insects and vermin by allowing the growth of weeds or grass in excess of ten inches in height. Natural growth in the public rights-of-way or in areas designated by the Parks Supervisor as "natural areas" are excepted from this provisions;

3. Permitting pools of water or other liquids to accumulate and remain upon the premises and become stagnant and foul. This provision shall not apply to natural drainage or drainages connected with streets or other public rights-of-way;

4. Retention of a dilapidated and dangerous building, shed, fence or other man-made structure which by reason of age, fire, faulty construction, lack of proper repair or any other cause is in such a condition that it constitutes an attractive nuisance to children or that its strength or stability substantially less than a well constructed new building or it is likely to or collapse in whole or in part and its condition endangers the life, health, safety or property of the public;

5. The unsheltered storage for fifteen consecutive days or more of inoperable, junked, partially dismantled, discarded or unregistered motor vehicles and other objects such

as appliances, machinery, implements and/or equipment which are no longer safely usable for the purposes for which manufactured (hereinafter collectively referred to as "personal property objects"), and which are visible from ground level beyond the boundary of the property. This definition shall not include personal property objects in a storage area repair shop, or other business enterprise in which the presence of such objects is necessary to the operation of the business and the business is operated in a lawful place and manner and in compliance with applicable zoning laws. Further, this definition shall not include inoperable historical vehicles, those vehicles being more than twenty-five years old, so long as said vehicles and covered in such a manner as approved by the Planning and Zoning Coordinator;

6. All places used or maintained as junkyards or dumping grounds, or for the disassembling, repair or rebuilding of automobiles, trucks, tractors or machinery or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, trailer or other vehicles, machinery of any kind or of any parts thereof or the storing or leaving of any machinery or equipment used by contractors or builders or other persons, which places are kept or maintained in such a manner so as to essentially interfere with the use and enjoyment of the surrounding public or private property owners. This definition shall not include business enterprises in which the presence of such objects is necessary to the operation of the business and the business is operated in a lawful place and manner and in compliance with applicable zoning laws;

7. Any unguarded, uncovered, unprotected or abandoned excavation, pit, well or hole dangerous to life or constituting an attractive nuisance to children;

8. Burning or disposing of refuse, sawdust or other materials in a manner as to permit ashes, sawdust, soot or cinders to be cast upon the streets or alley of the City or to cause or permit the smoke, ashes, soot or gases arising from the burning to substantially or unnecessarily interfere with the use and enjoyment of the surrounding public or private property or to injure or endanger the health of others; provided this subsection shall not prohibit any burning authorized under other sections of this Code;

9. Any private property area which is visibly filthy from the ground level from beyond the boundary of the property because of litter, debris or trash covered exterior areas and under any roof area not enclosed by walls, doors and windows of any building; including, but not limited to, cans, bottles, wood, metal, plastic, rags, boxes, papers, tires, auto parts, unused or inoperable appliances, discarded items or anything whatsoever, which is or may become a hazard to public safety; unless the same is kept in covered bins or receptacles;

10. Any object, building, tree, bush or vehicle that interferes with, obstructs or renders dangerous the free passage, use or vision of any public sidewalk, street or alley in the City; the Arizona Department of Transportation shall regulate obstructions, visual or otherwise, on state highways within the City;

11. Uncultivated plants, trees, shrubs, weeds or tall grass, growing or otherwise higher than ten inches; or any dead trees, bushes or shrubs or trees having dead or dry fronds descending downward more than eight feet and less than five feet from the ground;

12. Any fence with numerous missing blocks, boards or other fence structure maintained in such a condition of deterioration or disrepair so as to constitute a health or safety hazard to persons or property; and,

13. Any commercial or industrial type of equipment, including, but not limited to, tractor trailers, bulldozers, trenchers, cranes or other similar equipment parked in an area visible from the ground level beyond the boundary of the property for more than forty-eight hours in any residential district except when the equipment is being used for construction purposes on the site.

G. "Public place" means any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, squares, spaces, grounds and buildings.

H. "Refuse" means all putrescible and nonputrescible solid wastes (except bodily wastes) including, but not limited to, garbage, rubbish, ashes, street cleanings, dead animals, abandoned or inoperative vehicles, appliances or machinery or parts thereof, and solid market and industrial waste.

I. "Rubbish" means nonputrescible solid wastes consisting of either combustible or noncombustible wastes including, but not limited to paper, wrappings, cigarettes, cardboard, tin cans, construction materials, yard clippings, leaves, wood, glass, bedding, crockery, weeds, trash, ashes or other accumulation of filth or debris.

J. "Weeds" means any of the following, living or dead, either standing or fallen:

1. Uncultivated brush, grass, cactus or any other vegetative growth not maintained for agricultural or ornamental purposes, and in an orderly manner, of a height in excess of ten inches as determined by measuring the maximum height of the tallest plant.

2. Useless or injurious plants.

Section 9-2-3 Authority to Enforce

A. Authorization for the regulations set forth in this article is granted to the City of Benson pursuant to Arizona Revised Statutes ' 9-240(B)(21)(a) as such may be amended from time to time.

B. The Planning and Zoning Coordinator or his designee is assigned the primary responsibility of enforcing this article and is granted the express and implied authority needed and necessary for enforcement.

C. Nothing in this article shall preclude the Planning and Zoning Coordinator or his designee from seeking voluntary compliance with the provisions of this article or for enforcing this article, proactively or reactively, through warnings, notices to comply or other such devices designed to achieve compliance in the most efficient and effective manner under the circumstances. Any person who neglects, fails or refuses to correct the violations contained within the notice to comply or other similar device issued pursuant to this article may be assessed a reinspection fee for inspections that occur after the compliance date. Reinspection fees, as established by separate council resolution, may be collected as a lien against the real property.

Section 9-2-4 Inspections

A. Unscreened exterior areas may be inspected at any time, with or without the involvement of the owner or occupant, in accordance with the legal requirements governing administrative inspections of private property.

B. Screened exterior areas shall be inspected only during the normal business hours of the City unless otherwise arranged, and only upon invitation or with the concurrence of the occupant, owner or agent for the owner when the premises are unoccupied, or when ordered by the court when probable cause exists to believe that conditions may be detrimental to the health, safety, economic or general welfare of the public.

C. Except in cases of alleged imminent hazard, if the occupant is not the owner of the premises to be inspected, the Planning and Zoning Coordinator or his designee shall provide notice in writing or by telephone to the owner or agent of the owner as to the date and time of inspection. The owner or agent may be present for the inspection if the occupant concurs. The inability to contact the owner or owner's agent, or the convenience of the owner or agent, shall not require the rescheduling of the inspection.

Section 9-2-5 Litter on Public Place or Private Property Prohibited

A. No person shall throw or deposit litter on any public place or private property whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place.

B. It is unlawful for any person to haul or cause to be hauled on or along any public street or alley any refuse, unless it shall be contained in vehicles or receptacles so constructed as to prevent the contents from falling, leaking or spilling or any noxious odor escaping therefrom, and to prevent any flies, insects or rodents from having access to contents. Every person hauling any refuse along any street or alley shall replace immediately, in the conveyance used for such hauling, any of the contents which may fall therefrom in or upon any street, alley or public or private property.

C. Persons owning or occupying property or places of business shall keep the sidewalk, alley or easement and any landscape area surrounding their premises free from litter, garbage or debris.

D. No person shall drive or move any truck or other vehicle within the City unless the vehicle is so constructed, loaded or secured as to prevent the load, contents, litter, garbage or debris from being blown or deposited upon any street, alley or other public place.

E. The owner or person in control of any private property shall at all times maintain the premises free of litter, garbage or debris. This provision does not prohibit the storage of litter, garbage or debris in authorized private receptacles for collection, or within any building when not in violation of any health, fire, building or other regulation, order, ordinance or statute.

Section 9-2-6 Public Nuisances Prohibited: Owner to Maintain Premises and Contiguous Areas

A. It shall be unlawful for any owner, lessor, lessee, manager, agent or other person having lawful control over a building, structure or parcel of land to cause, allow, permit, facilitate or aid or abet any violation of any provision of this article or to fail to perform any act or duty required by this article.

B. It shall be unlawful for any owner, lessor, lessee, manager or other person in control of any private property and the areas appurtenant and adjacent thereto to fail to maintain the property and contiguous areas in such manner so as not to create a public nuisance and be free of litter, weeds and debris.

C. The owner of record, as recorded in the County Recorder's Office, of the property which the violation of this article exists shall be presumed to be a person having lawful control over a structure or parcel of land. If more than one person is recorded as the owner of the property, the persons shall be jointly and severally presumed to be persons having lawful control over a structure or parcel of land. This presumption shall not prevent the enforcement of the provisions of this article against any individual person in violation of this article.

Section 9-2-7 Notice of Nuisance or Violation of Litter Control

A. Prior to the filing a civil citation or criminal complaint with the Benson City Magistrate Court, the Planning and Zoning Coordinator shall prepare a Notice to Abate and Cost Assessment to be served upon the person or persons in violation of any provision of this article.

B. Notice to abate:

1. The Notice to Abate and Cost Assessment shall be delivered in person or sent by certified mail, return receipt requested, from the Planning and Zoning Coordinator or his designee to the person, manager, agent or employee, owner, occupant or lessee of the property to be enjoined, at their last known address or the address to which the tax bill for the property was last mailed.

2. The notice shall contain a description of the property, both by street address and legal description, a specific statement of the violation, a statement that the person, manager, agent or employee, owner or lessee of the property has thirty days to abate or correct the violation, and in the event the violation is not corrected within thirty days, a civil citation or criminal complaint may be filed with the City of Benson Magistrate Court and/or the City of Benson may elect to clean up the property and the cost of such removal shall be assessed as a lien against the property, and the estimated cost of such removal to the City if the violation is not abated within thirty days.

3. The Planning and Zoning Coordinator or his designee may record the notice in the office of the county recorder. If the notice is recorded and compliance with the notice is subsequently satisfied, the Planning and Zoning Coordinator or his designee shall record a release of the notice.

4. If the person, manager, agent or employee, owner, occupant or lessee of the property to be abated cannot be located, such notice of abatement shall be posted upon the buildings, lots or grounds to be abated and shall be clearly legible and in a conspicuous place and shall be published at least two times in a newspaper of general circulation throughout the City, such publications to occur at least seven days apart.

5. The effective date of the notice to abate shall be the date received if delivered in person, or sent by certified mail, or the date the property is posted or the date of first publication if the alternate method of service is used.

C. The written notice shall be in substantially the following format:

NOTICE TO ABATE AND COST ASSESSMENT

TO: The Owner, Occupant or Lessee of the following property located within the City of Benson, Arizona:
(state the legal description and street address of the property)

You are hereby notified that there exists on the above described premises a violation of Section _____ of the Code of the City of Benson, Arizona, namely:

(describe the violation in specific terms, such as excessive weeds higher than ten (10) inches on the north side of the property adjacent to 1st Street)

You are further notified that this violation must be abated and corrected by the ____ day of _____, 20__, which is at least 30 days after your receipt of this Notice. If you do not comply within that time, the City of Benson, acting through its agents or employees, may elect to file a civil citation or criminal complaint against you with the City of Benson Magistrate Court or may elect to enter upon your property and remove the nuisance at your cost and expense. In that event, the minimum cost of removal that will be charged to you will be $_____. This cost will be assessed against you and the property and, if unpaid, will convert into a lien upon the real property.

You may appeal this Notice and the Cost Assessment to the City Magistrate by filing a written request for an appeal hearing with the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602 within ten (10) days from your receipt of this Notice. A hearing on your appeal will be scheduled before the City Magistrate within thirty (30) days from receipt of your written appeal. You will be notified of the time and date of the hearing by a mailing sent at least ten (10) days in advance of the hearing. At the hearing, you must appear and show cause, if any, why the condition existing on the property should not be declared a violation which must be abated or why the costs of abating such violation should not be assessed against you. If the City Magistrate decides that a violation exists which must be abated, you must abate and correct the violation by the date set by the City Magistrate. If you have not corrected the nuisance by that date, the City may do so at your expense, as set out above.

A Request for Appeal Hearing form may be obtained from the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602.

If you have questions, you may call (520) 586-2245 and speak to the Planning and Zoning Coordinator.

Dated this _____ day of _____, 20___.

_____
Planning and Zoning Coordinator

Section 9-2-8 Request for Time Extension on Notice to Abate

A. Any person may request an extension of time on a notice to abate. The request shall be made to the Planning and Zoning Coordinator.

B. A written request for an extension of time to comply with the notice to abate may be filed with the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602, within five days of receipt of the notice.

C. The Planning and Zoning Coordinator may grant one extension of the time limit set forth in the Notice to Abate. The extension shall not exceed 30 days. The extension period granted by the Planning and Zoning Coordinator shall start to run on the day the Planning and Zoning Coordinator issues his or her decision to grant the extension. The Planning and Zoning Coordinator may grant an extension of time only where it is shown that:

1. It would create a hardship to bring the property into compliance within the thirty day period required in the Notice to Abate; and,

2. The moving party presents a plan that is approved by the Planning and Zoning Coordinator by which the property will be brought into compliance within an additional thirty days.

Section 9-2-9 City Abatement of Nuisance or Litter Control Violation

When any person, owner, agent, occupant, or lessee of any building, grounds, or property within the City, neglects, fails or refuses to abate or correct a violation of this article for more than thirty days from the effective date of the notice to abate, the Planning and Zoning Coordinator or his designee may abate such violation at the expense of such person, owner, occupant or lessee.

Section 9-2-10 Lien to Cover Abatement Costs

A. Abatement by City; Expense Statement:

The Planning and Zoning Coordinator, his designee or authorized representative shall prepare a verified statement and account of all the expenses incurred by the City or occasioned by, or incidental to, such abatement and file such verified statement and account with the City Clerk or his or her designee. The verified statement shall include an administration charge with the cost of recording liens and releases thereof. The administration charge and cost of recording liens and releases shall be collected whether or not the violation is abated by the City.

B. Assessment of City Abatement Costs:

1. After filing of the verified statement and account as set forth, the Planning and Zoning Coordinator or his designee shall prepare duplicate copies of a notice of lien and record one copy with the office of the county recorder, and within in five days thereafter serve by certified mail the remaining copy off such notice of lien upon the person, owner or occupant of the building, grounds or premises.

2. If the owner or occupant of the property to be liened cannot be located, a copy of the notice of lien shall be posted up on the buildings, lots or grounds affected thereby and be clearly legible and in a conspicuous place and shall be published at least two times in a newspaper of general circulation throughout the City, such publications to occur at least seven days apart.

3. From and after the date of recording such notice of lien with the county recorder, all expenses incurred in connection with or incidental to such abatement and as fixed and determined by such verified statement and account are hereby declared as a lien upon such buildings, grounds and premises and shall be charged and assessed upon and against such buildings, grounds and premises.

4. The recorded lien shall bear interest at the legal rate for judgments in the State of Arizona from the date that the lien is recorded until it is paid in full.

5. The lien shall be subject and inferior to the lien for general taxes and to all prior recorded mortgages. A sale of the property to satisfy a lien obtained under the provisions of this section shall be made upon judgment or foreclosure and order of sale. The City may institute an action to enforce the lien in the superior court of the county at any time after the recording of the assessment, but failure to enforce the lien by the action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings prior to the recording thereof.

C. Assessments that are imposed under subsection (B) of this section shall run with the land and against the property until paid in full and are due and payable in equal annual installments as follows:

1. Assessments of less than $500 shall be paid within one year after the assessment is recorded.

2. Assessments of $500 or more but less than $1,000 shall be paid within two years after the assessment is recorded.

3. Assessments of $1,001 or more but less than $5,000 shall be paid within three years after the assessment is recorded.

4. Assessments of $5,001 or more but less than $10,000 shall be paid within six years after the assessment is recorded.

5. Assessments of $10,001 or more shall be paid within ten years after the assessment is recorded.

D. A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for these purposes, and any number of assessments on the same lot or tract act of land may be enforced in the same action.

Section 9-2-11 Violations Not Exclusive; Each Day a Separate Violation

A. Violations of this article are in addition to any other violation enumerated within the City ordinances or this code and in no way limit the penalties, actions, or abatement procedures which may be taken by the City for any violation of this article which is also a violation of any other ordinance or code provision of the City or Arizona Revised Statues.

B. Each day any violation of any provision of this article or the failure to perform any act or duty required by this article continues may constitute a separate offense.

Section 9-2-12 Enforcement Jurisdiction of City

Jurisdiction of all proceedings to enforce the provisions of this article, whether civil or criminal, shall be in the City of Benson Magistrate Court.

Section 9-2-13 Option to Proceed Criminally or Civilly

The Planning and Zoning Coordinator or designee may proceed pursuant to this article by citation for civil sanctions or by complaint for criminal sanctions.

Section 9-2-14 Civil Violations; Citation and Enforcement Procedure

A. Civil Citation - Authority to Issue:

The Planning and Zoning Coordinator or his designee may issue a civil citation pursuant to this article.

B. Civil Violation - Commencement of Action:

1. A civil violation may be commenced by issuance of a citation in the City of Benson Magistrate Court by the Planning and Zoning Coordinator or his designee.

2. The citation shall direct the defendant to appear before the City Magistrate within ten days after issuance of the citation.

3. The citation will further notify the defendant that if he or she fails to appear on or before the date specified in the citation, a judgment by default will be entered against him or her, and the City Magistrate may, in his or her discretion, impose a civil sanction not to exceed Two Hundred Fifty Dollars ($250.00).

4. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

   a. By hand delivering a copy of the citation to the defendant.

   b. By mailing a copy of the citation to the person charged by certified or registered mail, return receipt requested, to the person's last known address; or,

   c. In the event service cannot be accomplished as set forth in subparagraphs a or b of this paragraph, the City may serve the defendant by any means allowed by under the Arizona Rules of Civil Procedure for the superior court.

C. Appearance by Defendant:

The defendant shall, within ten days of the issuance of the complaint, appear in person or through his or her attorney before the City Magistrate and shall either admit or deny the allegations contained in the complaint. If the defendant admits the allegation, the City Magistrate may enter judgment against the defendant and impose a civil sanction for the violation. If the defendant denies the allegations contained in the citation, the City Magistrate shall set the matter for hearing.

D. Default Judgment:

If a person served with a citation fails to appear on or before the time directed to appear or at the time set for hearing by the City Magistrate, the allegations in the citation shall be deemed admitted and the City Magistrate may enter judgment for the City and impose a civil sanction.

E. Rules of Procedure for Civil Violations:

The Arizona Rules of Court for civil traffic violation cases shall be followed by the City Magistrate for civil violations of this article, except as modified or where inconsistent with the provisions of this article, local rules of procedure established for the hearing or rules of the supreme court.

F. Collection of Fines:

Any judgment for civil sanctions taken pursuant to this article may be collected as any other civil judgment.

Section 9-2-15 Habitual Offender

A person who commits a violation of this article after having previously been found responsible by the City Magistrate for committing three or more civil violations of this article within a twenty-four month period, whether by admission, by payment of the fine, by default or by judgment after hearing shall be guilty of a Class Three Misdemeanor. The City Attorney is authorized to file a criminal misdemeanor complaint in the Magistrate Court against habitual offenders who violate this article. In applying the twenty-four month provision, the dates of which the offender was found responsible shall be the determining factor, irrespective of the sequence of the commission of the offense.

Section 9-2-16 Interference with Abatement or Other Enforcement Procedure

Any person who interferes, prevents, or attempts to interfere or prevent, an individual employed by the City or other person contracted for by the City, from investigating an alleged violation of this article or from correcting or abating a violation of this article is guilty of a Class Three Misdemeanor.

Section 9-2-17 Giving False Information to Enforcement Personnel

Any person who knowingly makes a false or fraudulent statement, or knowingly misrepresents a fact, or misleads an individual employed by the City or other person contracted for by the City, when that individual is investigating, correcting or abating a violation of this article, is guilty of a Class Three Misdemeanor and the Planning and Zoning Coordinator is authorized to commence an action under this section by issuing a criminal complaint in the City of Benson Magistrate Court.

Section 9-2-18 Civil/Criminal Penalties; Restitution

A. *Civil penalties.* Upon finding a person responsible for a civil violation of this article, the City Magistrate may impose a civil sanction of not less than $50.00 nor more than $250.00. The City Magistrate may suspend the imposition of the civil sanction if at the time of sentencing, he or she finds by a preponderance of the evidence that the violation the defendant was found responsible for has now been corrected, and that the defendant is now in compliance with this article. In that event, the City Magistrate may suspend all or part of the fine.

B. *Criminal penalties.*

1. A person who is convicted of a violation of this article is guilty of a Class Three Misdemeanor and shall be sentenced to a fine of not less than $250.00, nor more than $500.00 and probation for not less than six months. The City Magistrate shall not suspend any or all of the impositions or execution of the sentence required by this section.

2. Notwithstanding paragraph 1 of this subsection, if the City Magistrate finds at the time of sentencing, and by a preponderance of the evidence, that the violation the defendant was convicted of has been corrected, and that the defendant is now in compliance with this article, the court may:

   a. Sentence the defendant to pay a fine of not less than $100.00; and
   b. Suspend all or part of the probation.

C. *Restitution.* In addition to any sanction or penalty provided for in subsections A and B of this section, the person shall be liable for all costs which may be associated with the City's bringing the property into compliance with this article. The City Magistrate may impose restitution as part of a civil sentence or criminal sentence.

Section 9-2-19 Appeals to City Magistrate

A. Any notice to abate or assessment may be appealed to the City Magistrate.

B. An appeal must be filed within ten days of the service of the notice to abate or assessment and must be filed with the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602.

C. Failure of a person entitled to appeal under this article to timely file an appeal shall constitute a waiver of the right to an appeal hearing on the notice before the City Magistrate, and the person shall be estopped to deny the validity of any notice or assessment which could have been timely appealed.

D. The notice of appeal shall set forth, in writing, the person's reasons for believing they are not in violation of this article or that the assessment is excessive.

Section 9-2-20 What May Be Appealed

Any person may appeal a Notice to Abate and Cost Assessment to the City Magistrate:

A. When it is claimed the property or building subject to the notice is not in violation of this article.

B. When it is claimed the true intent of this article or standards described in this article have been incorrectly interpreted.

C. When it is claimed that the statement of costs for correcting or abating the violation is excessive.

Section 9-2-21 Appeal Procedure

A. The City Magistrate shall set a date for hearing on appeal to be heard within thirty days of the receipt of notice of appeal by the Planning and Zoning Coordinator.

B. The City Magistrate shall take testimony from all parties to the appeal. The parties may, if they choose, be represented by an attorney.

C. The City Magistrate shall render a decision within five days of the hearing and the findings and decision shall be mailed to all parties to the appeal.

Section 9-2-22 Stay of Order During Appeal

Except for orders to vacate or violations presenting an imminent hazard, the timely filing of an appeal shall stay enforcement of a Notice to Abate and Cost Assessment until the appeal is finally determined by the City Magistrate.

Section 9-2-23 Appeal from City Magistrate Decision

Any party aggrieved by a decision of the City Magistrate may appeal to the superior court in accordance with the Rules of Procedure for special actions.

Section 9-2-24 Procedure for Service of Notice

A. Any notice required to be given for any purpose under this article delivered in accordance with the terms of Section 9-2-14 D shall be deemed proper and complete.

B. Notice is deemed effective on the date it is hand delivered or deposited in the United States mail.

C. Nothing in this article shall preclude the City from giving additional oral or written notice at its discretion. If the City does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situation.

ARTICLE 9 - 3 Smoking and Public Health (Added by Ordinance #459)

9-3-1 Purpose
9-3-2 Definitions
9-3-3 Regulation of Smoking in Buildings Owned by the City of Benson
9-3-5 Enforcement
9-3-6 Severability

Section 9-3-1 Purpose

The City Council of the City of Benson, Arizona, finds as follows:

1. The smoking of tobacco and other plants or weeks is a health danger to those exposed to the smoke and a source of annoyance and discomfort to those present in confined areas where such smoke is present;

2. It is in the best interest of the employees of the City of Benson to protect non-smokers from involuntary exposure to environmental tobacco smoke within the workplace;

3. It is in the best interest of the employees of the City of Benson to protect non-smokers from involuntary exposure to environmental tobacco smoke within City owned vehicles;

4. It is in the best interest of the citizens of the City of Benson and the public in general to protect non-smokers from involuntary exposure to environmental tobacco smoke within all buildings owned by the City of Benson; and

5. For these reasons, the purpose of this Section is to regulate smoking in enclosed public places and places of employment.

6. The City of Benson shall post no smoking signs in prominent locations in all enclosed public places by this ordinance.

Section 9-3-2 Definitions

1. Smoke or smoking@ means burning or carrying any lighted cigarette, cigar, tobacco or any other plant or weed or placing any burning tobacco, weed or plant in an ashtray or other receptacle and allowing smoke to diffuse into the air.

2. Public place@ means any enclosed buildings owned, controlled, occupied or managed by the City of Benson.

3. Smoking area@ means any area in which the burning or carrying of any lighted cigarette, cigar, tobacco or any other plant or weed or placing any burning tobacco, weed or plant in an ashtray or other receptacle and allowing smoke to diffuse into the air is permitted.

Section 9-3-3 Regulation of Smoking in Buildings Owned by the City of Benson

1. Smoking shall be prohibited within all enclosed buildings owned, controlled, occupied or managed by the City of Benson.

2. Smoking shall be prohibited within twenty-five (25) feet of the main entrance or ten (10) feet from any secondary, side or back entrance of any enclosed public place where smoking is prohibited.

3. The City of Benson shall not be required to provide any smoking areas outdoors of any public place.

4. If any smoking area is provided outdoors, said area shall not require others to walk through it upon entering any public place.

5. In the event any smoking area is provided outdoors, all smoking trash receptacles shall be placed beyond the twenty-five (25) feet limit prescribed above.

Section 9-3-4 Regulation of smoking in Vehicles owned by the City of Benson

Smoking shall be prohibited within all vehicles owned, controlled, leased or managed by the City of Benson.

Section 9-3-5 Enforcement

1. Any person who smokes in the area required to be smoke free shall be guilty of a civil offense and shall be subject to a fine of fifty dollars ($50.00) for the first offense, one hundred dollars ($100.00) for the second offense, two hundred dollars ($200.00) for the third offense and four hundred dollars ($400.00) for each offense thereafter within a twelve month period.

2. Each day a violation continues constitutes a separate civil offense and may be charged accordingly.

3. The Benson City Manager or such enforcement officer designated by the City Manager shall be responsible for enforcement of the provisions of this ordinance.

4. Enforcement of this Section shall be commenced by the issuance of a civil complaint signed by the enforcement officer and referred to the Municipal Court for adjudication.

5. By enforcing this Section, the City undertakes only to promote the general welfare and health of the community. This Section shall not create any private cause of action by a member of the public and this Section shall not create the basis for or create the standard of care for any private cause of action. It does not in any way assume, nor does it impose on its officers and employees an obligation for breach of which it is liable for money damages to any person claiming injury from such breach.

Section 9-3-6 Severability

If any section or portion of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining portions of the Ordinance.

Article 9-4 SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE [1]

9-4-1 Purpose
9-4-2 Definitions
9-4-3 Public Access to Pseudoephedrine Products
9-4-4 Seizure and Destruction of Pseudoephedrine Products
9-4-5 Seizure Appeal Procedure
9-4-6 Retail Establishment's Right to Refuse Sale
9-4-7 Reporting Requirements for Sales of Pseudoephedrine Products
9-5-8 Criminal Penalty

Section 9-4-1 PURPOSE

The purpose of this article is to promote the health, safety, and general welfare of the citizens of the City of Benson by regulating the manner of sale of products containing pseudoephedrine, ephedrine and norpseudeophedrine as key ingredients in the production and illicit manufacture of methamphetamine.

Section 9-4-2 DEFINITIONS

In this article unless the context requires otherwise:

A. **"PSEUDOEPHEDRINE PRODUCT"** means any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectible quantity of pseudoephedrine, ephedrine and norpseudoephedrine or their salts, optical isomers or salts of optical isomers. Product packaging that lists pseudoephedrine, ephedrine and norpseudeophedrine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product.

B. **"RETAIL ESTABLISHMENT"** means any place of business that offers any pseudoephedrine product for sale at retail.

C. **"PERMITEE"** means any person who holds or is required to hold a license of permit to sell drugs at retail pursuant to Title 32, Chapter 18 of the Arizona Revised Statutes.

D. **"OPERATOR"** means any owner, manager, corporation or other fictitious person or other responsible party.

Section 9-4-3 PUBLIC ACCESS TO PSEUDOEPHEDRINE PRODUCTS

A. The operator and/or the permittee of a retail establishment shall keep all pseudoephedrine products 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. Any pseudoephedrine products found to be displayed in a retail establishment in violation of subsection (A) constitutes a nuisance and a subject to seizure and disposal by the City in the manner provided in section 9-4-5 of this Article.

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[1] Added by Ordinance No. 499

Section 9-4-4 SEIZURE AND DESTRUCTION OF PSEUDOEPHEDRINE PRODUCTS

A. Products subject to seizure under this section may be seized by a peace officer under the authority of a search warrant or upon probable cause to believe that the products are subject to seizure pursuant to section 9-4-3(B). Before removing any products subject to seizure from the retail establishment, the peace officer shall give the operator or permittee of the establishment a reasonable opportunity to remove the products from the area of the establishment accessible to the public, unless the operator or the permittee has been afforded this opportunity on a previous occasion within the preceding twelve (12) months.

B. At the time of seizing any products under this section, the peace officer will deliver a notice of intent to dispose of the seized products. This notice shall include the date and location of the seizure, an inventory of the items seized, a description of how a post seizure hearing may be requested, the time for requesting that hearing, and a warning that failure to request the hearing in a timely manner will result in the disposal and destruction of the seized property. The notice under this subsection shall be personally served on the operator or permittee of the retail establishment present at the time of seizure, or if that person cannot be identified at the time of seizure, on any employee of the establishment.

Section 9-4-5 APPEAL PROCEDURE FOR SEIZURE OF PSEUDOEPHEDRINE PRODUCTS

A. A person receiving a notice of intent to dispose under section 9-4-5 may request a post-seizure hearing to determine the validity of the seizure within fifteen (15) days of receiving the notice.

B. The court shall conduct the post-seizure hearing within ten (10) days of the court's receipt of the request, excluding weekends and holidays. Failure to request a hearing in a timely manner, or failure to attend a scheduled hearing, constitutes waiver of the right to challenge the validity of the seizure. At the hearing the City shall have the burden of establishing by a preponderance of the evidence that the property was subject to seizure pursuant to sections 9-4-4 and
9-4-5 of this Article. At the hearing the court may admit any reliable and relevant evidence. If the court finds that the products were not subject to seizure, it shall order the immediate return of all seized items. If the court finds that the products were properly seized pursuant to this section, the court shall order that the products are forfeited to the City and shall direct the City to destroy and dispose of the seized items.

Section 9-4-6 RETAIL ESTABLISHMENT'S RIGHT TO REFUSE SALE

A. Any operator, permittee or employee of a retail establishment may refuse to sell any pseudoephedrine product to any person if the operator, permittee or employee has reason to believe that the product will be used in the unlawful manufacture of methamphetamine or other controlled substance. Facts that give rise to the reason to believe that the product will be used unlawfully include but are not limited to a "suspicious transaction" as defined in Section 13-3401 of the Arizona Revised Statutes; the attempted purchase of pseudoephedrine products in excess of the amounts permitted by Arizona law; the attempt to purchase pseudoephedrine products in a series of transactions in an effort to circumvent the limitations on sales; or the attempt to purchase pseudoephedrine products in conjunction with other products, such as red phosphorous or iodine, that are known to be used in manufacturing methamphetamine.

B. Any person who refuses to make a retail sale in accordance with this section is not liable to its customer or any other person for any loss or damage caused in whole or in part by the refusal to sell.

Section 9-4-7 REPORTING SALES OF PSEUDOEPHEDRINE PRODUCTS

A. A person making a retail sale of a product containing ephedrine or pseudoephedrine shall require acceptable photo identification from the purchaser and shall record the purchaser's name, date of birth, address and quantity of ephedrine or pseudoephedrine product purchased. For purposes of this subsection, acceptable photo identification means any of the following:

1. Current driver's license or picture identification issued by this or any other state or territory of the United States of America or the United States Government;

2. A current valid passport issued by the United States of America or a foreign government;

3. A current tribal identification card issued by a Federally Recognized Tribe;

4. A current military identification card issued by the United States Armed Forced or the Department of Defense; or,

5. A consular identification card that provides the required above information issued by a foreign government.

B. A retail establishment of pseudoephedrine products shall maintain a report consisting of the information required to be obtained under subsection (A) for sales occurring in the previous month for a period of one (1) year. The report shall be in writing and shall be available for inspection by the Benson Police Department or any other law enforcement agency requesting examination.

Sec. 9-2-8 CRIMINAL PENALTY

A violation of this Article is a class one misdemeanor and shall be punishable in accordance with Title 13, Chapter 7 of the Arizona Revised Statutes.

CHAPTER 10 OFFENSES

ARTICLE 10-1 OFFENSES

10-1-1 Dangerous Constructions
10-1-2 Excavations to be Covered
10-1-3 Explosives
10-1-4 Littering
10-1-5 Minors
10-1-6 Noise
10-1-7 Obstruction of View
10-1-8 Signs and Banners
10-1-9 Water--Flow Upon Streets

Section 10-1-1 Dangerous Constructions

It is unlawful for any person to maintain or allow any signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.

Section 10-1-2 Excavations to be Covered

A. It is unlawful for any person to make any excavation or dig any hole, drain or ditch in any highway or thoroughfare in the city without providing a sufficient light at night and a temporary fence or suitable obstruction around or in front of such excavation during the day.

B. It is unlawful for any person to maintain a well, cellar, pit or other excavation of more than two feet in depth on any unenclosed lot without providing substantial curbing, covering or protection of such excavation.

Section 10-1-3 Explosives[1]

It is unlawful for any person within the limits of the city to blast or use powder or other explosives without a permit from the chief of police in writing.

Section 10-1-4 Littering

It is unlawful for any person to throw or deposit any litter in or upon any street, alley, public grounds, school grounds or church grounds.

[1] Modified by Ord. No. 551

Section 10-1-5 Minors

A. It is unlawful for any person under the age of eighteen years to be abroad upon any of the streets, alleys, public ways or places within the city limits between the hours of 10:00 p.m. and 4:00 a.m. each day, Sunday through Thursday, and between the hours of 11:00 p.m. and 4:00 a.m. each Friday and Saturday, except under the following circumstances:

1. If said minor child is accompanied by his or her parent(s), guardian or by an adult who has been charged with and accepted said charge of responsibility for the actions of said minor child.

2. If the presence of said minor child on the streets, alleys, public ways or places open to the public is for the purpose of attending or returning from any function whatsoever sponsored by any church or religious group or any function sponsored by any school whether public, parochial or private or school sponsored group, or any public function sponsored or co-sponsored by any governmental agency or civic or community service organization unless such civic or community service organization is not approved by the mayor and council.

3. If the presence of said child on the streets, alleys, public ways or places open to the public within the city limits is required by the minor child's employment.

4. If said minor child is married.

5. If the presence of said minor child on the streets, alleys, public ways or places open to the public is caused by an emergency or necessitated by danger to the life, health or property of the minor child or his immediate family.

6. If said minor is attending or returning home from an event open to the public and said event had not been concluded for the day for longer than one-half (2) hour provided only that event not be held on a premises licensed by the State of Arizona to sell alcoholic beverages unless said license is a Special Event license issued for a period of not more than three (3) consecutive days.

B. It is unlawful for any parent or guardian of a minor child under the age of eighteen years to suffer or permit said child to be about or loitering upon any of the streets, alleys, public ways or places open to the public within the city limits between the hours of 10:00 p.m. and 4:00 a.m. each day, Sunday through Thursday and between the hours of 11:00 p.m. and 4:00 a.m. each Friday and Saturday unless said child comes within the exceptions listed in paragraphs 1 through 6 of subsection A of this section. The punishment for the conviction of this crime shall be a fine not to exceed one hundred dollars or by imprisonment in the city jail for a period of not more than ten days or both. Each day of any violation of any provision of this section shall constitute a separate offense. It shall not constitute a defense that such parent or guardian did not have knowledge of the presence of the minor upon any of the streets, alleys, public ways or places open to the public within the city limits.

C. It is unlawful for any minor to violate the provisions of subsection A of this section and proceedings shall be taken in accordance with and pursuant to the relevant sections of the Juvenile Code as contained in Chapter 2, Title 8 of the Arizona Revised Statutes, as amended or superceded.

OFFENSES

Section 10-1-6 Noise

A. It is hereby declared to be a public nuisance and it is unlawful for any person, firm or corporation owning or operating or in control of any restaurant, hotel, dance hall, show, store or any place of public amusement, entertainment or accommodation, to play or permit to be played any music or musical instrument or 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 slumbers, peace and quiet or otherwise interfere with or annoy the comfortable enjoyment of life or property of any person in the neighborhood, 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 phonograph with loud speaker or sound amplifier or any instrument of any kind or character which emits loud and raucous noises and is attached to and upon any vehicle unless such person in charge of such vehicle shall have first applied to and received permission from the chief of police to operate any such vehicle so equipped.

Section 10-1-7 Obstruction of View

It is unlawful for any person to maintain or allow any tree, hedge, billboard or other obstruction which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

Section 10-1-8 Signs and Banners

It is unlawful for any person to place any banner or sign including political signs, upon any street light pole, traffic signal pole or utility pole within the city without first obtaining authorization from the council and written permission from the owner of the pole.

Section 10-1-9 Water-Flow Upon Streets

It is unlawful for any person to willfully or negligently permit or cause the escape or flow of water in such quantity as to cause flooding, or to impede vehicular or pedestrian traffic, to create a hazardous condition to such traffic, or to cause damage to the public streets of the city.

Section 10-1-10 Fireworks[2]

A. **Definitions** – The following words, terms and phrases, when used in this article, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

[2] Added by Ord. No. 551

1. *Consumer fireworks* means those fireworks defined by Arizona Revised Statutes Section 36-1601(1).

2. *Display fireworks* means those fireworks defined by Arizona Revised Statutes Section 36-1601(2).

3. *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, or display firework as defined by Arizona Revised Statute Section 36-1601(3).

4. *Novelty items* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers and certain toys.

5. *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601(5) that may be sold within the City even where the use of those items has been prohibited.

6. *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the Fire Chief or his designee.

B. **Possession of Fireworks Prohibited; Exception** – No person shall possess fireworks within the City except as follows:

1. Persons may possess novelty items.

2. Persons at least sixteen (16) years of age or older may possess permissible consumer fireworks.

C. **Use of fireworks Prohibited; Exception** – The use, discharge, or ignition of fireworks within the City is prohibited except as provided for in this section:

1. Fireworks are permitted to be used beginning at 9 a.m. the day of the special event and end at 2 a.m. the following morning for the following holidays:

   a. The Fourth of July
   b. New Year's Eve

2. Nothing in this section or article shall be construed to prohibit the use, discharge or ignition of novelty items or the occurrence of a properly permitted supervised public display of fireworks. Sparklers greater than sixteen inches in total length are prohibited.

3. Permits may be granted by the Fire Chief or designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The Fire Chief has authority to impose conditions on any permits granted.

4. Failure to comply with any permit requirements issued by the Fire Chief is a misdemeanor offense punishable by a fine of not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

D. **Sale of Fireworks**

1. No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age.

2. No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law or the Benson City Code.

3. No person shall sell permissible consumer fireworks without first obtaining an inspection from the Fire Chief for compliance with the currently adopted International Fire Code and applicable reference standard enforced in the City of Benson. Following such inspection, the Fire Chief shall issue a permit if the sales site is in compliance.

4. Temporary stands, canopies, and structures are required to obtain a temporary use permit or conditional use permit, as applicable.

5. No roadside sales shall be permitted.

E. **Labeling of Fireworks for sale.** All fireworks for sale within the City of Benson shall be categorized, segregated, and labeled as either novelty items or permissible consumer fireworks so as to permit a reasonable inspection to determine if seller is in compliance with the requirements of Arizona Revised Statute Section 36-1601 and this Code.

F. **Signage required for sale of Fireworks.**

1. Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

   a. The use of fireworks, except novelty items as defined by City Code, is prohibited, and

   b. Permissible consumer fireworks may be used only on the Fourth of July and New Year's Eve.

   c. Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

2. Signs required under this section shall be placed at each cash register and in each area where fireworks are displayed for sale and shall conform to the rules and regulations of the State Fire Marshal adopted pursuant to Arizona Revised Statute Section 36-1609.

3. The Fire Chief or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the City's website and filed with the Clerk's office.

4. Failure to comply with subparts 1 and 2 of this section is a misdemeanor offense punishable by a fine of not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.

G. **Authority to enforce violations of this article; means of enforcement.**

1. The Fire Chief or designee, a City Police Officer, or the City Attorney may issue charges to enforce violations of this article.

2. Any person authorized pursuant to this section to issue charges may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid charges as stated in the code.

3. A City Police Officer or the City Attorney may issue charges as stated in the code to enforce this article.

H. **Liability for emergency responses related to use of fireworks; definitions**

1. A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is caused by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.

2. The expenses of an emergency response include all reasonable costs directly incurred by public agencies to make an emergency response to the incident. Such expense constitutes a debt against the person liable for those expenses pursuant to subpart 1 of this section. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

3. For the purposes of this section:

a. "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

b. "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

I. **Penalty.** The penalty for violating any prohibition or requirement imposed by this section is a class three misdemeanor unless another penalty is specifically provided for.

PARKS AND RECREATION [1]
CHAPTER 11

ARTICLE 11-1 GENERAL

11-1-1 Definitions

Section 11-1-1 Definitions

In this chapter, unless the context otherwise requires:

A. "Animal" means any mammal, bird, fish, reptile, amphibian or invertebrate, including wild and domesticated species, other than a human being.

B. "Camp" means the placement of any tent, temporary shelter or structure, blanket, cloth, or other sleeping implement on park property for the purpose of protection from the elements for any persons remaining in the park.

C. "Director" means the City of Benson Parks and Recreation Director.

D. "License" means a permit for an event that occurs more than once.

E. "Park" means any public park or recreation or playground area within or outside the corporate limits of the city, owned and maintained by the city as a public park, or recreation or playground area, including rodeo grounds and sports fields.

F. "Park Ranger" means a city employee designated by the Director, working under the supervision of the Director, and authorized to enforce all park rules and regulations.

G. "Permit" means authority issued by the Director granting a named person or persons permission to perform a specified activity in a park or any portion thereof.

H. "Pollution" means the contamination or other alteration of the physical, chemical or biological properties of park waters, including change in temperature, taste, color, turbidity or odor of the waters, or discharge of any liquid, gaseous, solid, radioactive or other substance into any park waters as will or is likely to create a public nuisance or render park waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, recreational or other beneficial uses, or to animals.

I. "Reservation" means authority issued by the Director for named persons to use a park or any portion thereof for a specified time and purpose.

J. "Recreation Manager" means the city employee designated by the Director and tasked with the supervision and management of the City's recreation programs.

K. "Vehicle" means any wheeled conveyance, whether motor-powered, animal-drawn, or personally-propelled, including any trailer in tow of any size, kind or description. Not included are baby carriages, vehicles in the service of the city, and vehicles authorized and properly equipped for emergency duties.

ARTICLE 11-2 ADMINISTRATION; LIABILITY

11-2-1 Park hours
11-2-2 Closing of parks

[1]New chapter – Ordinance 523

11-2-3 Operation of parks
11-2-4 Limitation of city liability

Section 11-2-1 Park hours

No person shall trespass upon or be on the grounds of any park during the hours posted that the park is closed; unless such person has received written permission from the Director or his or her designee. All activities sponsored or co-sponsored by the City of Benson are exempt from this section. However, the park in question will close immediately upon completion of the city-sponsored activity. The total number of people admitted for any usage shall not exceed the capacity of the facility involved as determined by the Director, the Recreation Manager, or the Fire Marshal.

Section 11-2-2 Closing of parks

Any park or portion of a park may be declared closed to the public by the City or any agent of the City, including the police department, at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise), and either entirely or merely to certain users, as the City shall find reasonably necessary; no person shall enter any closed area of a park if such entry is prohibited; nor shall any person utilize any portion of a park if such utilization is prohibited.

Section 11-2-3 Operation of parks

A. The City Manager may make such reasonable rules and regulations as are necessary to manage, use, preserve and govern park property and activities, and may designate hours of operation and opening and closing times of the various parks, which may be different as to individual parks.
B. Any section or part of any park may be declared closed to the public by the Director or his or her designee at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise), and either entirely or merely to certain uses, as the Director shall find in the interests of the public health, safety or welfare, or for proper operation of the park.

Section 11-2-4 Limitation of city liability

The City of Benson, its officers, employees and agents shall not be liable or responsible for any accident, injury or loss of or damage to property resulting from the use of the park by any individual, group or organization.

ARTICLE 11-3 REGULATIONS REGARDING PARK USE

11-3-1 Relating to park grounds and park property
11-3-2 Relating to wild animals

11-3-3	Relating to sanitation
11-3-4	Relating to traffic
11-3-5	Relating to recreation
11-3-6	Relating to commercial activities
11-3-7	Relating to miscellaneous activities

Section 11-3-1 Relating to park grounds and park property

No person in a park shall:

A. Disfigure or remove buildings, structures or facilities.

B. Willfully mark, deface, disfigure, injure, destroy, tamper with, abuse, displace or remove: any building; bridge; table; bench; fireplace; railing; paving or paving material; waterline or other public utility or parts or appurtenances thereof; sign; notice or placard, whether temporary or permanent; monument; stake, post or other boundary marker; or other structure or equipment, facility or park property or appurtenances whatsoever, either real or personal.

C. Enter any restroom or washroom to engage in any unlawful act or to use the facilities for other than their primary purpose; or use the restrooms or washrooms designated for the opposite sex, unless under six years of age and accompanied by an adult entitled to enter that restroom.

D. Dig, remove or damage soil, rocks, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting, or other means or agency.

E. Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across park land. This section is not intended to apply to shade tarps, umbrellas, and the like; nor is it intended to apply to temporary concession stands allowed by permit.

Section 11-3-2 Relating to wild animals

No person in a park shall:

A. Hunt, molest, aggravate, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, or the eggs, nest, or young of any animal.

B. Give or offer, or attempt to give or offer, to any animal any food or tobacco, alcohol or other noxious substances.

Section 11-3-3 Relating to sanitation

No person in a park shall:

A. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, or other bodies of water in a park, any substance, matter or thing, liquid or solid, which may result in the pollution of park waters.

B. Dump, deposit or leave any bottles, broken glass, paper, boxes, cans, dirt, cigarette butts, rubbish, waste, garbage or refuse, or other trash of any kind unless placed in the proper receptacles where provided; where receptacles are not so provided, all such rubbish or waste shall be carried off park premises and properly disposed of elsewhere.

C. Have a glass beverage container in his or her possession.
D. Throw, toss or otherwise propel, or either knowingly or recklessly break any glass object.

Section 11-3-4 Relating to traffic

A. No person in a park shall violate any state or city motor vehicle law relating to traffic on highways, which laws shall apply to all persons and vehicles in a park at a speed exceeding 15 miles per hour, except upon such roads as the city may designate, by posted signs, for speedier travel. No person shall drive a vehicle on any park area except the paved park roads or parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the city.
B. No person in a park shall park a vehicle in other than established or designated parking areas, and such use shall be in accordance with the posted directions thereat.
C. The city may cause to be designated and posted any park area in which parking is prohibited for a limited or a permanent time.

Section 11-3-5 Relating to recreation

No person in a park shall:
A. Swim, bathe or wade in any waters or waterways in a park, except in such waters and at such places as are provided therefore and specifically designated by the city as such, and in compliance with such rules and regulations as may be set forth or hereafter adopted by the Director. Nor shall any person frequent any waters or places customarily designated for the purpose of swimming or bathing, or congregate thereat, when such activity is prohibited by the Director upon finding that such use of the water would be dangerous to the public health, safety or welfare.
B. Frequent any waters or places designated for the purpose of swimming or bathing, or congregate thereat, except between such hours of the day as shall be designated by the Director for such purposes for each individual area.
C. Hunt, trap, or pursue wildlife at any time.
D. Process or explode or cause to be exploded any explosive or pyrotechnical device without a written permit from the Director or his or her designee.
E. Camp, lodge or sleep therein during the hours the park is closed, unless special written permit is obtained 72 hours in advance from the Director or his or her designee.
F. Hit golf balls or take practice swings with a golf club, or strike a simulated golf ball except at a municipal golf course, or at practice areas designated therein, or other areas set aside by the Director or his or her designee for such purposes.

Section 11-3-6 Relating to commercial activities

No person in a park shall:
A. Utilize any park property for any commercial purposes, except by permit issued by the Director or his or her designee.

B. Expose or offer for sale any article or thing; or station or place any stand, cart or vehicle for the transportation, sale or display of any article or thing. A regularly licensed concessionaire acting by and under the authority and regulation of the city, and vendors of food and refreshments who are in possession of a current vendor's permit issued by the city are exempted from this provision.

C. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription, except by written permit issued by the Director.

D. Distribute or attempt to distribute business or commercial literature to persons, or place them upon vehicles, except in specifically designated areas or by written permit issued by the Director.

Section 11-3-7 Relating to miscellaneous activities

No person in a park shall:

A. Bring or escort a dog or any other domestic animal or pet into any area within park boundaries that is clearly marked by signs bearing the words: "Domestic Animals and Pets Prohibited in This Area." Even in areas where domestic animals are permitted, such dog, domestic animal or pet will not be permitted unless restrained at all times on a leash not to exceed eight (8) feet in length and unless wearing a collar and displaying thereon a valid license. This subsection shall not be construed so as to prohibit the use of assistance animals by the disabled.

B. Build, or attempt to build, kindle or ignite a fire except in such areas and under such rules and regulations as may be designated by the city; or drop, throw or otherwise scatter lighted matches, burning cigarettes or cigars, charcoal or coals, or other flammable or flaming materials within any park area.

C. Enter an area posted as "Closed to the Public," or posted "No Trespassing," or use or abet the use of any area in violation of posted notices.

D. Disturb or interfere unreasonably with any person or party occupying any area, or participating in any activity, under the authority of a permit, license or reservation.

E. Emit, eject or cause to be deposited any excreta of the human body, except in those places designated for such purposes.

F. Gain admission to, attempt admission to, or make use of park facilities for which a charge is made without paying the fixed charge or admission, unless otherwise authorized by the Director or his or her designee.

G. Interfere with any of the authorized participants of any game, contest or athletic event conducted on any playing field from the time the event starts until its conclusion, and any time in between.

H. Bring or permit horses, cattle or any other livestock in a park without advanced written permission from the Director or his or her designee.

ARTICLE 11-4 PERMITS, LICENSES AND RESERVATIONS

11-4-1 Permit
11-4-2 Issuance
11-4-3 Standards for issuance
11-4-4 Appeal

11-4-5 Effect of permit
11-4-6 Liability of permittee
11-4-7 Revocation

Section 11-4-1 Permit

A person seeking issuance of a permit, license or reservation for use of a park area or facility shall make such request in writing to the Recreation Manager or his or her designee. The request shall state the park name, date and time of use and all information pertaining to the proposed use of the park facility.

Section 11-4-2 Issuance

A permit, license or reservation for use shall be obtained from the Recreation Manager or his or her designee by persons, organizations or individuals conducting, operating, presenting or managing any of the following activities:

A. Picnics, outings or gatherings sponsored by an organization or individuals that are attended by 100 or more persons.
B. A special event in a park. Special events include contests, exhibits, dramatic performances, spectacles, plays, motion pictures, radio or television broadcasts, fairs, circuses, jumping castles, shows, musical events such as a band, glee club, choir or orchestra concert, the use of public amplification systems, or any similar event. The Director shall have the authority to determine whether any given activity constitutes a special event within the meaning of this subsection.
C. The sale or giving away of food, refreshments (except nonperishable, prepackaged items contained within the manufacturer's original unopened wrapping), articles or things to the public; subject to the additional requirement that, in the case of the sale or giving away of food or refreshments that are potentially hazardous, whether prepackaged or not prepackaged, the applicant shall provide proof of a separately obtained health permit from the Cochise County health department.
D. Announcing, advertising or calling to the public's attention articles or services for hire or sale.
E. Broadcasting of amplified sound, which shall be limited to a reasonable decibel level and allowed only in an area designated by Recreation Manager or his or her designee.
F. The reservation of any park facilities for a certain person or group of persons to the exclusion of others.

Section 11-4-3 Standards for issuance

The Director or his or her designee shall issue a permit, license or reservation on a city form developed for the purpose when he or she finds all of the following:

A. That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public's enjoyment of the park or cause annoyance or disturbance to any other person's reasonable use of park facilities, or cause annoyance or

disturbance to the peace of persons residing near the park, or interfere with the maintenance of the park or its facilities.

B. That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.

C. That the proposed activity or use is not unreasonably anticipated to incite violence, crime or disorderly conduct.

D. That the proposed activity will not entail unusual, extraordinary or burdensome expense to or police supervision by the city.

E. That the facilities desired have not been reserved for other use at the day and hour requested in the application.

F. In the case of vendors of food and refreshments who are not regularly licensed concessionaires, that the required fees have been paid. Those fees shall be as set from time to time by the City Manager.

G. In the case of fairs, that vendors have paid the required fees. These fees shall be set from time to time by the City Manager.

Section 11-4-4 Appeal

If a permit is denied, the Recreation Manager shall notify the applicant in writing, within 10 working days after receipt of the request for permit, of the reasons for denial of a permit. An aggrieved person may appeal in writing to the Director within six working days of receipt of the Recreation Manager's written notice, who shall consider the application of the standards set forth in this Article and sustain, modify, or overrule the Recreation Manager's decision within six working days of receipt of the appeal.

Section 11-4-5 Effect of permit

Any person using a permit, reservation or license shall be bound by all park rules and regulations, all applicable state statutes, and the city codes as fully as though they were set forth in full in the form. The applicant shall retain the form in his or her possession at all times while utilizing the park and shall show the form to any park ranger or peace officer upon request.

Section 11-4-6 Liability of permittee

The person or persons to whom a permit, license or reservation is issued shall be liable for any loss, damage or injury to any person or property whatever by reason of negligence of the person or persons, their agents or employees, to whom such permit, license or reservation shall have been issued.

Section 11-4-7 Revocation

The Director or Recreation Manager or his or her designee may revoke a permit, license or reservation upon finding a violation of this code, state statute or regulation, or a park rule or regulation, or upon good cause shown. All reservations are voidable if the reserved area is not in use within 1 hour after the reservation period starts.

ARTICLE 11-5 SPIRITOUS LIQUOR ON PARK PREMISES

Option C.

No restrictions on alcoholic beverages

11-5-1 Open container

Section 11-5-1 Open container

Notwithstanding any other provision of this Chapter, it shall be unlawful for any person to consume or have an open container of any spirituous liquor within parking lots or vehicles within the city.

ARTICLE 11-6 RENTAL OF PARK FACILITIES AND EQUIPMENT

11-6-1 Fees for use of expendable recreation equipment; damage deposits
11-6-2 Fees for use of certain meeting rooms; reservation fees for ramadas, reserved park areas, special interest areas, sports fields; fees for special maintenance
11-6-3 Procedure for waiver of fees

Section 11-6-1 Fees for use of expendable recreation equipment; Damage deposits

The Recreation Manager may charge fees and require the payment of a damage deposit for use of expendable recreation equipment belonging to the city. Such fees shall be reasonable and shall be based on the type of activity for which the equipment is to be used, the time of use, and the condition of the equipment. When the equipment is returned to the department of parks and recreation, a portion of the damage deposit shall be refunded after retaining the fair market value of the damages, if any, to the equipment. Failure to return equipment shall result in forfeiture of the damage deposit. The Recreation Manager shall prepare, in duplicate, an itemized list of equipment issued and shall set forth thereon the deposit paid for each item issued.

Section 11-6-2 Fees for use of certain meeting rooms; Reservation fees for armadas, reserved park areas, special interest areas, sports fields; Fees for special maintenance

A. The fee for reservation and use of recreation centers, meeting rooms, armadas, reserve park areas, special interest areas, sports fields, and other park facilities shall be as set by a fee schedule adopted from time to time by the City Manager.

B. The users of any park facility governed by this Article may request special maintenance of any athletic facility governed by this Article. The request shall be in writing at least 7 days prior to the requested special maintenance. The department shall advise the party requesting special maintenance in writing, within a reasonable time, the cost of providing the special maintenance. The costs shall be an estimate of the actual cost to the city of providing the special maintenance, and shall be paid in advance.

C. The rental fee for each concession stand at sports fields shall be as set from time to time by the City Manager.

Section 11-6-3 Procedure for waiver of fees

The fees established in this Article for use of recreation facilities may be waived in whole or in part by the Director or his or her designee. Waiver or partial waiver of a fee shall not prevent the Director or his or her designee from requiring a full or partial fee for subsequent use by the same or another individual or applicant. No waiver shall be given for participation in team league sports. The Recreation Manager shall maintain a roster of those who have been granted waivers or partial waivers of fees provided for herein. Obtaining waiver or partial waiver of any fee authorized to be waived or partially waived as provided for herein, by furnishing false information to the Director or his or her designee, shall be a violation of this section.

ARTICLE 11-7 ENFORCEMENT

11-7-1 Officials
11-7-2 Ejectment
11-7-3 Seizure of property
11-7-4 No limitation

Section 11-7-1 Officials

The Director, Recreation Manager, park rangers and peace officers may enforce this Chapter, this code, state laws and park rules and regulations, and may when deemed necessary call upon the city police or other law enforcement officers and agencies for assistance.

Section 11-7-2 Ejectment

The Director, Recreation Manager, park rangers and peace officers may eject any person acting in violation of this Chapter from any park, for a specific period of time.

Section 11-7-3 Seizure of property

The Director or his or her designee, park rangers and peace officers may seize and confiscate any property, thing or device in a park used in violation of this Chapter.

Section 11-7-4 No limitation

No provision in this Chapter shall preclude any peace officer from the enforcement of any law, statute or provision of this code in the routine performance of his or her duties.

CHAPTER 12 TRAFFIC AND PARKING [1]

ARTICLE I. IN GENERAL

Section 12-1 Application of Arizona Revised Statutes

Those provisions of the Arizona Revised Statutes, as amended or succeeded, pertaining to the parking and operation of motor vehicles and other means of transportation are hereby incorporated and adopted within the city limits of the City of Benson.

Section 12-2 Definitions in General

The definitions in A.R.S. Title 28 (A.R.S. § 28-101 *et seq*.) apply to this Chapter unless a term is specifically defined in this Chapter, or unless the context requires otherwise.

Section 12-3 Definitions Pertaining to this Chapter

The below words and phrases, when used in this Chapter, are defined as follows:

(a) City – The City of Benson.

(b) Adjacent – Next to.

(c) Curb Loading Zone – Space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

(d) Dumpster – A large metal bin for refuse designed to be hoisted onto a specially equipped truck for emptying or hauling away.

(e) Motor Vehicle or vehicle – A wheeled vehicle that is propelled by an internal combustion engine that does not operate on rails and that is capable of carrying a passenger or passengers.

(f) Non-motorized vehicle – Any trailer or other device that is not self-propelled and is designed with the intended purpose of being towed behind a vehicle.

(g) Official Traffic Control Devices – All signs, signals, parking meters, markings, and devices not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

(h) Operator – A person who operates or is in actual physical control of a motor vehicle.

(i) Oversized Motor Vehicle – Any motor vehicle more than twenty-two (22) feet in length or with a gross vehicle weight rating of eight thousand (8,000) pounds or more.

(j) Owner – A person who holds the legal title to a motor vehicle.

(k) Parade – Any march or procession consisting of people, animals or vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.

(l) Procession – An orderly file of six (6) or more vehicles with suitable escort, such escort being approved by the Chief of the Police Department.

(m) Rights-of-Way – All property used as a public thoroughfare and lying between the exterior boundary lines of any area granted to or received by the City by grant, gift, easement, deed, dedications or operations of law for street, alley, walk or utility purposes.

(n) Sidewalk – That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

(o) Stand or Standing–Stopping a vehicle, whether occupied or not, other than for the active

[1] Adopted by Ordinance 583

engagement of receiving or discharging passengers.

(p) Stop or Stopping, when prohibited – Any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

(q) Stop or Stopping, when required – The complete cessation from movement of a vehicle.

(r) Temporary Storage Unit – A transportable, non-motorized unit designed and used primarily for temporary storage of building materials (before they are utilized for building purposes), household goods, and other such materials for use on a limited basis on residential property.

ARTICLE II. ROADWAY AND TRAFFIC CONTROL

Section 12-4 Authority to Designate Crosswalks, Establish Safety Zones, Designate No Parking Zones and to Mark Traffic Lanes

The City Engineer or Chief of Police is authorized:

(a) To designate at intersections and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks where in his opinion there is particular danger to pedestrians crossing the roadway, and at such other places as he may deem necessary.

(b) To establish school zones in accordance with ARS §28-797 and ARS §28-641 and safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians.

(c) To designate permanent or temporary no-parking zones along City streets and rights-of-ways, and to maintain such zones, by appropriate signage, as he may deem necessary for the general health, safety and welfare of the residents of the community.

(d) To mark lanes for traffic on street pavement at such places as he may deem advisable, consistent with the traffic laws of the City.

Section 12-5 Lane Markings; Restricted Turns

(a) The City Engineer is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles traveling through or turning at such intersections, and such courses may conform to or be other than as prescribed by law.

(b) The City Engineer is authorized to determine those intersections at which Operators of vehicles shall not make a right, left, or U-turn and shall place and maintain markers or signs giving notice of such determination at such intersections. The making of such turns may be prohibited entirely or between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs, or such signs may be removed when such turns are permitted.

Section 12-6 One-Way Streets and Alleys

The City Engineer may designate any street or alley to be limited to one-way traffic by placing signs indicating the direction of lawful traffic movement at every affected intersection.

Section 12-7 Regulation of Traffic at Intersections

The City Engineer may designate through streets, intersections where stops are required, and

intersections where vehicles shall yield the Right-of-Way.

Section 12-8 Curb Markings

The City Engineer shall designate restricted parking zones by use of signs, painted curbs, or both.

(a) If the curb is painted red, parking shall be prohibited in the area adjacent to the painted curbs at all times. Curbs painted red may also indicate bus loading zones, but only when accompanied by appropriate signs, in which case bus loading and unloading shall not be prohibited.
(b) If the curb is painted yellow, the space adjacent to the curb so painted shall be used exclusively as a Curb Loading Zone during those hours designated by the City Engineer and stated in signs giving notice of such determination at either one or both ends of such zone.

Section 12-9 Gross Vehicle Weight Restrictions

(a) The City Engineer is authorized to establish gross weight limits for vehicles using City streets and to prohibit certain vehicles from using certain designated streets by the placement of appropriate signs limiting the gross weight of vehicles permitted to use those streets.

(b) Vehicles may use the streets designated under this article to make a delivery or pickup or to provide services to a property as permitted under this article. A vehicle regulated under this article may: deliver, pick up, load, or unload merchandise, materials, or equipment, including furniture and other household goods, or provide construction, repair, or similar services to a property.

(c) This section shall not prohibit:
1. The operation of emergency vehicles upon any street in the City.
2. The operation of trucks owned or operated by the City, or contracted by the City, upon any street in the City.
3. The operation of recreational vehicles upon any street in the City.

Section 12-10 Suspension of Traffic and Parking Ordinances

The Chief of Police or designee is authorized to adopt regulations necessary to temporarily suspend traffic and parking ordinances of the City to cover emergencies or special conditions.

Section 12-11 Obedience to Traffic Regulations

It is unlawful, except as otherwise provided in this Code, for any person to do any act forbidden or fail to perform any act required by this Chapter or willfully fail or refuse to comply with any lawful order or direction of any police officer, police volunteer or duly authorized agent of the City in the performance of their duties related to the enforcement of this Chapter.

Section 12-12 Directing Traffic

(a) The City police department, including appointed volunteers, is hereby authorized to direct all traffic by voice, hand or signal.

(b) Fire officials, when at the scene of a fire, may direct or assist the City police department in directing traffic at that scene or in the immediate vicinity thereof.

(c) Public works employees, when at the scene of an emergency or an active construction site may

direct or assist the police or fire departments in directing traffic at that scene or in the immediate vicinity thereof.

Section 12-13 Traffic Control Devices

(a) The City Engineer shall provide for the placement and maintenance of traffic control devices, signs, signals, and markers when and as required under the traffic regulations of the City, and may place and maintain such additional traffic control devices as may be deemed necessary to regulate traffic under the traffic laws of the City or under state law or to guide or warn traffic.

(b) The Operator of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the traffic regulations of the City unless otherwise directed by a police officer or other duly authorized City agent, subject to the exceptions granted in this Chapter or by state law.

Section 12-14 Limitations on Turning Around

The Operator of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street unless such movement can be made safely and without interfering with other traffic.

Section 12-15 Driving on Private Property

(a) No person shall operate, drive or leave any motor vehicle, motorcycle, motor scooter, dune buggy, jeep or other form of transportation propelled by an internal combustion engine upon the private property of another or upon public property which is not held open to the public for vehicle use, without permission from the owner of the property or the person entitled to immediate possession thereof, or the authorized agent of either.

(b) No Operator shall drive upon or through any private property such as a commercial property, oil station, vacant lot or similar property to avoid obedience of any regulation included in this Chapter or any traffic control device.

Section 12-16 Operation of Vehicles on Vacant Lots

No person shall operate a vehicle on or across any portion of a vacant lot other than on an established dustproof driveway, except during activities authorized by the City.

Section 12-17 Processions

No procession or parade, except funeral processions, shall be held without first securing a permit from the City, and all such requests for permits shall state the time, place of formation, proposed line of march, destination and such other information as the City may set forth therein.

Section 12-18 Prohibition Against the Use of Engine Brakes

It shall be unlawful for a person to operate or permit the operation of the engine of a commercial vehicle so as to assist in braking or slowing the vehicle through the use of any engine brake or engine retarding device on any street or roadway within the City unless the vehicle is an emergency services vehicle.

Section 12-19 Placing Debris on a Public Roadway

(a) No person or persons will deliberately place debris, construction material, signage or any other material in or on a public street within the City of Benson that will affect the safe flow of traffic, without having obtained the appropriate construction permit from the City.

(b) This section does not apply to City employees in performance of their roadway related duties.

ARTICLE III. STOPPING, STANDING AND PARKING

Section 12-20 Presumption in Reference to Illegal Parking

In any prosecution charging a violation of this Article, proof that the particular vehicle described in the complaint was parked in violation of this Article, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

Section 12-21 Method of Parking

The City Engineer may have erected signs requiring parking at an angle to the curb, allowing parking on the left hand curb on one-way streets, notifying Operators that parking is prohibited and restricting parking in any way that may be necessary. When such signs have been erected, no person shall stop or stand a vehicle in disobedience to such parking restrictions. City employees, or their agents, may disobey such parking restrictions if necessary to perform their public duties.

Section 12-22 Prohibited Parking

Unless otherwise directed by a police officer or other duly authorized City agent or in accordance with properly erected signage to the contrary, no person shall stop, stand, or park any motor vehicle or non-motorized vehicle on any City street, roadway, or right of way:

(a) In such a manner or under such conditions as to obstruct or impede traffic in any manner.

(b) In such a manner as to block an alley or the entrance to a private driveway except for the loading or unloading of materials, and not then unless such loading or unloading can be accomplished without interference to the free movement of vehicular traffic, including into or from adjacent private property.

(c) In any area designated, signed, and marked as a fire lane.

(d) Within thirty-three (33) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy five (75) feet of the entrance when properly posted.

(e) Within fifteen (15) feet of a fire hydrant.

(f) For the principal purpose of displaying such vehicle thereon for sale, hire or rental.

(g) For the principal purpose of painting, greasing or repairing said vehicle except for repairs

necessitated by an emergency.

(h) For the principal purpose of washing or polishing such vehicle or any part thereof when a charge is made for such services.

(i) Within a lane designated for the making of turning movements or for the operation of bicycles.

(j) Within an intersection.

(k) On a crosswalk.

(l) Within twenty (20) feet of a crosswalk at an intersection.

(m) Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway.

(n) Within an area designated as a public transit stop.

(o) Within fifty (50) feet of the nearest rail of a railroad crossing or within eight (8) feet six (6) inches of the center of any railroad track, except while a motor vehicle with motive power attached is loading or unloading railroad cars.

(p) On the roadway side of any vehicle stopped or parked at the edge or curb of a street (double parking).

(q) On a sidewalk or in that area between the curb and sidewalk or on those roadways without curbs in a manner so as to force a pedestrian to walk in the traveled portion of the roadway.

(r) Upon any bridge or other elevated structure.

(s) Alongside or opposite any street excavation or obstructions when stopping, standing or parking would impede traffic.

(t) Upon any public street, public Right-of-Way or public property when such vehicle does not display current registration.

(u) Except as otherwise provided in this chapter, no person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the curbside wheels of the vehicle within eighteen (18) inches of the curb or edge of the roadway.

(v) Directly in front of a community or individual postal box served by the U.S. Postal Service except for the purpose of delivering or collecting mail.

(w) In violation of posted no parking signs or while in the area of a painted red curb.

Vehicles parked in violation of the requirements of this Section are subject to removal and storage at the expense of the registered owner under A.R.S. §28-872.

Section 12-23 Parking Duration

(a) No person shall park any vehicle upon any public street or upon publicly owned, maintained or operated property for a period of seventy-two (72) or more consecutive hours. For purposes of this Section, the vehicle shall be considered to have remained parked unless, during the seventy-two (72) hour period, said vehicle has been moved at least one hundred feet (100') from the position it previously occupied, or the odometer on said vehicle exhibits a change of at least one-tenth of one mile.

(b) Vehicles parked in violation of subsection (a) are subject to removal and storage at the expense of the registered owner.

Section 12-24 Parking on Private Property

(a) Notwithstanding any other law to the contrary, it is unlawful for the Operator of a motor vehicle to park the vehicle in or upon property of another without first obtaining permission of the person legally entitled to possession of the property.

(b) Vehicles in violation of this Section may be subject to removal at the vehicle owner's cost.

Section 12-25 Emergency; No Parking

(a) No person shall park a vehicle upon any public highway, street or parking lot in violation of an emergency no parking sign that has been conspicuously posted.

(b) The City Engineer or designee is authorized to post emergency no parking signs on public highways, streets or parking lots for the purpose of street maintenance, construction, special events or any community related event. The duration of emergency no parking shall be no longer than seventy-two (72) hours. After a reasonable attempt has been made to contact the owner, any vehicle parked in violation shall be removed at the owner's expense.

Section 12-26 Prohibition Against the Parking of Oversized Vehicles

(a) Subject to the exceptions below, no person shall stop, stand, or park any oversized motor vehicle or non-motorized vehicle on any public street, road or alleyway within any residential or commercial district.

(b) The prohibition set forth in subsection (a) shall not apply to oversized vehicles, or non-motorized vehicles parked for a period of less than twelve (12) hours for the purpose of loading, unloading, cleaning, or other activity preparatory to or incidental to travel.

(c) The prohibition set forth in subsection (a) shall not apply to oversized vehicles, or non-motorized vehicles parked in residential areas zoned as rural where the minimum lot size is one acre or more.

Section 12-27 Restricted Parking Areas for the Physically Disabled; Identification

(a) Except as provided in subsection (d), no person may stop, stand or park a motor vehicle within any specially designated and marked parking space provided for a physically disabled person, which includes the area indicated by hash marks painted adjacent to any such space, in accordance with this Section, A.R.S. § 28-882, or any related provision, whether on public or private property, unless the motor vehicle is transporting a person eligible to obtain a special license plate with the

international wheelchair symbol or a placard issued pursuant to state law for this purpose and the vehicle displays either the special plate or the placard.

(b) Parking spaces subject to this Section shall be clearly and conspicuously designated as being reserved for the physically disabled. Such designations shall include a standard symbolic disabled parking sign bearing the number of this section of this Code and conform to specifications for design and placement as approved by the City Engineer. The property owner is responsible for all required postings.

(c) If a police officer or other duly authorized agent finds a motor vehicle in violation of this Section, a complaint shall be issued to the Operator or other person in charge of the motor vehicle, or a notice of violation placed on the vehicle, as appropriate.

(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 any such parking space for the purpose of loading or unloading such physically disabled person. No complaint shall be issued to the driver for such momentary parking.

(e) It is unlawful to stop, stand, or park a vehicle in such a manner as to block or deny access to a wheelchair curb access ramp, except that this provision shall not prohibit the operator of a vehicle from temporarily stopping in accordance with other parking regulations for the purpose of and while actually engaged in loading or unloading physically disabled passengers.

Section 12-28 Placement of Temporary Storage Units and Dumpsters

(a) Unless permitted by the City Engineer, Temporary Storage Units and Dumpsters are prohibited from being placed in the public Right-of-Way or streets.

(b) The property owner(s) and/or Lessee(s) of the property and supplier that is found in violation of Section 12-27, shall be fined, upon conviction, a maximum sum of two hundred fifty dollars ($250).

(c) The, Property owner(s) and/or Lessee(s) of the property and Supplier shall all be jointly and severally be liable for all costs incurred by the City for the removal of the Temporary Storage Unit or Dumpster.

Section 12-29 Overnight Camping

It is unlawful for any person, firm, corporation or other organization to camp or park an occupied recreational vehicle between the hours of 11:00 p.m. and 5:00 a.m. upon the private or public property of any other person, firm, corporation or other organization, without first having obtained permission from the owner or occupant of the property upon which such camping or parking is conducted. For the purposes of this section, an RV park/campground receipt or a special use permit approved by the City shall be considered permission.

ARTICLE IV. ADMINISTRATION AND ENFORCEMENT

Section 12-30 Enforcement

(a) It shall be the duty of the City Police Department to provide for the enforcement of the street traffic regulations of the City and all of the State vehicle laws applicable to street traffic in the City, to make arrests for traffic violations, to assist in the prosecution of those persons charged with

violations of law, to investigate accidents and to assist the City Engineer in developing ways and means to improve traffic conditions and to carry out all duties specifically imposed upon the City Police Department by this Chapter.

(b) Any peace officer of the City may be authorized by the Police Chief to perform any of the duties of the police department included in this Chapter.

(c) The City Police Department shall keep a record of all violations of the traffic laws of the City or of the State vehicle laws of which any person has been charged in accordance with the City of Benson Records Management Program[pal1].

(d) All forms for records of violations and notices shall be serially numbered.

Section 12-31 Civil Traffic Procedure

An action or proceeding alleging a violation of this chapter may be initiated and served as provided in the Arizona rules of procedure in civil traffic cases or Arizona rules of procedure in traffic cases. The rules governing individual cases as determined by the governing court shall apply to the determinations of all questions arising out of any initiated action or proceeding.

Section 12-32 Violation; classification; exception; civil traffic violation; surcharge

(a) A person who violates a provision of this title or who fails or refuses to do or perform an act or thing required by this title commits a civil traffic offense unless the statute defining the offense provides for a different classification. Unless otherwise specifically provided, a violation of any of these provisions shall result in the imposition of a civil sanction which shall not exceed five hundred dollars ($500.00).

(b) A person who violates any provision of Section 12-26 shall be assessed a mandatory minimum fine of one-hundred fifty dollars ($150.00), no part of which may be suspended or waived by the court.

(c) A person who violates any other provision of this Chapter which regulates the time, place, or method of parking a vehicle shall be assessed a mandatory minimum fine of fifty dollars ($50.00), no part of which may be suspended or waived by the court.

(d) A person who commits any violation of this Chapter and who within the past two years has previously been convicted of or been found responsible for two or more violations of this Chapter is guilty of a class 1 misdemeanor.

(e) In addition to any other penalty assessment provided in this title, the court shall levy surcharges required by State law.

Section 12-33 Payment of Penalty Fee upon Receipt of Notice of Violation

(a) The presiding judge of the municipal court shall, from time to time, prepare a table of charges and penalty fees for violations of this Chapter consistent with ordinances and resolutions of the City council.

(b) Any person who becomes aware that a notice of violation has been issued with respect to an alleged violation of any provision of this Chapter classified as a civil infraction may, in lieu of court

proceedings, pay the base penalty fee as established by the municipal court and any state or local mandatory surcharges within thirty (30) days of the date of violation indicated on the notice of violation.

(c) The owner or operator of a vehicle for which a notice of violation has been issued may contest the violation by requesting a civil traffic hearing. The request for hearing must be in writing and shall be promptly submitted to the hearing officer or designee.

(d) If the owner or operator of a vehicle for which a notice of violation has been issued fails to pay the amount of the fine or request a hearing within thirty (30) days of the issuance of the notice of violation, then a summons and complaint shall be issued to the registered owner of the vehicle. The notice of violation for a parking violation shall be issued within sixty (60) days from the date of violation. The summons shall command the registered owner to appear in the City court on a date and time certain.

(e) When a person is found responsible for a violation by a judge or a civil traffic hearing officer, whether by default or after a hearing, the judge or hearing officer shall impose a civil sanction for the violation, which shall be not less than the amount of the prescribed fine, as indicated in subsection (a) above.

(f) It is an affirmative defense to an alleged violation of Section 12-58, if at the time of a hearing in municipal court, the vehicle that was the subject of the violation was eligible for and had been issued a valid distinguishing insignia placard at the time of the violation.

Section 12-34 Vehicle Impound Fees

An assessment of a vehicle impound fee shall be collected by the Benson Police Department as necessary revenue to offset the costs of inspection, transmission of required documentation to the Arizona Department of Motor Vehicles, and the provision of facilities and manpower to effectuate the storage of motor vehicles impounded by the City of Benson Police Department. The impound fee shall be assessed as follows:

(a) The vehicle impound fee shall consist of an administrative fee and a daily storage fee calculated as follows:
   1. An administrative fee in the amount of seventy-five dollars ($75.00) shall be assessed on the impound of each vehicle; and,
   2. A daily storage fee at the rate of ten dollars ($10.00) per day, shall accrue starting on the first (1st) day of impoundment.

(b) The total vehicle impound fee assessed against any one vehicle on any single occasion of impound shall not exceed six hundred seventy five dollars ($675.00).

(c) Payment of impound fees shall be by U.S. currency, cashier's check, or money order payable to the City of Benson.

(d) The City shall generate a written receipt upon payment of any impound fees, and provide the same to payor.

(e) The impounded vehicle must be removed from storage on the date impound fees are paid in full, or an additional daily storage fee shall be incurred.

CHAPTER 13 UTILITIES

ARTICLE 13-1 UTILITIES DEPARTMENT

13-1-1 Established; Composition
13-1-2 Compensation
13-1-3 Appointment and Duties of Utilities Manager
13-1-4 Maintenance, Upkeep and Extension
13-1-5 Utility Improvement Zones

Section 13-1-1 Established; Composition

A. There is hereby established the utilities department of the city.

B. The utilities department shall consist of the utilities manager and all employees deemed necessary in order to service and maintain the gas, water and sewer systems, garbage pickup and disposal, and other duties as may be assigned from time to time within the city.

Section 13-1-2 Compensation

Monthly salaries shall be paid to the personnel of the utilities department as approved by the council from recommendations submitted from time to time by the utilities manager and the city manager.

Section 13-1-3 Appointment and Duties of Utilities Manager

A. The utilities manager shall be appointed by the city manager.

B. The utilities manager shall have the following duties:

1. Exercise entire charge of the utilities department and all apparatus and property used by said department, and have full and complete charge of all employees of the utilities department.

2. Recommend to the city manager the number of employees necessary to fulfill the responsibilities of the department and provide the names of all candidates for those positions along with recommendations as to their acceptance or rejection.

3. Cooperate with the city manager regarding all purchases of any and all equipment or apparatus utilized by the utilities department and assist in the preparation of the annual budget for consideration of the council.

4. Consult with the city manager and the council from time to time in order to furnish information, data or opinions concerning questions arising about the public utilities within the city.

5. Be responsible for the installation, upkeep, maintenance, repair or replacement of all sewer lines, gas lines and water lines of the city along with the safe and efficient removal and disposal of all trash and garbage, maintenance of roadways, identification of fees or charges to be assessed relative to the above activities and all other duties inherent in running the utilities department of the city.

Section 13-1-4 Maintenance, Upkeep and Extension

The council shall make such allowances for the maintenance, upkeep and extension of the utilities department as it deems necessary.

Section 13-1-5 Utility Improvement Zones[1]

A. The mayor and city council are authorized to establish by resolution any number of Utility Improvement Zones (UIZ) provided that each UIZ shall have a clearly ascertainable boundary enclosing the specific area to which extraordinary capital and/or operating expenses can be ascribed.

B. Upon adoption of a resolution establishing a UIZ, each of which shall be identified by an area name or alphabet character selected by the mayor and city council at the time of designation as a UIZ, the mayor and council shall thereafter, and from time to time as it deems appropriate, be authorized by resolution to impose such additional charges, surcharges, hook up fees, service availability charges, unit charges or other rates and/or charges in such amounts and for such periods as are reasonably necessary to offset the extraordinary costs found by the mayor and council to have incurred, or continuing to be incurred, to provide certain specific city utility service in the UIZ.

C. Consideration of the creation of UIZ and/or the determination of the level of any additional fees or charges in conjunction therewith, occur only after the convening of a duly noticed public hearing at which the mayor and city council may receive public input and comments; however, a single public hearing may be convened to consider both the UIZ designation and the proposed or appropriate additional charges to be collected from users within the UIZ.

Section 13-1-6 Developer Installation of Metering Equipment [2]

Any Developers wishing to establish any interconnections with any of the City of Benson's utility systems shall be required to establish such connection(s) based upon the current metering equipment specifications as approved by the Building Inspector in conjunction with the Utilities Department. Any connections established which do not meet the required metering equipment specifications will be refused for service by the City of Benson. (Enacted by Ordinance No. 483.)

[1]Created by Ordinance No. 387

[2]Created by Ordinance No. 483

UTILITIES

ARTICLE 13-2 GAS SERVICE[1]

13-2-1 Definitions
13-2-2 Establishment of Service
13-2-3 Deposits
13-2-4 Grounds for Refusal of Service
13-2-5 Rates and Charges
13-2-6 Master Metering
13-2-7 Provision of Services
13-2-8 Unsafe or Hazardous Customer Gas Line
13-2-9 Billing
13-2-10 Termination of Service
13-2-11 Annual Review and Notification
13-2-12 Gas Line Extension Policy

Section 13-2-1 Definitions

In this article, unless the context otherwise requires, the following definitions shall apply:

A. "Accommodation charge" shall be the charge applied to **any initial turn on** [2] (modified by Ordinance #455) summer turn off, turn off for construction or repair, moving or other turn off requested by the customer except for discontinuing service.

B. "Applicant" means a person requesting the utility to supply gas service.

C. "Application" means a request to the utility for gas service, as distinguished from an inquiry as to the availability or charges for such service.

D. "Billing month" shall be the period between any two regular readings of the city's meters at approximately thirty day intervals.

E. "Billing period" shall be the time interval between two consecutive meter readings that are taken for billing purposes.

F. "Commodity charge" shall be the unit of cost per billed usage as set forth by city ordinance.

G. "CCF" means one hundred cubic feet.

H. "Customer" means the person or entity in whose name service is rendered, as evidenced by signature on the application or contract for service or by the receipt and/or payment of bills regularly issued in his/her name regardless of the identity of the actual user of the service.

I. "Customer charge" shall be the amount the customer must pay the city for availability of gas service, excluding any gas used.

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[1]Modified by Ordinances No. 307 and 376

[2]Modified by Ordinance No. 455

J. "Customer gas line" shall mean any gas pipe connecting to the gas meter setting, as herein defined, and continuing on to the user's gas consuming fixture whether or not said gas pipe is located on the user's property.

K. "Day" as used herein shall mean a calendar day.

L. "Distribution main" shall be the gas line belonging to the city from which service lines may be extended to customers.

M. "Gas meter setting" shall mean the gas meter, pressure regulator and the upstream (or city- side) gas pipe riser necessary to make the connection between the city's gas main or distribution line and the gas meter, and the gas meter setting shall end at the first elbow coming out of the low pressure side of the gas meter on the customer's side of said gas meter.

N. "Hazardous customer gas line" shall mean a customer gas line which, because of its condition, location or material of construction presents or may present an imminent danger to persons or property.

O. "Interruptible gas service" means gas service that is subject to interruption or curtailment.

P. "Main extension" shall be the lines and equipment necessary to extend the existing gas distribution system to provide service to additional customers.

Q. "Master meter" shall be the instrument for measuring or recording the flow of gas at a single location where said gas is transported through an underground piping system to multiple tenants or occupants for their individual consumption.

R. "MCF" means one thousand cubic feet.

S. "Meter" shall be the instrument or device for measuring and indicating or recording the volume of gas or flow that has passed through it.

T. "Meter tampering" means any situation where a meter has been illegally altered; common examples are meter bypassing and other unauthorized connections.

U. "Person" as used herein shall mean any individual, partnership, corporation, governmental agency or other organization operating as a single entity.

V. "Point of delivery" shall mean the point where pipes owned, leased or under license by a customer connect to the utility's pipes or at the outlet side of the meter.

W. "Premises" shall mean all of the real property and apparatus employed in a single enterprise on an integral parcel of land undivided by public streets, alley or railway.

X. "Residential use" shall mean the service to customers using gas for domestic purposes such as space heating, air conditioning, water heating, cooking, clothes drying and other residential uses and includes use in apartment buildings, mobile home parks and other multi-unit residential buildings.

Y. "Service establishment charge" shall be the charge as specified in the city's ordinances for establishing a new account.

Z. "Service line" means a gas pipe that transports gas from a common source of supply (normally a distribution main) to the customer's point of delivery.

AA. "Service reconnect charge" shall be the charge specified herein or to be paid by the customer prior to reestablishment of gas service each time the gas is disconnected for nonpayment or whenever service is discontinued for failure otherwise to comply with the city ordinances.

BB. "Service reestablishment charge" means the charge as specified herein or otherwise established for gas service at the same location where the same customer had ordered a service disconnection within the preceding twelve-month period. Same as accommodation charge.

CC. "Standard delivery pressure" shall be 0.25 pound per square inch gauge at the meter or point of delivery.

DD. "Temporary service" means service to premises or enterprises which are temporary in character, or where it is known in advance that the service will be limited duration; additionally, it shall also include service which, in the opinion of the city, is for operations of a speculative character.

EE. "Utility" as used herein shall mean the city.

FF. "Zone A customers" shall be those customers receiving natural gas service within the corporate limits of the city.

GG. "Zone B customers" shall be those gas customers outside the limits of the city.

Section 13-2-2 Establishment of Service

A. An applicant requesting gas service shall provide the following information to the city prior to the initiation, reconnection or reestablishment of said service:

1. Name or names of applicant(s);

2. Name, address and telephone of employer;

3. Social Security number or name, address and phone number of next of kin not living with them;

4. Service address or location and telephone number;

5. Billing address or location and telephone number, if different than service address;

6. Address where service was provided previously and if outside the city, the name and billing address of the service provider;

7. Date applicant will be ready for service;

8. Indication of whether premises has been supplied with city gas service previously;

9. Purpose for which service is to be used;

10. Indication of whether applicant is owner, tenant or agent for the premises;

11. Information concerning the gas usage and demand requirements of the customers;

12. Type and kind of life-support equipment, if any, used by the customer.

B. A new applicant for service must appear at city hall to produce proof of identity and sign the utility's application form

C. Where service is provided to two or more individuals, at the same location, the city shall have the right to collect the full amount owed to the city from any one of the individuals.

Section 13-2-3 Deposits

A. The city shall **only require a 50% of the deposit** [1] (modified by Ordinance 455) from a new applicant for residential service if the applicant meets either of the two following requirements:

1. The applicant has had service of a comparable nature by the city at another location for the past two years and was not delinquent in payment more than twice during the last twelve consecutive months and was not disconnected for nonpayment; or,

2. The applicant can produce a letter or credit or verification from a gas utility where service of a comparable nature was last received and which states that the applicant has had service of a comparable nature with such utility at the previous service location within the past two years and was not delinquent in payment more than twice during the last twelve consecutive months and was not disconnected for nonpayment.

B. The city may require a customer to establish or reestablish a deposit if the customer becomes delinquent in the payment of three or more bills within a twelve consecutive month period or has been disconnected for service during the last twelve months.

C. If an advance cash deposit is required by the city, the full amount of such deposit shall Be paid before service is connected according to the following schedule:

1. Individual/Residential: Upon application by a single residential gas user,

[1]Modified by Ordinance No. 455

There shall be a cash deposit in the sum of **one hundred and fifty** dollars[1] (modified by Ordinance #455).

2. Multi-residential: Upon application by a multi-residential gas user, they shall make a cash deposit with the city in a sum equal to one-sixth the annual billing as evidenced by the former account for such property in the utility office, or seventy-five dollars whichever is greater.

3. Commercial: Upon application by a gas user, they shall make a cash deposit with the city utility office in a sum equal to one-sixth the annual billing as evidenced by the former account for such property in the city utility office. If no former account existed for the property, the city manager shall establish the initial deposit requirement based on such information as he deems appropriate.

4. Irrigation: Upon application by a gas user, they shall make a cash deposit with the city utility office in a cash sum equal to one-sixth the annual billing as evidenced by that account for such property in the city utility office. If no former account existed, the procedure applicable to commercial accounts shall be followed.

D. Deposits shall be refunded if one of the following conditions are met:

1. The customer has completed twelve consecutive months of service without being delinquent in the payment of more than two utility bills; or,

2. If service is disconnected and the customer has paid all outstanding amounts due the city.

E. Deposits will remain with the city an additional twelve months if the customer has been delinquent in the payment of two or more utility bills during the first twelve months of service except after service has been terminated at the customer's request and all unpaid amounts discharged.

Section 13-2-4 Grounds for Refusal of Service

The city may refuse to establish service if any of the following conditions exist:

A. The applicant has an outstanding amount due for any city utility service and the applicant has not made acceptable payment arrangements with the city; or,

B. A condition exists which in the city's judgement is unsafe or hazardous to the applicant, the public or the utility's personnel or facilities; or,

[1]Modified by Ordinance No. 455

C. Refusal by the applicant to provide the city with an acceptable deposit when the customer has failed to meet credit provisions set forth in Section 13-2-3 for waiver of deposit requirements; or,

D. Failure of the customer to furnish such funds, service equipment and/or rights-of-way necessary to serve the customer or which have been specified by the city as a condition for providing service; or

E. Applicant falsifies his or her identity for the purpose of obtaining service or it appears that another person is being presented as the prospective customer because the actual primary resident of the property has an outstanding utility account balance due or has an unacceptable payment history.

Section 13-2-5 Rates and Charges

A. Rates

1. There shall be a customer charge to all Zone A customers of $7.50 per month, for each meter, to maintain the availability of natural gas at the customer's location. The charge shall be made whether or not the customer takes natural gas during the month.

2. There shall be a customer charge to all Zone B customers of $10.00 per month for each meter to maintain the availability of natural gas at the customer's location. The charge shall be made whether or not the customer takes natural gas during the month.

3. The price per CCF of natural gas to all customers shall be established by resolution from time to time by the city council.

B. Accommodation Charges

1. Zone A accommodation charges shall be $30.00 during regular working hours.

2. Zone B accommodation charges shall be $40.00 during regular working hours.

C. Service Reconnection Charge

1. Zone A reconnection fee for turn off because of nonpayment shall be $30.00 for residential accounts and $50.00 for commercial accounts which must be paid with the delinquent amount before service is restored.

2. Zone B reconnection fee for turn off because of nonpayment shall be $40.00 for residential accounts and $60.00 for commercial accounts which must be paid with the delinquent amount before service is restored.

D. Re-Reads

1. The city shall at the request of a customer re-read the customer's meter within five working days after such request by the customer.

2. The city shall charge the Zone A customer for each meter re-read the sum of $5.00. The re-read charge for Zone B customers is $15.00. Whenever a re-read reveals a previous reading to be in error, the re-read shall be at no charge to the customer.

3. In order to process a re-read, the customer must appear at city hall, request the re-read and pay the appropriate fee. If the reading is found to be in error, the fee shall be applied as a credit to the customer's account.

E. In addition to the applicable development fee, the City shall collect the following fees before any service taps or gas meters are connected to the gas system: [1]

1. A connection fee, as established by resolution from time to time by the City Council; and,

2. The cost of repairing or replacing any pavement or other structure necessarily damaged in the process or because of the installation of any service connection, either within or without the corporate limits of the City of Benson, shall be paid by the person making the application for such service, in addition to any other charges that may be required for such service, and such amount shall be estimated by the City Manager or his designee, and paid in advance of the City being obligated to undertake the utility work.

F. There shall be a charge of **twenty-five dollars** (modified by Ordinance #455) for each check returned for insufficient funds, stop payment order, checks drawn on closed accounts, or any other reason within the customer's control.

Section 13-2-6 Master Metering

All meters shall be subject to the following provisions:

Mobile Home Parks - New Construction/Expansion

A. The city shall refuse service to all new construction and/or expansion of existing permanent residential mobile home parks unless the construction and/or expansion is individually metered by the city.

B. Permanent residential mobile home parks for the purpose of this rule shall mean mobile home parks where, in the opinion of the city, the average or reasonably anticipated length of stay for an occupant is a minimum of six months.

[1]Modified by Resolution 47-2006

C. For the purposes of this section, expansion means any construction which has been started for additional permanent residential spaces after May 19, 1988.

D. For master meters already installed, for all Zone A customers the service availability charge shall be five dollars per month per connection whether or not such connection is actually in use. For customers in Zone B the service availability charge shall be seven dollars and fifty cents per month per connection whether or not such connection is actually in use.

Section 13-2-7 Provision of Services

A. Customer Responsibility

1. Each customer shall be responsible for maintaining all customer piping, fixtures and appliances on the customer's side of the point of delivery in safe operating condition.

2. Each customer shall be responsible for safeguarding all city property installed in or on the customer's premises for the purpose of supplying gas service.

3. Each customer shall exercise all reasonable care to prevent loss or damage to city property, excluding ordinary wear and tear and the customer shall be responsible for loss of or damage to, city utility property on the customer's premises arising from neglect, carelessness or misuse and shall reimburse the city for the cost of necessary repairs or replacements.

4. Each customer shall be responsible for payment for any equipment damage and/or estimated unmetered usage resulting from unauthorized breaking of seals, interfering, tampering or bypassing the city's meter.

5. Each customer shall be responsible for notifying the city of any gas leakage identified in the customer's or the city's equipment.

B. Continuity of Service

1. The city shall make reasonable efforts to supply a satisfactory and continuous level of service. However, the city shall not be responsible for any damage or claim of damage attributable to any interruption or discontinuation of service resulting from:

a. Any cause against which the city could not have reasonably foreseen or made provision for i.e., force majeure;

b. Intentional service interruptions to make repairs or perform routine maintenance;

c. Curtailment due to lack of available gas for distribution.

2. In the event of a national emergency or local disaster resulting in disruption of normal service, the city may, in the public interest, interrupt service to any customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

C. Standard Delivery Pressure

1. The city shall maintain the standard delivery pressure at the outlet of the customer's meter of approximately 0.25 pounds per square inch gauge subject to variation under load conditions.

2. In cases where a customer desires service at greater than standard delivery pressure, the city may supply at its option such greater pressure if and only as long as the furnishing of gas to such customer at higher than standard delivery pressure will not be detrimental to the service of other customers or facilities of the city. The city reserves the right to lower said delivery pressure or discontinue the delivery of gas at higher pressure at any time upon reasonable notice to the customer. Where service is provided at such higher pressure, the meter volumes and billing charges will be adjusted to reflect that higher pressure.

D. Access to Customer Premises - The city shall at all times have the right of safe ingress to and egress from every customer's premises at reasonable hours for any purpose connected with the furnishing of gas service and the exercise of any rights or responsibilities secured to it by law or this article.

Section 13-2-8 Unsafe or Hazardous Customer Gas Line

A. The city's responsibility for maintenance, repair, inspection and replacement of its gas system components shall include the gas meter setting as herein defined, but shall not extend to, or include, customer gas lines as herein defined.

B. In the event the city, in the course of its usual standard operating procedures, becomes aware of the existence of a customer gas line which it determines to be in an unsafe condition, the customer shall be given written notice of the existence of such condition, by first class mail addressed to the customer's billing address as shown in the city's utility department records, and thereafter the customer shall, within thirty days, repair or correct the unsafe condition to the satisfaction of the city gas department representative designated by the city manager, and said representative shall indicate approval in writing on a form approved by the city manager. Failure to correct or repair a customer gas line designated as unsafe for more than thirty days after the date of the written notice specified above shall result in termination of the customer's gas service until such time as acceptable repairs have been completed.

C. If the city determines a customer gas line to be in a hazardous condition, gas service shall be terminated immediately and service shall not be restored until the gas line is determined by the city gas department representative to be restored to a safe condition.

D. The city shall incur no liability by reason of its interruption of gas service when said interruption is caused by discovery of an unsafe or hazardous customer gas line even though such interruption is without advance notice to the customer.

E. The city shall have no duty or obligation to undertake to inspect or otherwise determine the condition of customer gas lines or devices except in the usual course of its general accepted standard operating activities.

Section 13-2-9 Billing

A. Frequency

1. The city shall bill monthly for services rendered.

2. Failure on the part of the customer to comply with a reasonable request by the city for access to its meter shall be grounds for immediate discontinuance of service.

B. Combining Meters - Each meter at a customer's premises will be considered separately for billing purposes, and the readings of two or more meters will not be combined for any purposes.

C. Billing Terms

1. All bills for utility services are due and payable no later than fifteen days from the date the bill is mailed. Payments not received within fifteen days shall be considered delinquent. For purposes of this rule, the date a bill is mailed may be evidenced by the city's record of mailing.

2. All delinquent bills for which payment has not been received within ten days shall be subject to the provisions of the city's termination procedures.

3. Failure to receive bills or notices which have been according to city records placed in the United States mail shall not prevent such bills from becoming delinquent and will not relieve the customer of the obligation for timely payment as set forth herein.

4. Charges for service commence when the service is installed and connection made, whether used or not.

D. Meter Error Corrections

1. If any meter, after testing, is found to be more than three percent in error, either fast or slow, an adjustment correction of the amount calculated as being between three percent of the correct amount and the amount of the erroneous billing shall be made of previous readings and adjusted bills shall be rendered according to the following terms:

   a. For the period of three months immediately preceding the removal of such meter from service for test or from the time the meter was in service since last tested, but not exceeding three months since the meter shall have been shown to be in error by such test.

   b. From the date the error occurred, if the date of the cause can be definitely fixed.

2. No adjustment shall be made by the city except to the customer last served by the meter tested **and only back six billing months** [1] (modified by Ordinance #455).

E. Insufficient Funds (NSF) Checks

1. When the city is notified by the customer's bank that there are insufficient funds to cover the check tendered for utility service or the account is closed or no longer exists, the city may require the customer to make payment in cash, by money order, certified check or other means which guarantee the customer's payment to the city.

2. A customer who tenders an insufficient check shall in no way be relieved of the obligation to render payment to the city under the original terms of the bill nor defer the city's provision for termination of service for nonpayment of bills. **A customer who tenders two insufficient checks shall lose the convenience of paying by check** [2] (modified by Ordinance #455).

F. Change of Occupancy

   1. Not less than three working days advance notice must be given in person at the city utility office to discontinue service due to change of occupancy.

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[1]Modified by Ordinance No. 455

[2]Modified by Ordinance No. 455

2. The customer of record at the time of notice to discontinue service shall be responsible for all utility services provided and/or consumed up to the scheduled turn-off date.

Section 13-2-10 Termination of Service

A. The city may disconnect service without advance written notice under the following conditions:

1. The existence of a hazardous condition.

2. The city has evidence of meter tampering or fraud.

3. Failure of a customer to comply with the curtailment requirements imposed by the city during supply shortages.

B. The city shall not be required to restore service until the conditions which resulted in the termination have been corrected to the satisfaction of the city.

C. Termination of Service with Notice

1. The city may disconnect service to any customer for any reason stated below.

a. Customer violation of any of the city's gas utility regulations;

b. Failure of the customer to pay a delinquent bill for utility service;

c. Failure to meet or maintain the city's deposit requirements;

d. Failure of the customer to provide the city reasonable access to its equipment
and property;

e. Customer breach of a written contract for service between the city and customer.

f. Whenever necessary for the city to comply with an order of any governmental agency having jurisdiction.

2. Right to Hearing – In all of those instances enumerated in paragraph 1 of this subsection in which termination of service may be unjust or cause severe hardship to an occupant of the premises which will be affected, either the customer of the occupant thereof may request a hearing, as hereafter provided with a city employee designated by the City Manager who shall act as a hearing officer and who shall consider any evidence which may be presented and thereafter make a determination as to whether or not the termination should occur and, if so, when such termination will take place. The hearing officer may enter into such other arrangements as he deems appropriate to allow continuation of gas service under conditions which protect the city’s interest in light of the reason upon which the termination order was initially based.

3. Hearing Procedure – In the event any person so entitled elects a hearing by reason of the provisions of this section, such hearing shall be requested by filing a written "Request for Hearing" on a form supplied by the City and delivered personally or mailed to the utility billing department manager, the city clerk or the hearing officer designated in accordance with the provisions of paragraph 2 of this subsection and the hearing be held thereafter as soon as reasonably practicable during normal work hours. If the request for hearing is filed at least four hours prior to the scheduled termination of service, the termination shall be delayed until the hearing has been concluded according to the schedule which shall be determined by the city. The hearing officer shall be empowered to affirm, delay, cancel or modify the termination of service order and may impose such conditions as he deems reasonable to protect the city's interest in light of the evidence presented by the person requesting the hearing and the past experience with the customer affected thereby. In the event service has been terminated prior to the request for hearing being filed, the hearing officer may upon good cause being shown direct that the service be temporarily restored pending deposition of the matter in the same manner as provided in those instances when the request for hearing is received prior to termination of service. In all instances, burden of proving a hardship shall be on the person requesting the hearing. Hearings shall be scheduled if actual notice cannot be delivered, by posting notice of the scheduled hearing at least twenty-four hours in advance on the public notice bulletin board located in city hall. Failure to appear at a requested hearing shall be considered a withdrawal of the request for hearing.

Section 13-2-11 Annual Review and Notification

A. A review of natural gas users and users classes, total costs of operation and maintenance of the gas distribution system and the user rate charges will be made no less often than annually.

B. Revision to the user class or user rate charges as may be approved by resolution of the city council shall be made in order to accomplish the following:

1. Maintain the proportionate distribution of operation and maintenance costs to amount of users and user classes;

2. Generate sufficient revenue to pay the total operation, maintenance and replacement of the system.

Section 13-2-12 Gas Line Extension Policy

A. Whenever a natural gas main line is extended to provide new gas service, the total cost of the line extension shall be borne by the person requesting extension. A person requesting the gas main extension shall be required to pay for a gas main extension whenever the city elects to install a line, the diameter of which exceeds four inches; in which case the person requesting the service shall pay only that portion of the cost which would have been incurred had a four inch main been installed.

B. The actual installation of all gas main lines referred to in subsection A of this section shall be accomplished by the city. The person requesting the installation shall pay the actual costs of

installation incurred by the city including right-of-way acquisition, labor, fringe benefits, materials and equipment costs and a ten percent administration charge which shall be calculated on the total of all other charges. The city manager shall require a minimum deposit of fifty percent of the estimated costs of installation to be paid to the city before construction begins. The balance of the actual costs incurred shall be paid prior to the city furnishing gas to any customer served by the newly constructed line or fifteen days after construction of the new line is completed, whichever occurs first.

C. The person requesting the gas line extension may elect to provide their own trenching and backfill work in conjunction with the activities described in subsections A and B of this section. If such an option is selected, the person electing that option shall notify the city manager of their intent to provide trenching and backfill work at least ten working days prior to beginning the work. The individual or organization performing trenching or backfilling work shall immediately comply with all specifications and directions etc. given to them by the city manager or his authorized representative during the course of the trenching and backfill work in conjunction with the gas line installation.

D. Immediately upon completion of any gas line constructed under the foregoing provisions of this section, the gas line shall become the property of the city which shall maintain exclusive control of the gas line and rights-of-way associated with said extension.

E. In the sole and complete discretion of the city council or the city manager, the city may enter into into extension agreements with individuals or organization who have installed a gas line extension pursuant to this section. Such agreements may provide that any person other than the person who paid for extending a specific line connecting to that line shall pay a predetermined portion of the original construction costs and the amount or a specific portion thereof shall be remitted to the party who paid the cost of such extension. The extension agreement may specify the amount future users shall pay for each connection based on the circumstances of each individual extension. The total of such repayments shall not exceed the original construction cost and the period of any repayment agreement negotiated pursuant to this section shall not extend fifteen years from the date construction of the gas main was completed. No interest may be accrued to the original construction cost.

F. The city shall have the right to install, at its own expense, any extension or facility it deems appropriate and desirable. Additionally, the city council may enter into any extension agreement which provides for a sharing of costs in any manner deemed to be in the best interests of the city.

UTILITIES

ARTICLE 13-3 SEWER SERVICE[1]

13-3-1 Purpose
13-3-2 Definitions
13-3-3 General Provisions
13-3-4 Application for Approval
13-3-5 Fees for Connection to Sewer
13-3-6 Construction under Private Contract
13-3-7 Permits for Temporary Installations for Areas not Contiguous to Sewers
13-3-8 User Fee Charges
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13-3-10 Restrictions Upon Sewer Use
13-3-11 Interceptors Required
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13-3-17 Penalties

Section 13-3-1 Purpose

A. The purpose of this article is to insure that all connections to the city sewer collection system shall be done only under plumbing inspection permits issued by the city; provide a connection fee method to equitably construct main, trunk and interceptor sewers and to establish and build a sewer improvement fund for future sewer and wastewater treatment system expansion; provide a method for authorizing construction of sewers under private contract; provide a means for reimbursement for oversize sewer mains and provide equitable methods for payment of sewer construction.

B. In addition, the purpose of this article is to provide for maintenance and operation of wastewater collection and treatment, expansion or renovation of treatment facilities and retirement of sewer and wastewater treatment facilities bonds by establishment of a sewer service charge.

C. It is unlawful for any person, firm or corporation to construct or cause to be constructed any sanitary sewer or to connect to any sanitary sewer in the city without complying with the provisions of this article. The fees provided herein shall be in addition to plumbing permit fees, building permit fees or development impact fees then in effect.

D. It is unlawful for any person, firm or corporation to discharge waste into the sewer system of the city without complying with the provisions of this article.

Section 13-3-2 Definitions

In this article, unless the context otherwise requires:

[1]Modified by Ordinances No. 323 and 335

UTILITIES

A. "Acre" means 43,560 square feet of land, excluding easements or rights-of-way and any other unusable portions of the land.

B. “A.D.E.Q.@ means the Arizona Department of Environmental Quality.

C. “A.D.H.S.@ means the Arizona Department of Health Services.

D. "Applicant for development" means an applicant for sewer service for an area under development for marketing purposes.

E. "Applicant for service" means an applicant for sewer service for personal use requiring an extension of an existing sewer.

F. "Area under development" means an area in which sanitary sewer improvements are being constructed including, but not limited to, single-family and multiple-family residential subdivisions, mobile home subdivisions and parks, improvement districts, and plats or development plans with intent of developing land for residential, commercial or industrial use. The term includes all development in which "on-site" sewerage improvements have been provided by the applicant by improvement district or contract.

G. "Biochemical Oxygen Demand (B.O.D.)" means the quantity of oxygen utilized in the biochemical oxidation of organic mater under standard laboratory procedures measured in milligram per liter.

H. "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two feet (0.6 m) outside the building way.

I. "Building sewer" means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system or other point of disposal. The installation, cleaning, maintenance and replacement of said building sewer shall be the responsibility of the property owner.

J. "Commercial" means buildings or property not normally used as a residence, and where the public has general access to plumbing fixtures such as restaurants, bars, laundromats, service stations, motels, etc.

K. "Improvement district" means a district formed under the provisions of Chapter 4, Title 48 of the Arizona Revised Statutes.

L. "Industrial" means buildings or property not normally used as a residence, and where the public has restricted access to fixtures such as manufacturing where the discharge of sewage is not normally associated with residential or commercial uses.

M. "Industrial wastes" means the liquid, gaseous or solid wastes produced as a result of any industrial operation.

N. "Multi-family residence" means any residential complex under single or corporate ownership, designed for use by more than one family unit; including apartments, mobile home parks, hotels, motels, school dormitories, guest ranches and churches, but excluding townhouses and condominium projects excepting those fixtures to which the public has general access such as restaurants, laundromats, bars, etc., and which shall be continued under the commercial classification.

O. "Non-participating property" means property which is either residential, commercial or industrial that has not participated directly in the construction cost of a sanitary sewer providing service to that property.

P. "Off-site sewage improvements" means all sewage construction necessary to connect "on-site" facilities to an existing system as required by the manager and approved by the A.D.H.S. or A.D.E.Q., whichever agency has jurisdiction.

Q. "On-site sewage improvements" means all sewage facilities within any plat, improvement plan, development plan or other development, excluding capacities in excess of what is necessary to provide sewer service to that development as may be required by the supervisor, subject to approval by the A.D.H.S. or A.D.E.Q., whichever agency has jurisdiction.

R. "Participating property" means property, either residential, commercial or industrial, that has participated directly in the construction cost of a sanitary sewer providing service to that property.

S. "Person" means the State of Arizona, a municipality, county or other political subdivision of the State of Arizona; a cooperative, institution, corporation, company, firm, partnership or individual person.

T. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any waters of the city; discharge of any liquid, gaseous or solid substance into any waters, onto or under any land within the city or into any of the air surrounding it that creates a nuisance or renders such waters, land or air harmful or injurious to public health, safety or welfare to domestic, commercial, industrial, agricultural, recreational or other lawful beneficial uses, or to livestock, wild animals, birds, fish or other natural life.

U. "Private sewer" means sewer service lines of less than six inches in diameter, which receive sewage discharge from one or more building drains and transmit it to the public sewer system.

V. "Public sewer" means the common sewage collection system, including manholes and sewer lines, six inches or larger in diameter that receives sewage from private sewer lines and has been built or accepted by the city.

W. "Public sewage system" means pipelines or conduits, pumping stations, force mains and all other devices, appurtenances and facilities used for collecting and conducting common wastes to a point of treatment and disposal under the control of the administrative authority.

X. "Residential" means in an area under development where a family unit normally resides.

Y. "Sewage" means the wastes from toilets, baths, sinks, lavatories, laundries and other plumbing fixtures in residences, institutions, human habitation, employment or recreation.

Z. "Supervisor" means the utilities manager of the City of Benson, Arizona.

AA. "Suspended solids (S.S.) means the total suspended matter which floats on the surface, or is suspended in, the wastewater which is removable by laboratory filtering, measured in milligrams per liter.

BB. "U.P.C." means the Uniform Plumbing Code as adopted by the International Association of Plumbing and Mechanical Officials.

CC. “Unit of water@ means the measuring unit of 748 gallons or 100 cubic feet.

DD. “User” means any person, lot, parcel of land or premises that discharges, causes or permits the discharge of water into the public sewage system.

EE. "User fees" means a charge as set by resolution of the council made to the recipient of sanitary sewer service by the city to defray the costs of operation, maintenance and replacement of sewage collection and treatment facilities of the city.

FF. "Waste treatment works" means any plant, disposal field, lagoon, pumping station, incinerator or other works used for the purpose of treating or stabilizing sewage and industrial wastes.

GG. "Waters of the city" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private which are contained within, flow through or border upon the city or any portion thereof.

Section 13-3-3 General Provisions

A. No sewage or industrial wastes shall be permitted to flow into waters within the city or upon or under any lands within the city in any manner determined by the A.D.H.S. or A.D.E.Q. to be detrimental to the health, safety or welfare of persons who may be affected by the resulting environmental condition.

B. No individual disposal system, development plan or improvement plan shall be approved nor shall any sewage disposal system be installed on a subdivision or development consisting of lots one acre in size or less except as approved by the supervisor, subject to the approval of the A.D.H.S. or A.D.E.Q.

C. Where soil conditions or topography are such that in the opinion of the A.D.H.S. or A.D.E.Q. or A.D.E.Q., based on experience, knowledge or engineering data, a septic tank system cannot be expected to function satisfactorily or where groundwater conditions are such that septic systems may cause pollution of the groundwater supply, other sewage disposal methods satisfactory to the A.D.H.S. or A.D.E.Q. shall be provided; except that in no such case shall an individual disposal system be approved or installed.

D. Subdivisions consisting of lots of one acre or less shall be connected to a sewerage system.

E. Every property located within three hundred feet of a public sanitary sewer shall have all sanitary drains connected to the public sanitary sewer. Any sewer or drain not so connected shall be a violation of this code.

Section 13-3-4 Application for Approval

Before any person shall construct or contract for the construction of any main line sewerage systems, sewerage system extensions or waste treatment works or shall install any process, device or equipment, either in whole or in part, an application for approval to construct the contemplated works shall be made to the supervisor on forms provided by such officer. The supervisor, subject to the approval of the A.D.H.S. or A.D.E.Q., shall act on the application within thirty days upon receipt thereof, by designating either approval or disapproval. No construction shall be commenced until approval has been obtained from the A.D.H.S. or A.D.E.Q.

Section 13-3-5 Fees for Connection to Sewer

All fees charged for the connection to the city's sanitary sewer system shall be at the rate set by this article by the city council.

A. Participating Property in Areas Under Development:

1. All fees listed herein shall not apply to that property which by August 11, 1980 has paid a sewer assessment or sewer connection fee. These fees shall apply to all other properties subject to this article which have not previously paid any sewer assessment or sewer connection fee to the city as well as to all new developments requiring the installation of new sewer lines.

2. Single Family Residential. For service of residential subdivisions and residential improvement districts, said fee shall be charged at a rate of one hundred seventy-five dollars per residential lot in addition to the appropriate development impact fee allocated to sewer service.

3. Multiple Family Residential. For service of residential subdivision and residential improvement districts, said fee shall be charged at the rate of one hundred dollars per residential unit in addition to the appropriate development impact fee allocated to sewer service.

4. Commercial and Industrial. For service of commercial and industrial property, said fee, payable in cash at the time of application or upon execution of a written agreement between the owner and the city for sewer service, shall be at a rate of twenty-five dollars per fixture unit, so connected as shown in the U.P.C. as adopted by the city, and according to Tables 1 and 2 in addition to the appropriate development impact fee allocated to sewer service.

5. Drainage piping serving batteries of appliances capable of producing continuous flow shall be adequately sized to provide peak loads. Clothes

washers in groups of three or more shall be rated at six units each for the purpose of common waste piping sizing.

6. Where trap sizes are increased over the minimums shown in Table 1 or greater waste loadings are evident, the discharge rating shall be determined in accordance with Table 2.

7. Trap sizes shall not be increased to a point where the fixture discharge may be inadequate to maintain their self-scouring properties.

UTILITIES

Kind of Fixture	Minimum Trap & Trap Arm Size	Residential Units	Public Commercial & Industrial Units
Bath Tubs	1 - 2"	2	4
Bidets	1 - 2"	2	3
Dental Units or Cuspidors	1 - 3 A		1
Drinking Fountains	1 - 3 A		1
Floor Drains	2"	2	*
*Interceptor for Grease, Oil, Solids, Etc.	2"	3	*
*Interceptor for Sand, Auto Wash, Etc.	3"		*
Laundry Tubs	1 2 "	2	4
Clothes Washers	2"	2	4
*Indirect Waste Receptors for Commercial Sinks, Dishwashers, Airwashers, Etc.	2"		4
*Indirect Waste Receptors for Coffee Urns, Refrigerators, Water Stations, Etc. (Floor Sinks)	1 - 2 A		*
Showers, Single Stall	2"	2	4
Showers, Gang (One Unit per Head)	2"		*
Sinks, Bar - Private (1 - 2 " Min. Waste)	1 - 2 A	1	
Sinks, Bar - Commercial (2" Min. Waste)	1 - 2 A		2
Sinks; Including Dishwashers, Washup Sinks and Wash Fountains (2" Min Waste)	1 - 2 "		4
Sinks, Flushing Rim, Clinic	3"		10
Sinks, and/or Dishwashers(2" Min Waste)	1 - 2 A	2	
Sinks, Service	2"	3	4
Trailer Park Traps (One for Each Trailer)	3"	6	6
Urinals, Pedestal	3"		10
Urinals, Stall	2"		5
Urinals, Wall (2" Min. Waste)	1 - 2 "		5
Urinals, Wall Through (2" Min. Waste)	1 - 2 "		3
Wash Basins (Lavatories) Single	1 - 2 "	1	2
Wash Basins, in Sets	1 - 2 "	2	4
Water Closet-tank Type (Trap Arm Only)	3"	4	5
Water Closet-flush Valve Type (Trap Arm Only)	3"	6	10

TABLE 1 *

TABLE 1 *

*NOTE--The size and discharge rating of each indirect waste receptor and each interceptor shall be based on the total rates discharge capacity of all fixtures, equipment or appliance discharging thereinto in accordance with Table 2.

TABLE 2

FIXTURE UNIT EQUIVALENTS
DISCHARGE CAPACITY
(IN GALS. PER MIN.)

Up to 7 G.P.M. or 1 1/4"	EQUALS	1 UNIT
8 to 15 G.P.M. or 1 1/2"	EQUALS	3 UNITS
16 to 30 G.P.M. or 2"	EQUALS	4 UNITS
31 to 50 G.P.M. or 3"	EQUALS	6 UNITS
51 to 60 G.P.M. or 4"	EQUALS	8 UNITS

Over 61 Gallons shall be determined by the supervisor.

B. Connection Fees Relating to Non-Participating Property in Areas Under Development:

1. Single Family Residential. For services of single family residential property said fee shall be charged at the rate of twenty-five dollars per fixture unit as determined from the Uniform Plumbing Code as adopted by the city which shall be in addition to the appropriate development impact fee.

2. Multi-Family Residential. For services of multi-family residential property, said fee shall be charged at the rate of twenty dollars per fixture unit as determined from the Uniform Plumbing Code as adopted by the city, with the minimum fee to be not less than that rate as set by the city council which shall be in addition to the appropriate development impact fee.

3. Commercial and Industrial. For service of commercial and industrial property, said fee shall be charged at the rate of fifty dollars per fixture unit as determined from the Uniform Plumbing Code as adopted by the city which shall be in addition to the appropriate development impact fee.

C. Special Facilities:

If the property to be connected to the sanitary sewer system necessitates the construction of special facilities required to handle the waste, the city manager may require the applicant to provide these special facilities at his own expense.

D. The cost of repairing or replacing any pavement or other structure necessarily damaged in the process or because of the installation of any service connection, either within or without the corporate limits of the city, shall be paid by the person making application for such service, in addition to any other charges that may be required for such service.

Section 13-3-6 Construction under Private Contract

A. General Provisions. Upon written application, the city manager may permit construction of permanent sanitary sewer systems where no existing sewer is available. Said sewer will be constructed at the sole expense and cost of the applicant within streets, avenues, alleys and rights-of-way pursuant to grants of easements. The applicant will be required to construct all "on-site" and "off-site" facilities large enough to provide service to his development and in no case shall a line be less than eight inches in internal diameter.

B. Permits for Construction. Plans for construction will be provided by the applicant, certified by a registered professional engineer and the supervisor, subject to the approval of the A.D.E.Q. The construction of the sewer facilities authorized by said permit will be inspected by the utilities manager or his authorized representative. An inspection fee shall be charged as set by resolution of the city council. Upon completion of the sewers and acceptance by the utilities manager, title to such sewer shall be transferred to the city.

C. Agreement for Construction. With each application for a permit for the construction of sewers authorized by this section, the applicant shall submit in duplicate, the proposed agreement for the construction thereof by private contract. If the proposed construction is approved and the agreement otherwise conforms with the provisions of this article, it shall be the duty of the utilities manager to approve the agreement, subject to further approval of the city council, for and on behalf of the city, and to issue the permit in accordance therewith.

D. Sewer Installed Through Private Contract by an Applicant for Development. If the utilities manager requires an applicant to install an "on-site" or "off-site@ sewer system of a size and/or capacity larger than is required to collect the waste of the area under development, as determined by the utilities manager, an agreement for refund of the cost of the oversizing may be made with the applicant. The refund amount shall not include any portion of the development impact fees collected and shall be limited to sewer or wastewater connection service fees and shall not exceed the total fees to be collected as authorized in Section 13-3-5 or as otherwise provided in a separate development agreement with applicant if such an agreement exists.

E. Sewers Installed Through Private Contract by Applicant for Service. If a sewer system is installed by an applicant for service in such a manner as to provide service to a non-participating property, an agreement for refund of the cost of the sewer system may be made with the applicant. The refund shall not include any portion of a development impact fee, whether paid directly or indirectly by the applicant for service, nor shall it include any fees other than sewer or wastewater connection fees actually collected by the city as authorized in Section 13-3-5. Such refunds shall be made until the full sum has been refunded, or for a maximum period of five years from the date of the refund agreement, whichever shall first occur. In the event the full sum has not been refunded within the said five year period, any balance remaining unpaid shall be considered canceled, and the city shall be fully discharged from any further obligation under the agreement.

Section 13-3-7 Permits for Temporary Installations for Areas not Contiguous to Sewers

The city manager may, upon written application, issue a permit authorizing an area not contiguous to any sewer to be temporarily connected to a nearby sewer. All permits issued and installations made pursuant to this section shall be on a temporary basis only and shall be subject to the following terms and conditions:

A. The temporary line referred to in this section shall be only at such locations as shall be approved by the city manager.

B. All such installations shall be made without cost or expense to the city.

C. Upon the installation of permanent sewers contiguous to the area being serviced by such temporary line, the temporary installations shall be abandoned, connection shall be made to the permanent sewers and the area serviced shall be subject to the same fees set forth in Section 13-3-5.

D. All charges and expenditures, including rental charges incurred or paid by the applicant in installing and maintaining such temporary line, shall in no manner be considered as having been incurred or paid with respect to any permanent sewer improvement district, private contract authorized by this article or any sewer installed by the city.

Section 13-3-8 User Fee Charges

A. The city shall collect sewer user fees for the use and services rendered by the city's public sewage system and waste treatment works from the person who is the owner or occupant of every lot, parcel of real estate or building that is connected to the public sewage system of the city or which discharges wastewater, sewage, industrial wastewater or other liquids, either directly or indirectly, into the public sewage system of the city. Except as otherwise provided herein, sewer user fees shall be based upon the quantity of water, measured in units of water, used on the premises as measured by the city's meter on the property or premises subject to such fees and those fees shall be computed as set forth herein.

Where the potable water consumed by a public sewage system user is obtained from any source other than the city, the following provisions shall apply:

1. For a sewer system user who obtains water from a source other than the city either of two methods may, (subject to the conditions stated in subsection C of this section), be used to compute the monthly sewer user fee charge. The two computation methods are:

   a. Water consumption records acceptable to the city manager or his designate, showing the previous December, January and February months water usage may be used to compute the sewer user volume charge or,

   b. The median sewer user volume charge experienced for all other users of the same category may be used and the resultant charge known as the median usage method rate;

2. For those users who chose not to use the median usage method of determining the monthly sewer charge, suitable metering, as approved by the city manager or his designate, shall be provided and maintained by the user at all times in connection

with each or all sources of water not purchased from the city and delivered through a city meter. The city manager or his designate shall have access to the premises at all reasonable times for the purpose of inspection, testing and reading of the water user's water meter;

3. The city reserves the right to determine if the "median" usage method is an appropriate method of determining user fees in all cases. The city may require a water metering device to be installed and used to determine the sewer user charges in cases where the city has determined the median usage method is not acceptable;

4. The city manager shall be authorized to direct that sewer service to user's premises be disconnected and plugged by the city to prevent sewage from entering the public sewage system from the premises unless a suitable water metering device is installed. Sewer service may be restored upon compliance with the requirements of this section. A fee equal to the actual cost of labor and materials plus a fifteen percent administration fee shall be charged each time sewer service to a premises is disconnected and/or reconnected.

B. For all users whose premise is served by metered city water service, the monthly sewer user charges shall be based on the average monthly water usage billed for the months of December, January and February, which shall be known as the "winter average water usage. If a sewer user has not established a "winter average water usage", the monthly sewer user charge shall be the median charge for all other residential users or that of the same meter size commercial user, whichever is applicable to establish a "winter average water usage." All users shall be billed according to one of the foregoing methods beginning with the July 1, 1989 billing. The winter average water usage shall be established each March, and subsequently the sewer user fee charged will be adjusted as of the subsequent April 1 billing.

C. In the event a public sewage system user has a consumptive use of water or in some other manner uses water which does not enter the wastewater collection system during the winter average water usage period, the sewer user charge for that contributor may be adjusted according to a method acceptable to the city manager. The city manager, in making his determination of an acceptable adjustment method, shall rely upon a quantitative method of determining the amount of water which did not enter into the wastewater collection system and in the event the user disputes either the method or the resultant calculation, the user shall have the burden of proving a different method or calculation to be more appropriate.

As an alternative to the foregoing adjustment method, any non-residential public sewage system user may select any three consecutive months as an alternative to the months of December, January and February, as is provided in subsection B of this section, and the period so selected shall become the basis for calculating the period known as the winter average water usage. In the event that an alternative period is selected for determination of the winter average water usage, the users monthly sewer charge shall be adjusted annually on the month following the end of the period selected.

D. The monthly base minimum sewer user charge shall be **eleven dollars and sixty cents** [1] (changed by Resolution 5-2006) per month for all residential customers. For commercial and multi-user customers, the monthly base minimum charge shall be based on the size of the water meter used by that customer according to the following chart:

Size of Meter	Minimum Charge [2]
3/4 "	$ 11.60
1"	$22.90
1 1/2 "	$38.10
2"	$53.40
4 "	$137.20
6"	$206.50

E. In addition to the monthly base sewer user charge, each user shall pay a sewer user volume charge for operation and maintenance, including facilities replacement and debt retirement, of such amounts as the city council may, from time to time, determine and fix by resolution and said amount shall be assessed on the basis of the units of water consumed as determined by the winter average water usage method.

F. Any user discharging sewage which is significantly stronger than normal residential sewage will be charged a surcharge rate in proportion to the concentration of pollutants in discharged sewage. The surcharge will be determined according to the following formula:

$$CS = BC \times B + SC \times S = PC \times P \times VU$$

Where:

CS is a surcharge for wastewaters of excessive strength.
BC is the operation and maintenance costs for the treatment of a unit of B.O.D.
B is the concentration of B.O.D. from a user above that typical in the city.
SC is the operation and maintenance costs for the treatment of a unit of S.S.
S is the concentration of suspended solids from a user above that typical in the city.
PC is the operation and maintenance costs for the treatment of a unit of any pollutant.
P is the concentration of any pollutant above that typical in the city.
VU is volume contribution from a user per unit time.

Section 13-3-9 Annual Review and Notification

A. A review of the base sewer user charges, individual user volume and surcharge rates, the total cost of operation and maintenance of the waste treatment works will be made no less often than annually.

B. Revisions to sewer rates as stated in Section 13-3-8 may be made by resolution of the city council and shall be at levels which generate adequate annual revenue to pay those expenses which the city council designates through the adoption of its annual budget to be paid by the sewer user fee system.

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[1]Modified by Resolution 5-2006

[2]Modified by Resolution 5-2006

Section 13-3-10 Restrictions upon Sewer Use

A. No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, cooler or unpolluted industrial process water to any sanitary sewer without complying with the provisions of Section 13-3-5 (C).

B. Except as provided in this section, no person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewer:

1. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit.

2. Any water or waste which may contain more than fifty parts per million by weight of fat, oil or grease.

3. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

4. Any garbage that has not been properly shredded.

5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, grits such as brick, cement, onyx, carbide or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer works.

6. Any waters or wastes having a pH lower than five and one-half or higher than nine or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.

7. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters of the sewage treatment plant.

8. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

Section 13-3-11 GREASE & OIL CONTROL CODE [1] (Amended by Ordinance No. 476)

13-3-11(A). Purpose
13-3-11(B). Policy
13-3-11(C). Definitions
13-3-11(D). Applicability
13-3-11(E). Design
13-3-11(F). Existing Establishments
13-3-11(G). Service Records
13-3-11(H). Variance or Appeal
13-3-11(I). Enforcement

Section 13-3-11(A). PURPOSE

The intent of this policy is to provide guidelines and procedures to ensure compliance with City's Sewer Use Ordinance. This policy is designed to aid in the prevention of sanitary sewer blockages and obstructions from contributions and accumulation of fats, oils, and greases discharged to the sanitary sewer system from industrial or commercial establishments, particularly food preparation and serving facilities.

Section 13-3-11(B). POLICY

1. The City's Wastewater Department, like most sewer utilities, continues to experience sewer blockages caused by the accumulation of fats, oils and grease on the surfaces of sewer lines. Greasy wastewater can be discharged to the sewer system from several sources, including food service operations. In order to reduce sewer blockages, customers in the City's service area that discharge wastewater that contains grease must install and properly operate and maintain a grease trap or interceptor.

2. Grease, oil and sand interceptors shall be provided when, in the opinion of City, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not normally be required for residential professional, such as an engineer, as meeting City requirements and shall be easily accessible for cleaning, testing and inspection.

Section 13-3-11(C). DEFINITIONS

1. Fats, Oils, and Greases: Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures. All are sometimes referred to herein as "Grease" or "Greases".

2. Food Preparation or Serving Facility: Any commercial or industrial facility that prepares or serves food, including but not limited to a restaurant, café, cafeteria, snack bar, grill, deli, catering service, bakery, grocery store, butcher shop, or similar establishment that discharges wastewater to the City's system.

[1] Amended by Ordinance 476

3. Cooking Establishments: Those establishments primarily engaged in activities of preparing, serving, or otherwise making available food for consumption and that use one or more of the following preparation activities: cooking by frying (all methods), baking (all methods), grilling, sautéing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting, or poaching and which discharge wastewater to the City's system. Also included are infrared heating, searing, barbecuing and any other food preparation activity that produces a hot, non-drinkable food product in or on a receptacle that requires washing.

4. Grease Trap or Interceptor: A device for separating and retaining waterborne Greases and Grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. These devices also serve to collect settable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. Grease Traps and Interceptors are sometimes referred to herein as "Grease Interceptors".

5. Minimum Design Capability: The design features of a Grease Interceptor and its ability or volume required to effectively intercept and retain Greases from grease-laden wastewaters discharged to the public sanitary sewer.

6. Non-cooking Establishments: Those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking. These include cold dairy and frozen foodstuffs preparation and serving establishments.

7. User: Any person, including those located outside the jurisdictional limits of City, who contributes, causes or permits the contribution or discharge of wastewater into the sewer collections system, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.

8. Vehicle Maintenance Facility: Any commercial or industrial facility where automobiles, trucks or equipment are serviced or maintained, including garages, service stations, repair shops, oil and lubrication shops, or similar establishments.

Section 13-3-11(D). APPLICABILITY

1. The following types of facilities will be required to have grease interceptors: restaurants, schools, hospitals, service stations, car washes, vehicle repair and lubrication facilities, nursing homes and any other facility that handles grease and which discharges wastewater containing grease into the City's sewer collection system. All such establishments are required to have a properly sized and functioning grease interceptor, which a qualified professional certifies, to City, is designed to meet City's sewer use and grease control requirements.

2. All vehicle maintenance facilities are required to have a properly sized grease, oil and sand interceptor.

3. Facilities other than those noted in Section 4.1 and 4.2 may require the installation of a grease and oil interceptor. The City's Building Inspector or his/her designee shall determine the need and applicability of such device.

Section 13-3-11(E). DESIGN

1. Access manholes, with a minimum diameter of 24 inches, shall be provided over each chamber and sanitary tee. The access manholes shall extend at lease to finished grade and be designed and maintained to prevent water inflow or infiltration. The manholes shall also have readily removable covers to facilitate inspection, grease removal and wastewater sampling activities.

2. All interceptors shall be located outside of the building in such a manner that personnel from City can inspect the interceptors at any time.

3. The City shall be notified of any changes of operation or process at the permitted establishment. The establishment may be required to upgrade their grease interceptor to meet current requirements and standards.

4. The following documents shall be submitted to City's Building Inspector for review and approval prior to issuance of a permit for installation of an interceptor. Building Inspector shall approve any changes to the approved plan, prior to implementation:

    a. A site plan showing the location of the interceptor, lines and cleanout or manhole;
    b. Details of the interceptor, lines and cleanout or manhole;
    c. Formula and calculations used to determine the interceptor capacity.

5. Every interceptor shall have sufficient capacity to perform the service for which it is provided. Interceptors shall be designed to provide for a minimum hydraulic retention time of 24 minutes at actual peak flow or 12 minutes at the calculated theoretical peak flow rate as predicted by the Uniform Plumbing Code fixture criteria, between the influent and effluent baffles with 20 percent of the total volume of the grease interceptor being allowed for sludge to settle and accumulate.

6. All grease traps and interceptors must be designed using standard engineering principles for sedimentation and floatation in gravity separators. Baffles and good inlet design are required to deflect the flow across the surface areas of the units and sufficient grease and solids storage capacity is required. Grease traps and interceptors shall be rated for the designed flow-through rate of the unit in gallons/minute.

7. Users as required by City shall install grease interceptors. Grease interceptors shall be installed at the user's expense. All grease interceptors shall be of a type, design, and capacity approved by City's Building Inspector and shall be readily and easily accessible for cleaning and inspection. All such grease interceptors shall be serviced and emptied of accumulated waste contents as required in order to maintain minimum design capabilities or effective volume of the grease interceptor, but not less than once every 60 days.

Section 13-3-11(F). EXISTING ESTABLISHMENTS

1. Businesses and other locations subject to this regulation which were in operation before the effective date of this regulation ("Existing businesses") and do not have grease interception systems are generally required to install such a system within one year of the effective date of this regulation. Such businesses may receive approval from the Building Inspector of his/her designee, to install a system under alternate standards taking into account the circumstances of the business's operation, production of waste grease and the practicality of installation under normal requirements.

2. Existing businesses with an existing grease interception system that does not meeting City's standards may be required to upgrade the system or may be allowed to continue use of the present system subject to requirements such as a clean-out frequency less than 60 days.

Section 13-3-11(G). SERVICING AND RECORDS

1. Servicing and maintenance is essential for the efficient operation of grease traps and interceptors. All grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor. All users' shall be required to provide documentation of servicing to the City every 60 days or as otherwise specified. Servicing frequency is site-specific and is dependent on the amount of oil and grease and suspended solids generated at each operation and the size of the grease trap or interceptor. In no case shall the frequency of cleaning be less than once every 60 days, or as otherwise specified in City's permit for the interceptor system. The volumes of greases and solids in grease traps and interceptors must not exceed the designed grease and solids storage capacity of the unit.

2. All grease interceptors shall be cleaned by a properly licensed cleaning and disposal operation.

3. All users, including food preparation or serving facilities and vehicle maintenance facilities shall maintain a written record of maintenance performed on the interceptor for a minimum of three years. All such records will be available for inspection by the City upon request.

Section 13-3-11(H). VARIANCE/APPEAL

1. Under certain circumstances, the interceptor size and location may need special exceptions to this policy. If an exception to this policy is requested, the user must demonstrate that the size and location will not cause the facility any problems in meeting the discharge requirements of City.

2. The Building Inspector or his/her designee, reserves the right to make determinations of grease interceptor adequacy and need, based on review of all relevant information regarding grease interceptor performance, facility site and building plan review and to require repairs to, or modification or replacement of such traps.

Section 13-3-11(I). ENFORCEMENT

A. If, an obstruction of an City's sewer main(s) occurs that causes a sewer overflow and such overflow can be attributed in part or in whole to an accumulation of grease in City's sewer main(s), the City will take appropriate enforcement actions, as stipulated in City's Ordinance codes, against the generator or contributor of such grease. These actions may include fines, civil penalties or a discontinuance of sewer service.

Section 13-3-12 Authority of Wastewater Department

The admission into the public sewers of any waters or wastes having any of the following characteristics shall be subject to the review and approval of the wastewater department:

A. A five day biochemical oxygen demand greater than three hundred parts per million by weight.

B. Containing more than three hundred fifty parts per million by weight of suspended solids.

C. Containing any quantity of substance having the characteristics described in Section 13-3-10.

D. Having an average daily flow of greater than two percent of the average daily sewage flow of the city.

Section 13-3-13 Preliminary Treatment

A. Federal pretreatment regulations shall be enforced as applicable.

B. Where necessary in the opinion of the wastewater department or for any industrial wastes, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:

1. Reduce the B.O.D. to three hundred parts per million and the suspended solids to three hundred fifty parts per million by weight.

2. Reduce objectionable characteristics or constituents to within the maximum limits provided for in Section 13-3-12.

3. Control the quantities and rates of discharge of such waters or wastes.

C. Plans and specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be in accordance with the most recent edition of the plumbing code in effect, and shall be submitted for approval of the wastewater department and the engineering division of the A.D.H.S. No construction of such facilities shall be commenced until such approvals are obtained in writing.

D. Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

Section 13-3-14 Manholes

When required by the wastewater department, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation and sampling of wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the wastewater department. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

Section 13-3-15 Tests and Analyses

All tests and analyses of the characteristics of waters and wastes, shall be determined in accordance with Standard Methods for the Examination of Water and Wastewater as prepared by APHA, AWWA, and WPCF, latest edition and shall be determined at the control manhole provided for in Section 13-3-14 or upon suitable samples taken at such control manhole.

Section 13-3-16 Special Agreements with Industrial Concerns

No statement contained in this article shall be construed as preventing any special agreement or arrangement between the city and the industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern. All industries and entities subject to the Federal Industrial Cost Recovery Regulations shall enter into an agreement with the city in accordance with U.S. EPA regulations.

Section 13-3-17 Penalties

A. It is unlawful for any person to excavate or to cause an excavation to be made for the purpose of laying any sewer mains or pipes in the public streets, alley ways or upon the property of the city without first complying with the provisions of this article or for any person to fail to obtain permits as required by this article prior to the commencement of construction of sewers or temporary installations.

B. Civil Penalties. Any person who connects or attempts to connect to the sewage system of the city without complying with the provisions of this article shall also be liable to an additional penalty of five hundred dollars for each day such violation continues. Said penalty shall be collected by the city in a civil action filed in the appropriate court.

C. Liens. Any contractual or service agreement entered into between the owner and the city pursuant to the terms of this chapter shall provide that any unpaid charges, rentals or expenses for the services provided to the property under said agreement shall be and become a lien thereon until the same has been fully paid and discharged. Said lien may be foreclosed in the same manner as the foreclosure of a realty mortgage.

D. Right of City to Remove Sewer Connections. Notwithstanding any provisions of this chapter to the contrary, the city has the right, and such right shall be reinforced by contract between the city and the owner of the property or tenant involved whether inside the city limits or outside the city limits, to disconnect by any reasonable means any connection when the sewer service charges provided for in this article have not been paid within thirty days after said owner has been notified in writing of the delinquency.

E. Right of City to Bring Suit. Nothing in this chapter shall be construed or interpreted to deprive the city of its right to bring suit against any person, corporation or other entity for damages to the city sewer lines or wastewater disposal system resulting from the careless or deliberate discharge of wastes contrary to the provisions of this article.

F. Returned Checks. There shall be a charge of twenty-five dollars for each check returned for insufficient funds or any other reason.

UTILITIES

ARTICLE 13-4 WATER SERVICE[1]

13-4-1	Definitions
13-4-2	Application
13-4-3	Deposit
13-4-4	Connection Fees
13-4-5	Rate Schedules
13-4-6	Other Charges
13-4-7	Payment for Services
13-4-8	Penalty for Late Payment
13-4-9	Water Shortage
13-4-10	Backflow Prevention and Cross-Connection Control Code

Section 13-4-1 Definitions

In this article, unless the context otherwise requires:

A. "Accommodation charge" means that charge applied to **any initial turn on** (modified by Ordinance #456), summer turn off, turn off for construction or repair, moving or any other turn off requested by the customer except for discontinuing of service.

B. "Delivery pressure" means a minimum pressure delivered to the customer,

C. "In-city customers" means those customers receiving water service within the corporate limits of the city.

D. "Out-of-city customers" means those customers receiving water service outside the corporate limits of the city.

E. "Rate" means the fees charged for each unit or fraction thereof.

F. "Service availability charge" means that monthly charge affixed to the water service whether in service or not.

G. "Unit" means the measuring unit meaning seven hundred forty-eight (748) gallons or 100 cubic feet (Ccf).

H. “302 Area Utility Improvement Zone Number 1" means the area described as:
Those portions of Sections 7, 8, 17, 18 and 19, Twp. 17 South Range 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, said portion being specifically described as:
That portion of the south half of Section 7 lying south of the right-of-way of Interstate Route 10,
That portion of the west half of Section 8 lying south of the right-of-way of Interstate Route 10,
The northwest quarter of Section 17, and,
All of Section 18 and all of Section 19.

[1]Modified by Ordinance No. 334, 335, 356 and 428

I. "Private Water Well" means any well or system for the delivery of water within the Corporate Limits of the City of Benson, for any use whatsoever, including but not limited to agricultural and potable uses, upon real property that does not belong to, is leased to or presently licensed by the City of Benson for the operation of a water well. (Amended by Ordinance No. 488)

Section 13-4-2 Establishment of Service (modified by Ordinance #456)

A. An applicant requesting water service shall provide the following information to the City prior to the initiation, reconnection or reestablishment of said service:

1. Name or names of applicants;

2. Name, address and telephone of employer;

3. Social security number or/and name, address and phone number of next of kin not living with them;

4. Service address or location and telephone number;

5. Billing address or location and telephone number, if different than service address;

6. Address where service was provided previously and if outside the City, the name and billing address of the service provider;

7. Date applicant will be ready for service;

8. Indication of whether applicant is owner, tenant or agent for the premises.

B. A new applicant for service must appear at City Hall to produce proof of identity and sign the utility application form.

C. Where service is provided to two or more individuals, at the same location, the City shall have the right to collect the full amount owed to the City from any of the individuals.

D. The City may refuse to establish service if any of the following conditions exist:

1. The applicant has an outstanding amount due for any City utility service and the applicant has not made acceptable payment arrangements with the **City; or,**

2. A condition exists which in the City=s judgement is unsafe or hazardous to the applicant, the public or the utility=s personnel or facilities; or,

   a. Refusal by the applicant to provide the City with an acceptable deposit when the customer has failed to meet credit provisions set forth in Section 13-4-3 for waiver of deposit requirements; or

   b. Failure of the customer to furnish such funds, service equipment and/or rights-of-way necessary to serve the customer or which may have been specified by the City as a condition for providing service; or,

c. Applicant falsifies his or her identity for the purpose of obtaining service or it appears that another person is being presented as the prospective customer because the actual primary resident of the property has an outstanding utility account balance due or has an unacceptable payment history.

Section 13-4-3 Deposit

A. **The City shall require only 50% of the deposit** (modified by Ordinance #456) providing the customer has established a good payment record with the city or presents a verifiable credit reference from another utility.

B. An advance cash deposit shall be made to the utility office before any service is permitted. Such deposits shall be in accordance with the following table.

1. Residential. Upon application by a water user, they shall make a cash deposit with the city utility office in the sum of **fifty dollars** (modified by Ordinance #456) dollars as a final payment advance and guarantee.

2. Multi-Residential. Upon application by a water user, they shall make a cash deposit with the city utility office in a sum equal to one-sixth the annual billing as evidenced by the account in the city utility office.

3. Commercial. Upon application by a water user, they shall make a cash deposit with the city utility office in a sum equal to one-sixth the annual billing as evidenced by that account in the city utility office.

4. Irrigation. Upon application by a water user, they shall make a cash deposit with the city utility office in a sum equal to one-sixth the annual billing as evidenced by that account in the city utility office.

C. Accounts where no history exists shall be compared to a similar operation by the utility department for setting the required cash deposit in accordance with this article.

D. Accounts turned off because of delinquency shall be required to pay the necessary deposits in accordance with this article.

E. Deposits shall be refunded if one of the following conditions are met:

1. The customer has completed twelve consecutive months of service without being delinquent in the payment of more than two bills; or

2. If service is disconnected and the customer has paid all outstanding amounts due the city. (Modified by Ordinance #456)

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Section 13-4-4 Connection Fees [1]

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[1]Modified by Resolution 51-2006

[2]Modified by Resolution 04-2006 and Ord. No. 517

In addition to the applicable development impact fee, the City shall collect the following fees before any service taps or water meters are connected to the water system:

A. A connection fee, as established by resolution from time to time by the City Council; and,

B. The cost of repairing or replacing any pavement or other structure necessarily damaged in the process or because of the installation of any service connection, either within or without the corporate limits of the City of Benson, shall be paid by the person making application for such service, in addition to any other charges that may be required for such service, and such amount shall be estimated by the City Manager, or his designee, and paid in advance of the City being obligated to undertake the utility work.

Section 13-4-5 Rate Schedules [2]

A. **RESIDENTIAL RATES (COMBINED REGULAR AND 302):**

Availability Charge	$/month
5/8 x ¾ "	$8.00
¾	$12.00
1	$20.00
1 ½	$40.00
2	$64.00
3	$120.00
4	$200.00
6	$400.00

1. **Single Residential Units:**

Consumption	**Charge ($/CCF)**
First 5 Units	$1.00
6-10 Units	$1.50
11-30 Units	$2.50
Over 30 Units	$3.50

B. **COMMERCIAL RATES (INCLUDES MULTI-FAMILY):**

Availability Charge	$/month
5/8 x ¾"	$8.00
¾	$12.00
1	$20.00
1 ½	$40.00
2	$64.00
3	$120.00
4	$200.00
6	$400.00

Consumption	**Charge ($/CCF)**
All units	$1.43

C. **Construction Water:**

$5.00 minimum. Plus $3.80 per 1,000 gallons.

Section 13-4-6 Other Charges

A. Accommodation charge shall be **$30.00** (Modified by Ordinance #456) per call.

B. Reconnection fee for turn off because of nonpayment shall be $30.00 for residential, multi-residential and commercial accounts, which must be paid with the delinquent amount before service is restored.

C. There shall be a charge of $25 per check returned for insufficient funds or any other reason.

Section 13-4-7 Billing (Modified by Ordinance #456)

A. Frequency

1. The city shall bill monthly for services rendered.

2. Failure on the part of the customer to comply with a reasonable request by the City for access to its meter shall be grounds for immediate discontinuance of service.

B. Billing terms

1. All bills for utility services are due and payable no later than fifteen days from the date the bill is mailed. Payments not received within fifteen days shall be considered delinquent. For purposes of this rule, the date a bill is mailed may be evidenced by the City's record of mailing.

2. All delinquent bills for which payment has not been received within ten days shall be subject to the provisions of the City's termination procedures.

3. Failure to receive bills or notices which have been according to City records placed in the United States mail shall not prevent such bills from becoming delinquent and will not relieve the customer of the obligation for timely payments as set forth herein.

4. Charges for service commence when the service is installed and connection made, whether used or not.

Section 13-4-8 Penalty for Late Payment

If payment is not received by the thirtieth day after the billing date, the account shall be subject to disconnection. Reconnection charges shall be those currently in effect at the time of reconnection and shall be payable in advance along with a new deposit for each meter reconnected.

Section 13-4-9 Water Shortage

A. Since a critical water shortage may occur within the city at anytime, it may be in the best interest of the citizens of the city to curtail the nonessential usage of water.

B. The city manager shall identify the water levels and/or equipment malfunctions which may indicate a potential hazard to the health, safety and welfare of the citizens of the city and is hereby directed to implement a water curtailment program. The city manager shall immediately notify, by most appropriate means available, the citizens of the city to discontinue all unnecessary usage of water, until such time as the danger shall have passed.

C. After notification of a critical water shortage, any individual, business or corporation who shall continue to use water in an unnecessary manner, such as, but not limited to, sprinkling, pool filling or vehicle washing, shall be in violation of this section.

SECTION 13-4-10 BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL CODE (Amended by Ordinance No. 475)

13-4-10(A). Application
13-4-10(B). Purpose
13-4-10(C). Definitions
13-4-10(D). Backflow Prevention Required
13-4-10(E). Hazzard Potential
13-4-10(F). Approved Backflow Prevention Methods
13-4-10(G). Backflow Prevention Methods Required
13-4-10(H). Backflow Assembly Installation Requirements
13-4-10(I). Installation of Backflow Prevention Assemblies for Fire System
13-4-10(J). Inspection Testing
13-4-10(K). Permit Required
13-4-10(L). Maintenance and Records
13-4-10(M). Modification of Backflow Prevention Requirements
13-4-10(N). Discontinuance of Water Service
13-4-10(O). Administrative Appeal
13-4-10(P). Violation a Civil Infraction
13-4-10(Q). Retroactive Application
13-4-10(R). Fees

Section 13-4-10(A). APPLICATION

This Code shall be applicable to all water service connections, including those which existed prior to the effective date of this amendment, in accordance with the compliance schedule hereinafter set forth.

Section 13-4-10(B). PURPOSE

1. To protect the City of Benson's drinking water quality and to ensure that the City supplies safe drinking water in compliance with the provisions of Arizona law and the rules adopted by the Arizona Department of Environmental Quality, the City of Benson shall require the installation of a backflow prevention assembly under those circumstances hereinafter defined.

2. To protect the public water supply of the City of Benson from the possibility of contamination or pollution from the backflow of contaminants and pollutants into the public potable water supply system.

3. To promote the elimination or control of existing cross-connections, actual or potential, with a customer's internal potable water system, plumbing fixtures and industrial piping systems.

4. To provide for a continuing program to monitor, control, and prevent cross-connection contamination or pollution of the public potable water supply system.

Section 13-4-10(C). DEFINITIONS

1. Benson Water as used in this Code means the municipal water department for the City of Benson and/or the Benson City Building Inspector.

2. Department as used in this Code means the municipal water department for the City of Benson.

3. UPC as used in this Code means the Uniform Plumbing Code as adopted by Ordinance No. 344 on March 2, 1992.

Section 13-4-10(D). BACKFLOW PREVENTION REQUIRED

1. An approved backflow prevention method shall be utilized or installed at every service connection when it is determined by the City of Benson that the public potable water system may be subject to contamination, pollution or deterioration of its sanitary quality or condition.

2. The backflow prevention method to be utilized or installed shall be determined by Benson Water. The method of backflow prevention which an applicant will be required to use shall be of a nature sufficient to protect the public potable water supply against potential hazards from contamination or pollution.

Section 13-4-10(E). HAZARD POTENTIAL

1. The degree of hazard potential to the public potable water supply and system from a customer's water supply system shall be determined using the following hazard factors:

Contamination: Any condition, device or practice which, in the judgement of Benson Water, may create a danger to the health and well-being of the potable water customers.

Cross-connection: An actual or potential plumbing connection that is not properly protected by an approved backflow prevention method.

Hazard: An actual or potential threat of backflow which may cause severe damage to the physical facilities of the public potable water supply system or which may have a protracted effect on the quality of the potable water in the system.

Pollution: An actual or potential threat to the physical facilities or the public potable water supply system or to the public potable water

supply which would constitute a nuisance or cause objectionable odor, taste, or discolor or could cause damage to the system or its appurtenances.

B. A public water system customer shall ensure that a backflow-prevention assembly is installed whenever any of the following occur:

1. A substance harmful to human health is handled in a manner that could permit its entry into the public water system. These substances include chemicals, chemical or biological process waters, water from public water supplies that has deteriorated in sanitary quality, and water that have entered a fire sprinkler system. A Class 1 or Class 2 fire sprinkler system is exempt from the requirements of this Section.

2. A source of water supply exists on the user's premises that is not accepted as an additional source by the public water system or is not approved by the Department.

3. An unprotected cross-connection exists or a cross-connection problem has previously occurred within a user's premises; or

4. There is a significant possibility that a cross-connection problem will occur and entry to the premises is restricted to the extent that cross-connection inspections cannot be made with sufficient frequency or on sufficiently short notice to assure that unprotected cross-connections do not exist.

C. Unless a cross-connection problem is specifically identified, or as otherwise provided in this Section, the requirements of this Section shall not apply to single-family residences used solely for residential purposes.

D. A backflow-prevention assembly required by this Section shall comply with Section 13-4-10(F).

Section 13-4-10(F). <u>APPROVED BACKFLOW PREVENTION METHODS</u>

The minimum level of backflow protection that is provided to protect a public water system shall be the level recommended in Section 7.2 of the Manual of Cross-Connection Control, Ninth Edition, USC-FCCCHR, KAP-200 University Park MC-2531, Los Angeles, California, 90089-2531, December 1993, (and any future editions or amendments), incorporated by reference and on file with the Department and the Office of the Secretary of State. The types of backflow prevention that may be required, listed in decreasing order according to the level of protection they provide, include: an air-gap separation (AG), a reduced pressure principle backflow prevention (RP) assembly, a pressure vacuum breaker (PVB) assembly, and a double check valve (DC) assembly. Nothing contained in this Section shall prevent the public water system from requiring the use of a higher level of protection than that required by this subsection. A backflow prevention method shall be any assembly or other means designed to prevent backflow. The following are the recognized backflow prevention methods which Benson Water may require to be installed or in place as a condition of water service:

a. Air Gap: The unobstructed vertical distance between the opening of the pipe or faucet supplying potable water to a tank, plumbing fixture or other device. An

approved air gap shall be at least double the diameter or the supply pipe or faucet and in no case less than one (1) inch.

b. Reduced Pressure Principle Assembly (hereinafter "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 assembly shall include properly located test cocks and tightly closing shut-off valves located at each end of the assembly and fitted with properly located test cocks.

c. Double Check Valve Assembly (hereinafter "DCVA"): An assembly composed of two independently acting, approved check valves, including tightly closing shut-off valves located at each end of the assembly and fitted with properly located test cocks.

d. Pressure Vacuum Breaker Assembly (hereinafter "PVB"): An assembly containing an independently operating, 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 test cocks and tightly closing shut-off valves located at each end of the assembly.

2. A backflow-prevention assembly required by this Section shall comply with the following:

a. If equipped with test cocks, it shall have been issued a certificate of approval by:

i. The University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC-FCCCHR), or;

ii. A third-party certifying entity that is unrelated to the product's manufacturer or vendor, and is approved by the Department.

b. If not equipped with test cocks, it shall be approved by a third-party certifying entity that is unrelated to the product's manufacturer or vendor and is approved by the Department.

C. Benson Water shall maintain a list of approved backflow prevention assemblies by type and manufacturer. The list shall be available to any customer required to install a backflow prevention assembly.

D. A backflow prevention method may be approved by Benson Water if it has received the approval of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California and, for assemblies, has a local manufacturer's parts and service center.

Section 13-4-10(G). <u>BACKFLOW PREVENTION METHODS REQUIRED</u>

Whenever the following items exist or activities are conducted on premises served by the public potable water system, a potential hazard to the public potable water supply shall be presumed, and a backflow prevention method of the type specified herein for that item or activity must be utilized or installed at each service connection for that premise. The type and size of the assembly shall be

determined by Benson Water.

1. Cooling Tower, boiler, condenser, chiller, and other cooling systems utilizing potable water: RPA

2. Tank, vessel, receptacle, and all other water connections including mobile units without approved air gap (except emergency vehicles and private swimming pools): RPA

3. Ice Maker (other than a residential service): RPA

4. Water cooled equipment, boosters, pumps or autoclaves: RPA

5. Water treatment facilities and all water processing equipment (other than residential water softeners): RPA

6. Bottle washer, bedpan washer, garbage can washer: RPA

7. Pesticide, herbicide, fertilizer, and chemical applicators (other than typical in-home use): RPA

8. Aspirator: RPA

9. Commercial Dishwashers, food processing and/or preparation equipment, carbonation equipment, or other food service processes utilizing potable water. RPA

10. Decorative fountain, baptismal, or any location water is exposed to atmosphere: RPA

11. X-ray equipment, plating equipment, or any other photographic processing equipment utilizing potable water: RPA

12. Auxiliary water supply and/or connections to unapproved water supply systems: RPA

13. Reclaimed water customers: RPA

14. Recreational vehicle dump stations (sewer), or any other location where potable water may be exposed to bacteria, virus, or gas: RPA

15. Any premises on which chemicals, oils, solvents, pesticides, disinfectants, cleaning agents, acids or other pollutants and/or contaminants are handled in a manner by which they may come in direct contact with potable water, or there is evidence of the potential to contact potable water (other than typical, infrequent in-home applications): RPA

16. Materials and piping systems unapproved by the Uniform Plumbing Code (UPC) or Environmental Protection Agency for potable water usage Contaminant: RPA-Pollutant: DCVA

17. Separately metered or unprotected irrigation systems, and construction water services: RPA or PVB as allowed.

18. Any premises where a cross-connection is maintained or where internal backflow protection is required pursuant to the Uniform Plumbing Code: RPA

19. Multi-metered properties with more than one meter connected to another or any building three stories or greater than 34 feet in height from service level: DCVA

B. When two or more of the activities listed above are conducted on the same premises and served 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 to be utilized or installed at each service connection. The order of most restrictive to least restrictive backflow prevention methods shall be as follows:

1. Air Gap (most restrictive)
2. Reduced Pressure Principle Assembly (RPA)
3. Double Check Valve Assembly (DCVA)
4. Pressure Vacuum Breaker Assembly (PVB) (least restrictive)

Section 13-4-10(H). BACKFLOW ASSEMBLY INSTALLATION REQUIREMENTS

A. Backflow prevention assemblies shall be installed by the customer, at the customer's expense and in compliance with the standards and specifications adopted by the City of Benson, at each service connection. The assembly shall have a diameter at least equal to the diameter of the service connection.

B. The assembly shall be in an accessible location approved by Benson Water. The reduced pressure principle assembly, pressure vacuum breaker assembly, and the double check valve assembly shall be installed above ground.

C. When a customer desires a continuous water supply, two backflow prevention assemblies shall be installed parallel to one another at the service connection to allow a continuous water supply during testing of the backflow prevention assemblies. When backflow prevention assemblies are installed parallel to one another, the sum of the cross sectional areas of the assemblies shall be at least equal to the cross sectional area of the service connection.

D. No person shall alter, modify, bypass or remove a backflow prevention method without the approval of Benson Water.

Section 13-4-10(I). INSTALLATION OF BACKFLOW PREVENTION ASSEMBLIES FOR FIRE SYSTEMS

All regulation of this section shall apply, with the exception of Class 1 and Class 2 sprinkler system which are exempt.

Section 13-4-10(J). INSPECTION TESTING

A. Customer's water system shall be available at all times during business operations for premises inspection by Benson Water. The inspection shall be conducted to determine whether any cross connection or other hazard potentials exist and to determine compliance with this chapter and modifications, if any, pursuant to this Section.

B. Each backflow-prevention assembly required by this Section shall be tested at least annually, or more frequently if directed by the public water system or the Department. Each assembly shall also be tested after installation, relocation, or repair. An assembly shall not be placed in service unless it has been tested and is functioning as designed.

C. Testing shall be in accordance with procedures described in Section 9 of the Manual of Cross-Connection Control. The public water system shall notify the water user when testing of backflow-prevention assemblies is needed. The notice shall specify the date by which the testing must be completed and the results forwarded to the public water system.

D. Testing shall be performed by a person who is currently certified as a "general" tester by the California-Nevada Section of the American Water Works Association (CA-NV Section, AWWA), the Arizona State Environmental Technical Training (ASETT) Center, or other certifying authority approved by the Department.

E. When a backflow-prevention assembly is tested and found to be defective, it shall be repaired or replaced in accordance with the provisions of this Section.

Section 13-4-10(K). PERMIT REQUIRED

A. Notification - It shall be the duty of the person doing the work authorized by the permit to notify Benson Water, orally or in writing, that said work is ready for inspection. Such notification shall be given not less than twenty-four (24) hours before the work is to be inspected and shall be given only if there is reason to believe that the work done will meet Uniform Plumbing Code and University of Southern California standards, as are referenced in the backflow prevention Manual.

B. Stop Orders - Whenever any work is being done contrary to the provisions of the UPC or this Code, Benson Water or an authorized representative may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by Benson Water to proceed with the work.

C. Suspension or Revocation - The City of Benson or any authorized employee may, in writing, suspend or revoke a permit issued under provisions of this Code, whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation of any provision of the UPC or this Code.

Section 13-4-10(L). MAINTENANCE AND RECORDS

A. A public water system customer shall maintain records of backflow-prevention assembly installations and tests performed on backflow-prevention assemblies in its service area. Records shall be retained by the public water system customer for at least three years

and shall be made available for review by the Department upon request. These records shall include an inventory of backflow-prevention assemblies required by this Section and, for each assembly, all of the following information:

1. Assembly identification number and description;
2. Location;
3. Date of tests;
4. Description of repairs and recommendations for repairs made by the tester; and,
5. The tester's name and certificate number.

B. A public water system shall submit a written cross-connection incident report to the Department and the local health authority within five business days after a cross-connection problem occurs that results in contamination of the public water system. The report shall address all of the following:

1. Date and time of discovery of the unprotected cross-connection;
2. Nature of the cross-connection problem;
3. Affected area;
4. Cause of the cross-connection problem;
5. Public health impact;
6. Date and text of any public health advisory issued;
7. Each corrective action taken; and,
8. Date of completion of each corrective action.

C. An individual with direct responsibility for implementing a backflow prevention program for a water system serving more than 50,000 persons, or if the Department has determined that such a need exists, shall be licensed as a "cross-connection control program specialist" by the CA-NV Section, AWWA, the ASETT Center, or other certifying authority approved by the Department.

D. The customer shall maintain records, on forms approved by Benson Water, of the results of all tests and all servicing, repairs, overhauls or replacements of the backflow prevention assembly. A copy of the records shall be promptly submitted to Benson Water after completion of the activity for which the record is made.

E. Fire systems shall not be out of service for more than eight (8) consecutive hours due to testing, maintenance, or repairs. The Fire Chief shall be notified immediately of any testing, maintenance, or repairs that place a fire system out of service.

Section 13-4-10(M). MODIFICATION OF BACKFLOW PREVENTION REQUIREMENTS

A. If Benson Water determines, after inspection of the customer's system, that a backflow prevention method less restrictive than that required in Section 13-4-10(F) will provide adequate protection of the public potable water supply from the degree of hazard potential by the customer's water system, the customer may appeal to the Backflow and Cross Connection Hearing Committee for relief

Section 13-4-10(N). DISCONTINUANCE OF WATER SERVICE

A. If Benson Water discovers that a customer's required backflow prevention method has been improperly tested or maintained, the water service to that service connection shall be disconnected if the situation is not remedied within the time specified in the notice sent to the customer as required by this Section. The service shall not be restored until the condition is remedied.

B. Water service to a fire sprinkler system shall be subject to disconnection under this Section. If a situation, which will result in discontinuance of water service in subsection (A) above, is not remedied within the time provided in the notice sent to the customer, multiple violations will accrue.

C. Prior to disconnecting any water service because a condition set forth in subsection (A) above exists, Benson Water shall issue a notice to the customer describing the condition and notifying the customer that the condition must be remedied within fifteen (15) days from the initial inspection date. If there is no immediate action on the part of the customer, a second notice by certified mail shall be sent ten (10) days after the initial inspection date stating that water service will be disconnected within five (5) days of the second notice. If there is still no action, a turn off notice shall be sent to the customer stating that service will be disconnected on a date certain (approximately two (2) days from the date of the turn off notice) (For retrofit notification procedures, see section 13-4-10(Q).

D. Benson Water may disconnect, without notice, water service to any customer when Benson Water discovers that a direct, contaminated cross connection exists in the customer's water system or that a backflow prevention method has been bypassed or removed.

Section 13-4-10(O). ADMINISTRATIVE APPEAL

A. An Administrative appeal may be requested whenever a violation or dispute of any of the requirements of this 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 appeal may be made to the Backflow and Cross Connection Hearing Committee as follows:

1. The applicant shall file a written appeal on the forms provided by the Benson Water Department.

2. The appeal will be heard by the Hearing Committee within seven (7) days, at regular specified time.

3. The Hearing Committee shall consist of the Utilities Manager, the City of Benson Building Inspector, and the City Manager. Additional Inspectors or other technical persons may be added for a particular appeal, at the discretion of the Utilities Manager.

4. Adequate information shall be provided by the applicant in order to fully describe the conditions in question.

5. The applicant may, but is not required to, personally attend the Hearing Committee meeting.

6. If an appeal is denied by the Hearing Committee, the applicant shall comply or appeal to the Benson City Council within ten (10) days of a denial by the Hearing Committee.

Section 13-4-10(P). VIOLATION A CIVIL INFRACTION

A. It shall be a civil infraction punishable pursuant to the Code of the City of Benson for any person, enterprise, or corporation to violate any of the requirement of this Code.

Section 13-4-10(Q). RETROACTIVE APPLICATION

A. The provisions of this Code shall apply to all new water customers or users and all water customers or users existing prior to the enactment date of this Code. Notwithstanding the foregoing, for multiple-metered premises presenting only a pollution hazard as defined in Section 13-4-10(E) existing as of the effective date of this Chapter, only one new or additional backflow prevention assembly shall be required to be installed within eighteen (18) months from the initial inspection notice and thereafter only one additional backflow assembly installation shall be required during any twelve (12) month period. Noncompliance may result in discontinuance of water service without further notice.

B. Backflow prevention assemblies installed prior to enactment of this article, and **which do not comply with the requirements set forth herein, shall be replaced with assemblies which comply with the standards set forth herein, within eighteen (18) months from initial inspection notice.**

C. The initial backflow assembly installation permit fee required by Section 13-4-10(R) shall be waived by Benson Water for retrofit backflow prevention assemblies only.

D. Meters documented as running backwards or contamination conditions as defined in Section 13-4-10(E) shall be immediately addressed under the provisions of Section 13-4-10(J), subparagraph (D).

Section 13-4-10(R). FEES

A. The fee for any permit required pursuant to the terms of this article may be established by resolution of the city council.

Section 13-4-11 Private Water Wells within the Corporate Limits of the City of Benson

The drilling of a private well within the Corporate Limits of the City of Benson, for any use whatsoever, shall be prohibited without first obtaining the approval of the Benson City Council. (Enacted by Ordinance No. 487)

ARTICLE 13-5 WATER AND SEWER SERVICE AVAILABILITY CHARGES[1]

13-5-1 Purpose
13-5-2 Annual Review and Notification

Section 13-5-1 Purpose

The city operates a municipal water and wastewater system, servicing consumers inside and outside of the city limits. The water and wastewater utilities must obtain through the application of rate and other charges an amount of revenue at least equal to the cost of providing the services to its customers as defined in A.R.S. ' 9-530. The cost consists of the amounts required for operation and maintenance expenses, renewals and replacement of properties, and payments of principal and interest on indebtedness, if any.

A. Operation and maintenance expenses shall include all direct out-of-pocket expenditures incurred by the water department and the wastewater department and that proportionate share of the administration department as from time to time may be established by resolution of the mayor and council.

B. The cost of renewals and replacement of properties shall be calculated on an annual basis using the previous year's actual capital expenditures for completed projects having an anticipated useful life of more than ten years. Except as otherwise established by a resolution of the mayor and council, the annual reserve account payment shall equal the proportionate amount for replacement of the capital asset in twenty years from the date of completion of the installation and in calculating said annual amount, the city manager shall assume that inflation or deflation shall equal that experienced during the previous year, as evidenced by the Consumer Price Index and that interest earned on the reserve amounts on deposit, shall equal the previous year's actual average earned interest. Any funds held as a reserve for renewals and replacement of water or wastewater properties shall be segregated from other funds and shall not be expended for purposes other than renewal or replacement of existing water and/or wastewater capital assets.

Section 13-5-2 Annual Review and Notification

A. A review of the water users and users classes, the total costs of operation and maintenance of the water system and the user rate charges will be made no less often than annually.

B. Revision to the user class or user rate charges as may be approved by resolution of the city council shall be made in order to accomplish the following:

1. Maintain the proportionate distribution of operation and maintenance costs among users and users classes;

[1]Modified by Ordinance No. 335

2. Generate sufficient revenue to pay the total operation, maintenance and replacement of the system including the treatment facilities.

C. Each user shall be notified annually of the rate or rate changes which are attributable to the water services in conjunction with a regular bill.

CHAPTER 14 SUBDIVISION REGULATIONS

ARTICLE 14-1 DEFINITIONS

In this chapter, unless the context otherwise requires:

A. "Alley" means a minor way designated or used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

B. "Area of jurisdiction" means within the corporate limits of the city and in the unincorporated area within three miles beyond such corporate limits.

C. "Arterial street" means such major street, highway, thoroughfare, parkway or boulevard so designated on the general development plan, or so designated by the city council.

D. "Collector street" means a street collecting traffic from local streets and connecting the same with an arterial street or another collector street.

E. "Commission" means the planning and zoning commission of the city.

F. "Drainage easement" means a dedication of land for the conveyance of storm and run off water.

G. "General development plan" means the master plan or any part thereof adopted by the city.

H. "Local street" or "minor street" mean a street exclusively or primarily to provide access to abutting properties.

I. "Person" means any individual, as well as any firm, corporation, partnership, company or any other form of multiple organization for the carrying on of business.

J. "Public works department" means the designated representative of the city as appointed by the mayor and council.

K. "Service street" or "local access street" means that part of an arterial street right-of-way, separated from the main flow of traffic and designated exclusively or primarily to provide access to abutting properties.

L. "Street" means a way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, freeway, road, boulevard, avenue, lane or however otherwise designated.

M. "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.

N. "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.

O. "Utility easement" means a dedication of land for installation and maintenance of public utilities only.

ARTICLE 14-2 GENERAL

A. Conformance to Laws. Every subdivision shall conform to requirements and objectives of the general plan, specific plans, or any parts thereof as adopted by the city council, to the city zoning ordinance, to other ordinances and regulations of the city and to the Arizona Revised Statutes, as amended.

B. Unsuitable Land. Land which, in the opinion of the commission, is based on the written recommendation of the city manager, is unsuitable for the proposed use by reason of adverse topography, adverse soils, subsidence of the earth surface, high water table, periodic flooding, lack of water or other natural or manmade hazards to life or property shall not be subdivided. However, the commission may approve subdivision of such land upon receipt of evidence from the developer's engineer and recommendation of the public works department, that the construction of specific improvements can be expected to render the land usable, in which case, construction upon such land shall be prohibited until the specified improvements have been acceptably planned and construction has been guaranteed.

C. Layout. Streets and easements shall be so arranged in relation to existing topography as to produce desirable lots of maximum utility, a safe and convenient street and pedestrian system and gradients to facilitate adequate drainage.

D. Subdivision and Street Names. Subdivision names and new street names shall not duplicate or be closely similar to any existing subdivision or street name except that street names shall be consistent with the natural alignment and extension of existing named streets.

ARTICLE 14-3 PUBLIC LAND

Reservation of Public Land. When a tract contains all or any part of the site of a park, recreational facility, school site, fire station or other public site as shown in the general plan or a specified plan, such site shall either be dedicated to the public or reserved for acquisition by the public subject to the following conditions:

A. The requirement may only be made upon preliminary plats filed at least thirty days after adoption of the general plan or specific plan affecting the land area to be reserved.

B. The required reservations are in accordance with defined principles and standards adopted by the city council.

C. The land area reserved shall be of such size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

D. The land area reserved shall be in such multiple of streets and parcels as to permit an efficient division of the reserved land in the event that it is not acquired within the prescribed period.

E. Unless otherwise agreed in writing, the public agency for whose benefit an area has been reserved shall have a period of one year after recordation of final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value thereof at the time of filing of the preliminary subdivision plat plus the taxes against such reserved area from the date of the reservation, and any other costs incurred by the subdivider in the maintenance of such reserved area, including interest costs incurred on any loan covering such reserved area.

F. If the public agency for whose benefit an area has been reserved does not exercise the reservation agreement set forth in subsection E of this section within such one year period or such extended period as may be mutually agreed upon by such public agency and the subdivider, the reservation of such area shall terminate.

ARTICLE 14-4 REQUIREMENTS

A. The subdivider shall be responsible for having a registered engineer or registered land surveyor prepare the necessary subdivision plats for filing.

B. Approval of Subdivision Required. Until a plat of a subdivision has been approved in accordance with these regulations no person proposing a subdivision within the corporate limits of the city shall subdivide or file a record of survey, map or plat for record or sell any part of said subdivision.

C. The plat of a subdivision outside and within three miles of the corporate limits which conforms to these regulations shall be approved and so recommended for approval to the Board of Supervisors of Cochise County. Any plat which does not conform to these regulations or which is approved subject to changes, shall be so reported to the board of supervisors with the reasons therefore.

D. Fee for plat review shall be as set by resolution of the mayor and council.

ARTICLE 14-5 PLATS[1]

14-5-1 Procedure for Approval of Preliminary Plat
14-5-2 Items Required on Preliminary Plat
14-5-3 Procedure for Approval of Final Plat

[1]Modified by Ordinance No. 355

SUBDIVISION REGULATIONS

Section 14-5-1 Procedure for Approval of Preliminary Plat

A. The subdivider shall cause to be prepared a preliminary plat, together with other supplementary material including utility plans.

B. Three copies of the detailed water, sewer and gas utility plans shall be submitted to the planning department for review and approval prior to submission of the preliminary plat as hereafter provided. All utility plans shall be approved by the utility department and the fire department, along with every other affected department as determined by the city manager, and such plans approved by each department prior to commission consideration of the preliminary plat.

C. Eight copies of the preliminary plat and supplementary material specified shall be submitted to the commission with written application for conditional approval at least fourteen days prior to the meeting at which it is to be considered.

D. Following a review of the preliminary plat and other material submitted, the commission shall, within thirty days, act thereon as submitted, or modified, and if approved the commission shall express its approval as conditional and state the conditions of such approval, if any, or if disapproved shall express its reasons for disapproval.

E. Action of the commission shall be forwarded to the developer and the city council in writing. Conditional approval of the preliminary plat shall not constitute approval of a final plat.

F. The following items shall be shown on the preliminary plat or submitted as a separate information item along with the preliminary plat.

Section 14-5-2 Items Required on Preliminary Plat

The following shall be required on any preliminary plat:

A. Name of proposed subdivision, existing zoning, zoning required.

B. Location of subdivision.

C. Names and addresses of subdivider.

D. Names and addresses of owners of adjoining land to the proposed subdivision.

E. Information sufficient to locate accurately the property shown on the plan, with reference to survey markers or monuments.

F. Contour map at one foot intervals.

G. The boundary lines of the property to be subdivided.

H. The location, width and other dimensions of all existing or platted streets and other important features, such as water courses, exceptional topography and buildings within the property and within two hundred feet of the property to be subdivided.

I. Existing sanitary sewers, storm drains, water supply mains and bridges within the property, or within two hundred feet thereof.

J. The location, width and other dimensions of proposed streets, alleys, easements, parks and other open spaces, with proper labeling of spaces to be dedicated to the public.

K. North point, scale and date.

L. Location and size of water and sewer lines, approved route, slope of sewer line, connection location to existing lines and any off site augmentation work required.

M. A grading and drainage plan submittal which shall include a hydrologic report prepared by a qualified Arizona-licensed engineer, if said report is required by the city engineer or city manager.

Section 14-5-3 Procedure for Approval of Final Plat

A. The final plat shall conform to the preliminary plat as approved, and, if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which he proposes to record and develop at the time provided, however, that such portion conforms to all requirements of these regulations.

B. Application for approval of the final plat shall be submitted in writing to the commission at least ten days prior to the meeting at which it is to be considered.

C. Two copies of the final plat and other exhibits required for approval shall be prepared as specified, herein, and shall be submitted to the commission within six months after approval of the preliminary plat; otherwise such approval shall become null and void unless an extension of time is applied for and granted by the commission.

D. Final plat shall be approved and signed by the commission and forwarded to the city council for approval prior to recordation. Approval of the final plat shall not constitute acceptance for construction of streets or utilities related to this development.

E. The city shall be responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder. (A.R.S. ' 9-463.01)

F. Changes to approved plat shall require the same procedures as outlined in Section 14-5-1 and 14-5-2.

ARTICLE 14-6 DRAINAGE PLANNING[1]

A. General. Storm water shall be conveyed through a subdivision in a manner that will not damage development within the subdivision nor create an undue nuisance to the inhabitants thereof or adjacent properties. When improvements within a subdivision change the natural flow of storm drainage, they shall be designed in a manner that will not damage the land or

[1]Modified by Ordinance No. 355

change the flow characteristics of the natural drainage over the land upstream or downstream from the subdivision unless the subdivider provides the city with a hold-harmless agreement from the affected upstream or downstream property owners.

B. Drainage Right-of-way. All concentrated storm drainage that cannot be conveyed in a public street right-of-way shall be conveyed in a dedicated drainageway or in a drainage easement. Dedicated drainageways shall be vested in the public for public use and not included in any lot. Drainage easements that are not dedicated for public use but for construction and maintenance of drainage facilities shall be granted to the public, and they may be included in a lot but the use thereof shall be restricted to uses that will not interfere with maintenance of the natural flow of storm drainage over and/or under the easement. A drainage easement shall be provided to accommodate the flow that is expected to occur at least once every one hundred years. A dedicated drainageway shall be provided to accommodate the flow that is expected to occur at least once every twenty-five years; provided, however, that this requirement may be waived by the commission when the resulting drainageway will be less than ten feet in width and less than one foot in depth. All drainage easements shall be at least fifteen feet in width.

C. Hydrologic Reports. When required, will describe as a minimum: drainage points of concentration, calculated peak drainages, a composite basin runoff analysis, cross-sectional location and modes of flow conveyance, slopes, velocities and other information as necessary to complete the analysis.

ARTICLE 14-7 STREET PLANNING

A. General Layout Criteria:

1. Whenever the subdivision embraces any part of a street designated in the adopted general development plan or any adopted neighborhood or specific plan, such street shall be platted in conformity therewith; provided, however, that the developer may request, and the public works department and the commission may recommend and the council may approve minor deviations in alignment whenever it is found to be impractical to conform to the exact alignment shown on the general development plan or other plan because of adverse topography, drainage problems, existing development or traffic safety. Such minor deviations may be made without adversely affecting the public purpose to be served by the street; provided, however, that the distance between an arterial or collector and a parallel arterial or collector does not exceed one thousand three hundred twenty feet.

2. Street layouts shall provide for the continuation of existing and proposed arterial and collector streets into adjacent areas and such other streets as the commission may designate. Streets which the commission should designate include, but are not limited to, collector and local streets, are required to provide future connection with adjoining unplatted lands. In general, these extensions should not be farther apart than the one thousand three hundred twenty foot maximum permitted block length.

3. Half streets shall be discouraged except when necessary to provide right-of-way required by the general development plan to complete a street pattern already begun or to insure reasonable development of the adjoining unplatted parcel. Where a half street exists abutting a tract, the remaining half street shall be platted within the tract.

Where a half street furnishes the sole access to a lot, the subdivider shall plat and develop a street of sufficient width to accommodate two-way traffic. Dead-end streets shall not be approved except where specifically designated by the commission as necessary for connection to adjacent unplatted lands. In any case a dead-end street serving more than four lots shall provide by easement a temporary cul-de-sac turnaround conforming to the provisions herein. Dead-end alleys shall be prohibited.

4. Street access to a subdivision shall be provided as required by the commission. In general, the subdivision shall have at least two street accesses serving each forty acres or smaller tract, unless the subdivider can show to the satisfaction of the commission that the number of lots in the subdivision makes this requirement an unjustified burden. Where access must be provided across land not owned by the subdivider, the subdivider shall, as minimum, provide at least sixty feet of right-of-way.

5. The maximum block length shall be one thousand three hundred twenty feet measured along the centerline of the street and between intersecting street centerlines, except that in subdivisions where lot areas average one-half acre or more, this maximum may be exceeded by six hundred sixty feet.

6. When a residential subdivision abuts the right-of-way of a railroad or limited access highway or abuts a commercial or industrial land use, the commission may recommend location of a street approximately parallel to such right-of-way or use at a distance suitable for appropriate use of the intervening land, such distance being determined with due regard for approachways, drainage, bridges or future grade separations.

7. Crosswalks are not considered a satisfactory substitute for a directional street layout and shall generally be avoided; however, where essential for circulation and access to schools, playgrounds and other community facilities, crosswalks sixteen feet wide may be required by the commission. Such walks may be used for utility installations.

8. Unless otherwise noted, all width measurements are to property lines and all length measurements are along the center line of the right-of-way and to the center line of intersecting streets.

B. Intersection Criteria:

1. Streets intersecting an arterial or collector street shall do so at a ninety degree angle. Local streets shall typically intersect at right angles but in no case less than seventy-five degrees.

2. Local streets intersecting a collector street or arterial street shall have a tangent section of center line at least one hundred fifty feet in length measured from the right-of-way line of the major street, except that no such tangent is required when the local street curb has a centerline radius greater than four hundred feet.

3. Street jogs with centerline offsets less than one hundred twenty-five feet shall be avoided except where waived by the commission based on the recommendation of the city manager.

4. Street intersections with more than four legs and Y-type intersections with legs, meeting in acute angles, shall be avoided.

C. Arterial Street Criteria:

1. Arterials are designed for maximum utilization by through traffic and minimal access from adjacent property. Major arterials are intended to carry high volume, high speed traffic with restricted access to property and minimal intersecting traffic. Access directly on to an arterial from residential property shall be prohibited by the construction of a frontage street or a one foot no-access easement with a vertical curb. Access directly on to a major arterial from any commercial or industrial property shall be prohibited by the construction of a frontage street. Access to a major arterial shall be restricted to one access every six hundred sixty feet. Arterials are located at approximately one mile intervals as designated on the general development plan. The requirement for a frontage street or the prohibition of access to an arterial street may be waived by the council upon request of the subdivider and recommendation by the commission providing the subdivider can show that existing development prohibits the reasonable development of an adequate frontage street and that the proposed alternate plan for access will preserve the traffic function of the arterial street and protect residential properties from the nuisance and hazard of high-volume noisy traffic.

2. Right-of-way for major arterials shall be one hundred ten feet. Right-of-way for minor arterials shall be eighty feet. Corners shall be rounded with a twenty-five foot radius curve.

3. Horizontal curves shall have a six hundred foot minimum radius.

4. The length of tangent between reversed curves shall be one hundred feet.

D. Collector Street Criteria:

1. Collectors are designed for utilization by through traffic and limited direct access from adjacent property. Access directly on to a major collector from residential property shall be discouraged. Major collectors are located at approximately one-half mile intervals as designated on the general development plan. Minor collectors are located at approximately one-quarter mile intervals. In commercial areas, all collector streets shall be designed and constructed to the standards established for major collectors.

2. Right-of-way for major collectors shall be eighty feet. Right-of-way for minor collectors shall be sixty feet. Corners shall be rounded with a twenty foot radius curve.

3. Horizontal curves shall have four hundred foot radius.

4. Length of tangent between reverse curves shall be one hundred feet.

E. Local Street Criteria:

1. Local streets are designed to discourage their use by through traffic and to provide access to adjacent property. Local streets in commercial areas shall be designed to

conform to the criteria for minor collector streets. Major local streets shall generally be provided, however, minor local streets may be used where the street serves twenty-eight dwelling units or less.

2. Right-of-way for major local streets shall be sixty feet. Right-of-way for minor local streets shall be fifty feet. Corners shall be rounded with a ten foot radius curve.

3. Horizontal curves shall have a two hundred foot minimum radius where tangent centerlines deflect from each other more than ten degrees and less than seventy-five degrees. Horizontal curves shall have a fifty foot minimum radius where deflection between tangents is seventy-five degrees or larger.

4. Length of tangent between reversed curves shall be one hundred feet.

F. Cul-de-Sac Turn-Around Criteria

1. Unless otherwise authorized or approved by the mayor and council, cul-de-sac turn-arounds may be used at the end of minor local-type streets providing the length of the minor local street does not exceed six hundred sixty feet.

2. Right-of-way for a cul-de-sac in a residential area shall be one hundred foot diameter circle. Right-of-way for a cul-de-sac in a commercial area shall be one hundred thirty foot diameter circle. Corners shall be rounded with a twenty-five foot radius curve.

G. Alley Criteria

1. Alleys may be developed at the option of the subdivider. When alleys are platted, the alley alignment and arrangement shall provide optimum convenience for truck service circulation and to avoid alley openings opposite fronts of residential lots. Alleys shall be required at the rear of multiple family residential, commercial or industrial developments except where, in the opinion of the commission, other provision is made for adequate permanent access for purposes of fire protection, parking and loading.

2. Right-of-way for alleys shall be twenty feet. Corners shall be cut off to form a ten foot by ten foot triangle.

3. Horizontal curves shall have a forty foot minimum radius.

ARTICLE 14-8 EASEMENT PLANNING

A. Utility Easements. The subdivider shall provide private utility easements as required by the serving utilities and is responsible for coordinating such with the utilities concerned. A separate utility easement of appropriate width acceptable to the utilities manager shall be provided for city utilities, and joint trenches will not be allowed.

B. Curvilinear Alignments. For lots facing on curvilinear streets, utility easements or alleys shall usually consist of a series of straight lines with points of deflection not less than one hundred twenty feet apart; said points of deflection always occurring at the junction of side and rear lot lines on the side of the exterior angle. However curvilinear easements or alleys may be

employed providing that the minimum radii of centerlines are not less than eight hundred feet.

C. Drainage. Dedicated drainageways or drainage easements shall be provided for surface drainage courses abutting or crossing the tract in accordance with Article 14-6, and shall be of a width sufficient to permit widening, deepening, relocating or protecting such drainage course as may be required by the commission based on recommendation of the public works department.

D. No-Access Easements. Lots arranged to back to railroad rights-of-way or commercial or industrial districts or arterial streets as provided in Article 14-7 shall have a recorded no-access private easement one foot wide along the rear lot line.

ARTICLE 14-9 LOT PLANNING

A. Code Compliance. Lot width, depth and area shall comply with the minimum requirements of the zoning ordinance; however, where drainage problems exist or prevail, the commission may require special lot width, depth and/or area exceeding requirements of the zoning district. Land within a public street, alley or drainageway; land within easement for major power transmission lines or major pipelines; and such other land considered by the commission to be unusable shall not be considered a part of the usable lot area. Utility easements for distribution or service purposes and drainage easements may be considered a part of the usable lot area.

B. Dimensions. The depth to width ratio of the usable area, lots shall generally be not greater than three to one.

C. Side Lot Lines. Side lot lines shall be substantially at right angles or radial to street lines except where other treatment can be justified.

D. Access. Every lot shall abut a public street furnishing satisfactory access to another existing public street; provided, however, that a lot in a commercial area may be considered as having satisfactory access if such lot abuts a joint use private drive providing public access to the lot from a public street.

E. Double Frontage Lots. Single family residential lots extending through the block and having frontage on to non-intersecting streets shall be prohibited as may be required herein.

ARTICLE 14-10 IMPROVEMENTS

14-10-1 Purpose
14-10-2 Responsibility for Improvements
14-10-3 Drainage Improvement Standards
14-10-4 Street Improvement Standards
14-10-5 Utility Improvement Standards
14-10-6 Lot Improvement Standards
14-10-7 Submittal, Review and Approval of Engineering Plan
14-10-8 Improvements Security
14-10-9 Final Inspection and Acceptance of Improvements

SUBDIVISION REGULATIONS

Section 14-10-1 Purpose

It is the purpose of this article to define the responsibility of the subdivider and city in the planning, construction and financing of public improvements, to establish in outline the minimum acceptable standards and required public improvements for subdivisions and to establish procedures for review and approval of engineering plans.

Section 14-10-2 Responsibility for Improvements

A. Responsibility of Subdivider. It is the responsibility of the subdivider to finance the planning, design and construction of the streets and alleys, curbs and gutters, sidewalks, crosswalks, street name signs, drainage facilities, sewage disposal facilities, monuments, street lights, fire hydrants, water facilities and all other public and semi-public improvements required by the council, this article to standards established herein.

B. Engineering Plans Required.

1. The subdivider shall be responsible for having a registered engineer prepare a complete set of engineering plans, satisfactory to the public works department, for construction of required improvements. Such plans shall be based on the approved preliminary plat and be prepared in conjunction with the final plat.

2. All required improvements shall be designed and constructed in accordance with the latest revision of the Uniform Standard Specifications for Public Works Construction as compiled by the Maricopa Association of Governments, and such other standards as may be adopted by the city council.

C. Inspection and Testing of Improvements.

1. All improvements in the public right-of-way shall be constructed under inspection and approval of the public works department. Construction shall not be commenced until a permit has been issued for such construction and if work has been discontinued for any reason, it shall not be resumed until after notifying the public works department in advance.

2. The subdivider shall be responsible for having a person conduct the testing of all materials used in the construction of public improvements who is authorized under Title 32 of the Arizona Revised Statutes to perform materials testing.

Section 14-10-3 Drainage Improvement Standards

Drainage Design and Construction:

A. The design and construction of drainage facilities shall be in accordance with approved engineering procedures and shall not conflict with the provisions of the state statutes.

B. All buildings shall be located so they have all-weather access. All-weather access is defined as not having to traverse any storm drainage that has a depth greater than seven-tenths feet during the storm that is expected to occur at least once every one hundred years.

Section 14-10-4 Street Improvement Standards[1]

A. General. Measurements are to the back-of-curb unless otherwise noted.

B. Arterial Street Design:

1. The paved width of an arterial shall be sixty-eight feet. Frontage streets shall be twenty-two feet and shall generally be located to create a twelve foot unpaved island between the arterial and frontage street and an eight foot pedestrian way between the frontage street curb-gutter and the property line. Street corners shall be rounded with a twenty-five foot radius curve.

2. Vertical curves shall have a three hundred foot minimum length but not less than fifty feet for each algebraic difference in grade.

3. Street grades shall be a maximum of five percent and a minimum of five-tenths percent.

4. Sight distance shall be four hundred feet.

5. Design speeds shall be forty miles per hour.

C. Collector Street Design:

1. Paved street width for major collectors shall be forty-eight feet. Paved width for minor collectors shall be forty feet. Corners shall be rounded with a twenty-five foot radius curve.

2. Vertical curves shall have a two hundred foot minimum length.

3. Street grades shall be a maximum of seven percent and a minimum of five-tenths percent.

4. Sight distance shall be two hundred feet.

5. Design speed shall be thirty miles per hour.

[1]Modified by Ordinance No. 355

D. Local Street Design:

1. Paved width of major local streets shall be forty feet. Paved width for minor local streets shall be thirty-two feet. Corners shall be rounded with a twenty-five foot radius curve.

2. Vertical curves shall have a one hundred foot minimum length. Vertical curves are not required where the algebraic difference in grade is one percent or less.

3. Street grades shall be a maximum of ten percent and a minimum of five-tenths percent.

4. Sight distance shall be one hundred fifty feet.

5. Design speed shall be twenty-five miles per hour.

E. Cul-de-Sac Design:

1. Paved width of a cul-de-sac in a residential area shall be ninety foot diameter circle. Paved widths for a cul-de-sac in a commercial area shall be one hundred ten foot diameter circle. Corners shall be rounded with a twenty-five foot radius curve.

2. Curve grades shall be a maximum of five percent and a minimum of five-tenths percent.

F. Alley Design:

1. Street width of alleys shall be twenty feet in commercial areas and sixteen feet in residential areas.

2. Alley grades shall be a maximum of ten percent and a minimum of five-tenths percent.

G. Street and Alley Construction:

1. All streets shall be graded and paved with Asphaltic Concrete or Portland Cement Concrete to standards approved by the public works department. Streets within, adjacent to, or serving the subdivision shall be constructed to the full street width indicated in this section unless otherwise noted herein below.

   a. Streets and alleys adjacent to the subdivision need only to be improved for the half width adjacent to the subdivision providing the half width is sufficient for two-way traffic (twenty-two feet) in the case of a street and for one way traffic (ten feet) in case of an alley.

   b. Where a frontage street is required and constructed by the subdivider, the construction of the major arterial adjacent to the frontage street is the responsibility of the city.

   c. The subdivider is not required to pave more than twenty feet of pavement width on each side of the street, except at intersections, when the required street width is greater than forty-four feet. When traffic demands require additional width, the

city is responsible, subject to funding availability, for paving the center island created whenever the subdivider elects to pave only the twenty foot minimum requirement.

d. Where there are existing streets adjacent to the subdivision, proposed streets shall be improved to the intercepting paving line of such existing streets.

e. Where a minimum width twenty-eight foot paved access road is allowed, it shall be designed and constructed so that it can easily be widened to the full width street without reconstructing the center twenty-eight feet. Connections to existing and proposed streets shall be designed to safely accommodate traffic including any traffic control devices required by the public works department.

H. Intersection Design and Construction:

1. Intersections shall be designed and constructed in accordance with the improvement standards for streets.

2. The approach to an intersection shall have a relatively level area with a grade of not more than two percent for a distance of twenty-five feet measured from the nearest right-of-way line of the intersecting street.

3. All intersections shall have street name signs installed by the city at the subdivider's expense, located and constructed to standards approved by the public works department.

I. Curb-Gutter Design and Construction:

1. Unless otherwise agreed by the mayor and council in a pre-annexation or development agreement, all streets shall have Portland Cement concrete curbs and gutters along the pavement edge constructed to standards approved by the public works department, except as noted herein below. Combined six inch high vertical curb and gutter is required on all streets except three and one-half inch high rolled curb and gutter may be installed on streets in residential and industrial areas that are classified as local. Temporary six inch Portland Concrete cement curb placed on top of the street paving may be used in lieu of curb-gutter around any street center island or around the island between a frontage street and major arterial. A six inch thickened edge of asphalt may be used in lieu of curb-gutter along the inside edge of a half width street, around a temporary turn-around, at the end of a dead-end street, and along the edge of a minimum standard access road to a subdivision.

2. The provisions of paragraph 1 of this subsection shall not apply in residential subdivisions where the actual density is less than one residence per acre in the developed area.

J. Sidewalk Design and Construction:

1. Sidewalks shall be located behind the back-of-curb; providing, however, that lighting standards, utility poles, traffic control devices, fire hydrants, and mailboxes as

applicable, can be located behind the sidewalk. In cases where such items cannot be located behind the sidewalk or in alleys, sidewalks may be located five feet behind the back-of-curb. In all cases not otherwise governed by the provisions of the Manual of Uniform Traffic Control Devices, a minimum clearance of two feet shall be maintained between the face-of-curb and any obstruction. In cases of demonstrated necessity or existing unusual conditions, the public works department may approve a reduction of minimum clearance to the face-of-curb.

2. All streets shall have Portland Cement concrete sidewalks behind the curb-gutter where curb-gutter is required, constructed to standards approved by the public works department. Sidewalks shall be four inches thick and four feet wide in residential areas and five feet wide in commercial areas. All crosswalks shown on the subdivision plat shall have a Portland Cement concrete sidewalk down the center. Sidewalks shall be four inches thick and a minimum four feet wide.

3. Sidewalks shall not be required in residential subdivisions where the smallest actual lot size is greater than 14,520 square feet or in those instances where the council determines the nature of the subdivision, or a portion thereof, does not require sidewalks.

K. Street Monument Construction. Permanent monuments consisting of a brass cap, set in concrete, shall be installed to designate street centerlines and subdivision boundary lines at all angle points and points of curvature and at all street intersections. Concrete bases shall not be less than six inches in diameter and twenty-four inches deep with at least one vertical steel reinforcing bar of minimum one-half inch diameter placed directly beneath the brass cap and extending the full length of the concrete. After all improvements have been installed, the subdivider shall be responsible for having a registered land surveyor or engineer check the location of monuments and certify as to their accuracy prior to acceptance by the city for maintenance.

Section 14-10-5 Utility Improvement Standards[1]

A. General:

1. Utilities, excepting municipal storm drains and sanitary sewers, shall not be located beneath the street pavement other than necessary crossings, which shall be made as close as perpendicular as possible. In cases of demonstrated necessity and upon presentation of technically adequate plan insuring proper installation and maintainability, the public works department may approve location beneath the street pavement of major primary transmission lines of electrical, water, sewer, gas or communications. Any utility installation that may be approved for placement beneath the street pavement shall be completed prior to actual paving of said streets.

2. Reference is made to Section 14-10-4 (J) (1).

B. Sewerage Disposal Design and Construction. A public or community sanitary sewage system shall be installed and shall be constructed to plans, profiles and specifications

[1]Modified by Ordinances No. 351 and 355

approved by the public works department, and in accordance with Arizona Department of Environmental Quality regulations.

C. Water Service Design and Construction:

Fire hydrants and water service to each lot shall be installed on all streets within the subdivisions according to the standards set forth in Section 7-5-7.

D. Electrical Service Design and Construction:

1. Street Lights. When required for overhead lighting by the council, street lights on metal standards shall be installed on all streets within the subdivision and on streets developed in conjunction with the subdivision. The subdivider shall be responsible for coordinating street lighting design and installation with the Sulphur Springs Valley Electric Cooperative and shall cause the street lighting design plan to be submitted for approval of the city concurrently with other required improvement plans. Street lighting design practices shall be in conformance with the current edition of the Illuminating Engineering Society Lighting Handbook, and calculated luminosity shall meet the following criteria for average horizontal foot candles (maintained) light-level range, for each street classification:

Street Classification	Light-Level Range*
Arterial Type	(Horizontal Footcandles- Maintained)
Major	1.20 - 1.60
Minor	0.90 - 1.20
Street Classification	Light-Level Range*
Collector Type	
Commercial	0.70 - 0.90
Residential	0.60 - 0.90
Local Type	
Commercial	0.40 - 0.60
Residential	0.20 - 0.60
Cul-de-Sac	
Commercial	0.30 - 0.60
Residential	0.20 - 0.40

*Horizontal footcandle maintained values are based upon average pavement reflectance of approximately ten percent. For reflectance less than ten percent, increase value fifty percent. For reflectance more than ten percent, decrease value by twenty-five percent.

Additionally, the following criteria shall be applied:

a. Lights shall be placed at all intersections.

b. Midblock lights should be located at lot corners.

c. Separation between standards should be no less than three nor more than six lots apart.

2. Street lights shall be installed on metal or concrete standards.

3. Street lights shall not be required in residential districts when the smallest lot is at least 14,520 square feet in area.

Section 14-10-6 Lot Improvement Standards

A. Lot Design and Construction.

1. All lots shall be graded to drain toward a street or drainage easement and the finished floor elevation of any building shall be at least one foot above the elevation of the water surface that is created during a storm that is expected to occur at least once every one hundred years.

2. Corner lots shall be graded such that they do not create a traffic hazard by limiting visibility.

B. Lot Monument Construction. Iron or steel bars or iron pipes at least fifteen inches long and one-half inch in diameter shall be set at all corners, angle points of curvature for each lot and block within a subdivision within one year of recordation of the final plat. Identifying data shall be affixed to each point set in accordance with current rules and by-laws of the State Board of Technical Registration.

Section 14-10-7 Submittal, Review and Approval of Engineering Plan

Plans submitted in accordance with the provisions of Section 14-10-2(B)(1) shall be reviewed and approved by the public works department. In addition, a set of water improvement plans shall be supplied to the fire chief, who, in turn will review the plans and make his written recommendations to the public works department. The improvement plan originals shall be stamped by the public works department as "approved for construction" and a certificate of approval filed with the city clerk prior to recordation of the final plat. Two sets of the final, approved improvement plans shall be supplied to the public works department prior to commencing construction.

Section 14-10-8 Improvements Security

Prior to approval of the final plat by the council, the subdivider shall provide security by either:

A. Posting of a performance bond issued by a qualified surety;

B. Establishing a cash trust, said funds to be deposited with the city to the credit of the subdivider;

C. Depositing with the city a certificate of deposit issued by a banking institution authorized to issue same;

D. Filing with the city an executed contract of guaranty between financial institution authorized to enter into such contracts;

E. Executing a Third Party Trust and Assurance Agreement whereby an Arizona-licensed title or trust company holding title to the lands proposed to be subdivided agrees to act as a trustee who shall not convey title to any of said lands without first obtaining a written release from the city council, or its designee, except that the trustee may convey title in conjunction with a bulk sale or for the sole purpose of encumbering lands immediately reconveyed to the trust and said assurance agreement shall be subject to acceptance by the city council and approval of the city attorney.

The amount of said security is to be based upon the cost estimate prepared by a registered professional civil engineer in an amount to cover the completed installation of the improvements and requires approval by the public works department. A completion date for the improvements shall be declared by the subdivider and the security shall provide for its forfeiture to the city in the event that said improvements have not been completed or not accepted by the city by the declared completion date due to the default of the subdivider. Where applicable, a concurrent agreement may be executed between the city and the subdivider providing for incremental improvements in planned unit developments; provided, however, that each approved increment shall commensurately conform to the security requirements herein above specified. The council may require of the subdivider such further assurance of the completion of improvements as they may deem necessary to the interest of the public.

Section 14-10-9 Final Inspection and Acceptance of Improvements [1]

Upon due notice from the subdivider of presumptive completion of all improvements as called for on the approved improvement plans and required under the provisions of this article, the public works department will make an inspection. If all construction is found to be completed to their satisfaction, then that inspection shall constitute the final inspection and the public works department will recommend final acceptance and/or the full release of assurances of the public improvements (including, but not limited to, streets, paved shoulders, sidewalks, pedestrian paths, sewer infrastructure, water infrastructure, drainage structures, landscaping and park infrastructure) to the City Council upon receipt of the following items:

A. Final Plans. Final plans drawn in india ink, or a reproducible copy thereof, showing all street, drainage and sewer improvements constructed, and copies of the final plans, showing all electrical, lighting, gas, telephone, cable television and water improvements constructed within public rights-of-way or public easements for inclusion in the city's permanent files. Final plans shall show the approved design conditions and reflect any field changes

[1]Modified by Ordinance No. 512

approved by the public works department, and the developer's engineer shall certify that the final plans represent as nearly as possible the actual field conditions as constructed. Reproducible copies shall be defined as a copy prepared using an archival photographic image process conforming to standards established by the American National Standards Institute on a polyester material four thousandths of an inch thick with a matte finish. Additionally, the city may request and the developer shall furnish all final plans on compact disc (CD) in the Autocad computer format, and each CD shall be labeled with the name of the subdivision and date submitted.

B. Affidavit Regarding Settlement of Claim. The subdivider shall certify that all bills for labor and materials incorporated in the work have been paid and agree to indemnify and save harmless the city against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which the city may suffer arising out of the failure of the subdivider to pay for all labor performed and materials furnished in the construction of the required improvements.

C. Guarantee. The subdivider and contractor shall guarantee all work against defective workmanship or materials for a period of one year from the date of its final acceptance by the mayor and city council. Upon final acceptance of the public improvements by the mayor and city council, the public works department will notify the subdivider in writing of this acceptance as of the date of approval by the council.

ARTICLE 14-11 VARIANCES

A. Hardship. The developer or subdivider may upon written application to the planning and zoning commission request a variance from certain regulations of this chapter. Where the planning and zoning commission finds that hardship may result from strict compliance with these regulations, the commission may recommend to the city council to vary the regulations, provided that such variations will not have the affect of nullifying the intent and purpose of the general development plan or these regulations.

B. Large Scale Development. The standards and requirements of these regulations may be modified by the commission in the case of a plan and program for a new city, a complete community or a neighborhood unit, which in the judgment of the commission provides adequate public spaces and improvements for circulation, recreation, light, air, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.

C. Conditions. In granting variances or modifications the commission or city council may require such conditions as will, in its judgment, secure substantially the objectives of the standards of requirements so varied and modified.

ARTICLE 14-12 ISSUANCE OF BUILDING PERMITS [1]

The City Building Official shall not issue building permits until all provisions of Section 14-10-9 have been accepted by the City Council or approved by the City Engineer.

ARTICLE 14-13 APPROVED PLANTS [2]

14-13-1 Approved Plant List; Adoption
14-13-2 Landscaping Recommendations

SECTION 14-13-1 Approved Plant List; Adoption

That certain document known as the “Benson Plant List,” is hereby adopted by this reference and made a part hereof as if fully set forth in this code.

SECTION 14-13-2 Landscaping Recommendations

Whenever possible, property owners and developers are recommended to use only plants listed in the Benson Plant List for all landscaping in the City of Benson.

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[1]Modified by Ordinance No. 512
[2] Added by Ordinance 533

CHAPTER 15 CEMETERY [1]

ARTICLE 15–1 CEMETERY

15-1-1 Administration and Enforcement
15-1-2 Lots and Gravesites
15-1-3 Interment and Disinterment

Section 15-1-1 Administration and Enforcement

A. The City Cemetery shall be under the control and administration of the City Public Works Director. The Public Works Director or his designee shall assume the duties of the Cemetery Administrator. It shall be the duty of the Public Works Director and the Cemetery Administrator to enforce the provisions of this Article.

B. The Public Works Director is authorized to adopt Cemetery Rules and Regulations for the purpose of maintaining the beauty, security and dignity of the City's cemeteries. Such Rules and Regulations shall regulate the hours of operation when public visitation is permitted; the decorum expected of all visitors within the Cemetery, including that visitors may be prohibited from carrying firearms and consuming food and intoxicating beverages; and measures reasonably necessary to safeguard all property, including headstones and landscaping, within the Cemetery.

C. The Public Works Director shall post a speed limit of 5 miles per hour for the roads within the Cemetery, and the City Police Department is hereby authorized to enforce such speed limit.

D. The Cemetery Administrator is tasked with maintaining all City records regarding interment and plot ownership within the Cemetery. All plot owners and immediate family members of persons interred in the Cemetery have an obligation to respond to any written request for interment or ownership information received from the Cemetery Administrator within a reasonable time. Failure to respond to such request will allow the Cemetery Administrator to presume that the response would have been negative and proceed accordingly.

E. When attempting to communicate with or provide notice to a plot owner or next of kin, the Cemetery Administrator shall exercise reasonable diligence under the circumstances to provide the owner or next of kin with actual notice, which may include the use of first class mail, alternative methods of service recognized under the Arizona Rules of Civil Procedure, internet searches and postings,

[1] Revised by Ordinance 540

and/or posting at the grave site in question.

F. Any person violating any provision of this Article or the Rules and Regulations adopted by the Public Works Director is subject to all enforcement actions available for infractions of the City Code, and in addition may be subject to an order by the Public Works Director barring such person from entry to the Cemetery for a reasonable period of time.

Section 15-1-2 Lots and Gravesites

A. Individual plots within the Cemetery shall be sold on behalf of the City by the Cemetery Administrator. The price for each plot shall be for the plot only and not include any of the services necessary for burial.

B. The Cemetery Administrator shall keep accurate records and books of account showing the plots sold, the amounts received, and the owners of such plots.

C. No transfer of ownership of plot(s) between private parties, including by bequest, devise or descent, shall be binding upon the City until satisfactory proof of such transfer is presented to the Cemetery Administrator and a transfer fee of $10 shall have been paid. All such transfers of ownership shall be recorded in the records maintained by the Cemetery Administrator.

D. If, for the period of fifty years and one day from the purchase of burial rights to a cemetery plot, the owner(s) of a plot or plots have not used the plot or some portion of multiple plots for the purposes of burial and have not provided for the care and maintenance of such plots, then ownership of such unused plots shall revert to the City. Prior to exercising such right of reversion, the City shall make reasonable efforts to contact the record owner of its intent to reclaim ownership of unused plots. Reclaimed plots may re resold by the City or used for landscaping, as deemed appropriate in the discretion of the Cemetery Administrator.

E. All unsold cemetery plots shall be maintained by the City. Sold plots shall be maintained by the owner or immediate family members.

F. No improvement, change or service, other than routine graveside care, shall be undertaken by a plot owner or family member upon any plot within the Cemetery without the prior written approval of the Cemetery Administrator.

Section 15-1-3 Interment and Disinterment

A. The owners of burial rights to grave sites or family members/representatives may place, in a manner satisfactory to the Cemetery Administrator, a headstone, tombstone or other suitable monument to the deceased. All headstones,

tombstones or approved monuments shall be placed in an orderly row and reasonably in line with other such markers in that section of the cemetery.

B. No person may erect or maintain any fence, wall, corner post, coping, hedge or boundary of any kind upon any lot, grave site or groups of lots within the cemetery

C. It shall be unlawful to cause any remains to be interred within the City Cemetery without first notifying the Cemetery Administrator and presenting satisfactory proof of ownership or permission from the owner for the use of the plot. All such written permissions for use of a plot shall be filed with the records of the Cemetery Administrator.

D. The Cemetery Administrator shall keep records of all interments, including of cremated remains, which shall state the name of the deceased, date of birth, date of death, place of death, date of burial, and name and address of the funeral director.

E. No grave space shall contain more than one casket and one urn. No grave space may contain more than four urns of cremated remains. A minimum of five feet of dirt shall cover all caskets and urns.

F. It is the responsibility of the family of the deceased to make arrangements for to opening and closing of the grave site.

G. It shall be unlawful for any person to cause any remains to be disinterred from the City cemetery except upon direction of the Cemetery Administrator. Before such direction may be given, the person requesting the disinterment must provide a permit issued by the County Board of Health and a written order from the plot owner or representative authorizing such removal, which shall be filed with the records of the Cemetery Administrator.

Chapter 16

City Code

FEE SCHEDULE [1, 2, 3, 4]

SECTIONS:

ARTICLE 16-1 DEVELOPMENT IMPACT FEES (Existing)
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ARTICLE 16-2 ADDITIONAL FEES

ARTICLE 16-1 DEVELOPMENT IMPACT FEES (EXISTING)

Section 16-1-1 Title, Purpose and Administration

A. This Article shall be known as the "Development Impact Fee Regulations" and may be referred to herein as "the Regulations".

B. These regulations are intended to ensure the timely construction of off-site public capital improvements necessary to serve all new development by providing

[1] Ordinance 416, Amended by Ordinance 461
[2] Ordinance 516
[3] Ordinance 552
[4] Ordinance 554

necessary financing for new facilities to be constructed by the City and for an equitable means of cost sharing for existing facilities employed to serve new development. Development Impact Fees shall be paid by each new development, as described herein, in a manner which is proportional to the financial impact that new development will have upon existing and required city capital facilities.

C. The city official with primary responsibility for administering these regulations is the Benson City Manager. The City Manager shall be authorized to designate other city employees to undertake such responsibility and the employee or employees so designated shall be implicitly authorized to act within the scope of these regulations.

D. Definitions.

Unless otherwise specifically provided in these regulations, those definitions contained within the Planning & Zoning Regulations, the Subdivision Regulations set forth in Chapter 14 of the City Code, and any other definitions set forth in the City Code, shall apply in interpreting these regulations, except that in the event of a conflict between two or more definitions, the definitions specifically set forth in these regulations shall govern as to any interpretation of these regulations and in every case said interpretation shall favor a conclusion which accomplishes the intent of these regulations.

1. Specific development unit shall be any structure requiring a building permit.

2. An assisted living facility shall include multi-family dwellings used or designated to be used by older persons, persons with disabilities or other persons needing assistance with day-to-day living matters, but not including nursing homes, hospitals or convalescent care facilities.

3. Building square footage shall be measured in terms of gross floor area measured from the outside surface of building walls, except that areas which are used for the general conduct of a business shall be included in the building's square footage calculation, even though said area is not enclosed and is only partially enclosed, whether wholly or partially underroof and whether or not physically attached to the main business structure.

4. Developer - The individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for creating a demand for new or additional city services.

5. Development Impact Fee - The fee charged for new capital expenditures for necessary infrastructure improvements, or the proportionate share of the capital cost of existing city facilities or services, as such capital costs relate to planned or required services or facilities supplied by City to, or in conjunction with, new development as defined hereinafter.

6. Initial Period as used herein in conjunction with fee discounts shall mean the period commencing when these regulations become effective.

7. New Development - Any improvement commenced after the effective date of these regulations, the construction, creation or emplacement of which requires prior City approval and the use or availability of City supplied public services or facilities.

Section 16-1-2 Applicability [1]

A. The collection of Development Impact Fees shall apply to all new development in the City, unless otherwise provided herein. Until any Development Impact Fee required by these regulations has been paid in full, only a conditional building permit shall be issued and no Certificate of Occupancy shall be issued. In the event that work is commenced without payment of the appropriate fees, absent a written agreement for delayed payment of fees approved and signed by the City Manager, a stop work order shall be issued prohibiting any further development activity until such time as the required fees have been paid or a deferred payment agreement has been undertaken.

B. Parks and Cultural Facilities Development Impact Fees shall apply only to new residential development.

C. The movement of a structure onto a lot shall be considered new development and shall be subject to the Development Impact Fee provisions. If a structure is relocated from another area within the city limits from which it was receiving city public utility services. A relocated structure may be exempt from Development Impact Fees only if the usage stays the same as its usage immediately prior to relocation.

D. The residential and multi-family residential categories for which Development Impact Fees are payable include single-family or multi-family dwellings, whether detached residential units, including site-built, manufactured housing or modular constructed units.

E. Newly located mobile and manufactured homes in a designated park or a planned unit development are subject to these Development Impact Fees, except when exempted in accordance with Section 16-4-2(C) above or as stated herein. Park model homes as defined with A.R.S. §41-2142 as “Recreational Vehicles” are exempted from Development Impact Fees.

F. Each individual residential unit in a multi-family dwelling unit project, including duplex, triplex and similar single structure multi-family units, shall be subject to a separate Development Impact Fee.

G. Development Impact Fees for mobile homes and recreational vehicle parks shall be assessed for the entire development based on the number of mobile home and recreational vehicle spaces created at the time of application for the building permit. The City Manager shall be authorized to enter into written agreements for

[1] Modified by Ordinance 461

partial payment of Development Impact Fees where the entire planned development is not being developed at one time, but phased in over a specified time period. In the event the development schedule is uncertain, each development phase shall be considered as if a separate project and the applicable Development Impact Fees paid thereon at the commencement of each PHASE development and shall be assessed in accordance with the fee schedule existing at the time of actual development.

H. These Development Impact Fee Regulations shall not apply to the following:

1. Placing on a lot in the City, a temporary construction trailer or office, but only for the life of the building permit issued for the construction served by the trailer or office;

2. Expansion, upgrade, repair or replacement of an existing residential dwelling unit on a lot with a legal, conforming residential dwelling unit or structure;

3. Any development including, but not limited to, the mere subdivision of land, installation of utilities, or use of land for limited purposes which will not, in the opinion of the City Manager, result in any immediate demand for additional city utility services. However, upon completion of development and application for building permits, Development Impact Fees shall be assessed.

4. Parking lots regardless of how used, provided they are accessible to the public at all times. However, enclosed or partially enclosed storage yards are not excluded if part of a commercial business.

Section 16-1-3 Service Areas

A. For purposes of these regulations, the Development Impact Fee service areas for purposes of wastewater, water, police and fire department, general government administration, parks and cultural purposes, shall be all of the incorporated area of the City of Benson.

B. Development Impact Fees shall be assessed only to new development located within the service area.

C. The Development Impact Fees collected within the service area shall be expended so as to benefit the service area.

D. All the designated service area shall be subject to review by the City as part of its general Development Impact Fee revision process hereinafter set forth. Following such a review and public hearing, any designated service area may be amended from time to time.

Section 16-1-4 Development Impact Fee Schedules [1]

The City Council by resolution may adopt Utility Development Fees and Schedules to fund construction of infrastructure necessary to serve new development pursuant to A.R.S. § 9-463.05.

Section 16-1-5 Individual Assessment of Development Impact Fees

If any person submitting an application for which payment of a Development Impact Fee is required believes the proposed development will create public service impacts substantially less than development envisioned by the existing Development Impact Fee schedule, such person may request that the City Council perform an individual assessment of the impact of the proposed development. A request for individual assessment must be made prior to the application for a building permit and the City Council's written determination of individual assessment shall be binding in connection with a building permit application tendered, along with the prescribed fees within ninety days from the date of said individual assessment. The City Council may designate the City Manager as its agent for purposes of preparing a recommended individual assessment.

Section 16-1-6 Collection of Development Impact Fees

Except as hereinafter provided, Development Impact Fees due to all new development shall be collected at the time of issuance of the first building permit subsequent to the Development Plan approval.

Section 16-1-7 Fund Accounting for Impact Fees

A. City shall establish a separate accounting fund in which the Development Impact Fees collected for a particular category or facility within the service area shall be credited. Such fees shall be invested by the City and the yield of such fees, at the actual rate of return to the City, shall be credited to such accounting fund periodically in accordance with the accounting policies of the City. Such funds need not be segregated from any other city monies for banking purposes only.

B. Any yield on such accounting funds into which such fees are deposited shall accrue to that fund and shall be used for the purposes specified in said fund only.

C. City shall maintain and keep financial records for such accounting showing the revenues to such fund and the disbursement from such fund, in accordance with normal city accounting practices. The records of such funds shall be open to public inspection in the same manner as other financial records of the City.

Section 16-1-8 Expenditure of Development Impact Fees

Development Impact Fees may only be spent on qualifying improvements, as follows:

A. Wastewater Development Impact Fees may only be expended on wastewater system capital assets such as treatment facilities, collection systems and

[1] Ordinance 554

components thereof; land, including easements and rights-of-way necessary to connect an area of new development to existing collection lines or equipment, including mobile and portable devices or machinery necessary or convenient to continued safe, economical and healthy operation of the wastewater collection system.

B. Water Development Impact Fees shall be limited to expenditures for wells, pumps, mechanical and electrical system accessories including, but not limited to, overhead or below ground power supply lines, water treatment systems, measuring and monitoring devices for the water distribution system, machinery, including mobile and portable devices necessary or convenient to the safe, economical and healthy operations of the water distribution system.

C. Police and Fire Development Impact Fees shall be limited to expenditures for capital improvements to the Police and/or Fire Department, such as buildings, including satellite stations, communications equipment, acquisition of capital equipment, such as vehicles of any nature required for police or fire operations or similar expenditures, including the principal, interest and other financing costs of bonds, notes, certificates of participation or other obligations issued by or on behalf of the City to finance qualified improvements or capital equipment.

D. Park Development Impact Fees shall be limited to expenditures for acquisition of park sites, park site development costs, including utilities, landscaping, lighting and construction of parking facilities to serve park users, construction and installation of park facilities and equipment, and such other expenditures which directly benefit a park or a portion thereof.

E. General government Development Impact Fees shall be limited to expenditures for capital equipment and improvements to the City's administrative offices, including construction of new city offices, capital improvements to city maintenance facilities or such other facilities or equipment as used by city staff for the benefit of the entire city population.

F. Cultural Development Impact Fees shall be limited to capital expenditures for city facilities for the conduct of cultural activities including, but not limited to, library facilities, auditorium or outdoor music and entertainment presentation facilities, such as amphitheater, theater and drama facilities, including the associated accessory equipment, such as seating, public address, parking, shade and lighting so as to maximize the use of such facilities.

Section 16-1-9 Refund of Development Impact Fee

A. Any Development Impact Fee, or portion thereof, collected pursuant to these regulations which has not been committed to a use permitted by the foregoing Section within twenty years from the last date of the fiscal year in which said fee was received by the City, shall be refunded to the payer of said fee or the successor, assignee or heir of said payer, or current owner of the property for which the fee was paid if the original payer, its successor, assignee or heir, is not in existence or reasonably locatable upon written application. Development Impact Fees shall be deemed to have been "committed" in the order in which they are received and their expenditure included in a capital budget, including a capital

budget plan, which envisions actual expenditure in a future fiscal year contingent upon accumulation of sufficient funds in which to complete a planned project. Refunds of Development Impact Fees shall include accrued interest at the rate of return actually received on said funds while under the City's control. In disbursing any such refunds, the City may rely upon the written certification of the applicant, if not the original payor, as to the applicant's entitlement to a refund and in the event that it is later determined that another party, whether by assignment, reservation or other agreement, is actually entitled to said refund, the applicant receiving payment by the City shall hold the City harmless and indemnify the City for any amounts expended as a result of the erroneous written certification of the applicant who has been paid the refund amount. In the event that more than one applicant claims to be entitled to a Development Impact Fee refund, the City may deposit the disputed amount in the Superior Court, by filing an action in interpleader and, in said event, City shall be entitled to deduct from the funds in dispute and deposit with the Superior Court, an amount equal to the reasonable cost of said action, including any court costs and reasonable attorney's fees. In the event a Development Impact Fee remains unexpended or uncommitted for a period of twenty years from the date of its collection and no application for refund or other claim filed with City within twelve months after the expiration of the aforementioned twenty years, such amount shall be retained for future capital expenditures of the type for which it was collected and the City shall have no further obligation to refund any portion of the amount not expended or committed.

B. In the event a development for which a Development Impact Fee has been paid is not actually undertaken, the Development Impact Fee, and any accrued interest thereon, paid in conjunction with the planned, but not constructed development, shall be returned to the original payor, or its assignee, provided only that said payee submit a written refund request within sixty days after expiration of the building permit, including any extension thereon, for which the Development Impact Fee was assessed.

C. In the event of a refund of any Development Impact Fee, the City shall collect an administrative service charge equal to three percent of the amount of the gross refund.

Section 16-1-10Offsets to Development Impact Fee

The amount of any Development Impact Fees assessed pursuant to this regulation shall consider, among other things, the contribution made or to be made in the future by cash or taxes, fees or assessments, toward the capital costs of necessary public service covered by the Development Impact Fee. The Mayor and City Council, after considering the actual capital expense burden a specific new development will impose upon the municipality, including the pro rata share costs of existing capital assets benefitting the new development, may adjust any, or all, of the Development Impact Fees set forth herein accordingly.

A. Offsets are reductions from the Development Impact Fee which would otherwise be due from any new development and shall be subject to the following:

1. An offset shall be applied against development fees otherwise due for qualifying improvements, as hereinabove defined, where such

expenditures are actually directly undertaken, with prior written approval by the City Council, by a developer as a condition of development approval;

2. Offsets shall be allowable and payable only to offset Development Impact Fees otherwise due for the same category of improvements and shall not result in reimbursement from, nor constitute a liability for, the City Council;

3. Offsets shall be given only for the value of any construction of improvements or contribution or dedication of land or money by a developer, or its predecessor in title or interest, for qualifying improvements of the same category for which a Development Impact Fee is otherwise imposed.

B. The applicant for a Development Impact Fee offset shall be responsible for providing appraisals of land and improvements, construction costs, documentation of expenditure and any such other information as is requested by the City Manager in evaluation of the offset request. Any Development Impact Fee offset request in excess of the City Manager expenditure authorization shall be submitted to the City Council, which may request additional information from the applicant, and the City Council shall determine whether or not to approve or deny the offset request in whole or in part. No Development Impact Fee offsets shall be approved by anyone other than the City Manager or City Council acting at a regular or special council meeting.

C. The value of land dedicated or donated shall be based on the appraised value of the parcel as of the date of transfer of ownership to the City and shall be determined by an Arizona licensed real estate appraiser who shall be selected and paid for by the applicant and said appraiser shall employ generally accepted appraisal techniques. In the event the City disagrees with the appraised value submitted, the City may engage another appraiser at City's expense and the value shall be an amount equal to the average of the two appraisals unless either party rejects the average of the two appraisals, in which event, a third appraiser shall be selected by the first two appraisers and the cost of said third appraisal being equally divided between the two parties and the third appraiser's valuation shall be binding upon both parties.

D. Offsets provided for qualifying improvements meeting the requirements of this Section shall be valid from the date of approval until ten years after the date of approval or until the last day of construction within the development, whichever occurs first.

E. The right to claim offsets shall run with the land and may be claimed only by the owners-of-record of property within the development for which the qualifying improvement was required.

Section 16-1-11Developer Participation Agreements for Development Impact Fees [1]

A. The City and a developer may enter into a Participation Agreement to provide for full or partial reimbursement to the developer for the cost of constructing off-site improvements necessary for proper and adequate development of the property, provided the following conditions are met:

1. The off-site improvements are of a nature that could be paid for by use of Development Impact Fees, whether or not such fees are currently being levied by the City.
2. The Developer desires to construct the off-site improvements contemporaneously or in conjunction with construction of on-site improvements.
3. Developer will construct the improvements to City standards and thereafter convey said improvements to the City free of all liens and encumbrances, provide all necessary easements, and provide a one-year warranty period for parts and workmanship incorporated into the improvement.
4. Developer agrees to comply with all other reasonable requirements of the City for plan review, permitting, construction, inspection and conveyance of the improvements.

B. A Participation Agreement shall include the following terms:

1. The actual cost of construction of the improvements;
2. A definition of the benefit area from which future development shall be burdened with a pro-rata contribution as a condition of using the developer-financed off-site improvements;
3. Where the improvement is included in the City's infrastructure improvement plan and the City imposes a Development Impact Fee to fund such an improvement, the Participation Agreement shall either create a method of reimbursing the developer pro-rata from the Development Impact Fees collected within the benefit area, or shall equitably reduce the amount of Development Impact Fees collected within the developer's property, or a combination of both;
4. A schedule for initiation and completion of construction of the improvement; and
5. Expiration date, which shall be no more than fifteen years or the repayment of the developer's cost of construction, whichever occurs first.

C. Where the improvement benefits land in addition to developer's land and Development Impact Fees are not levied by the City to fund such improvements, in the discretion of City Council the Participation Agreement may create a burden on all undeveloped land within the benefit area to pay a pro-rata contribution amount as a condition of obtaining a building permit, in which case the developer shall submit an engineering study that sets forth the following:

[1] Ordinance 554

1. The benefit area that defines future development that can reasonably be expected to benefit from the off-site improvements;
2. the pro-rata contribution amount that each unit of undeveloped land within the benefit area shall pay in addition to all other fees imposed when applying for a building permit; and
3. Such other information as necessary to consider developer's request.

D. Land included within the benefit area may avoid paying the pro-rata contribution amount of Subsection C above where the owner, upon application for a building permit, establishes that the land does not benefit from the improvement, either because the improvement does not serve his land or because he will construct other improvements that obviate any benefit derived from the earlier improvement.

E. All Participation Agreements shall be recorded in the official records of Cochise County.

F. All monies collected by the City, or all Development Impact Fees for which pro-rata reimbursement obligations are created, pursuant to Participation Agreements shall be remitted to the developer or developers quarterly.

G. Developers shall be responsible for submitting any claims against the City for reimbursement amounts due under a Participation Agreement no later than 180 days after they are collected by the City or they shall be deemed waived.

Section 16-1-12Development Impact Fees as Supplemental to Other Required Fees

A. Except as otherwise provided herein, Development Impact Fees are in addition to any other requirements, such as water and sewer hook-up fees, utility deposits, building permit fees, taxes and any applicable assessments imposed by the City on development or the issuance of building permits or Certificates of Occupancy which are imposed on and due against property within the jurisdiction of the City. Development Impact Fees are intended to be consistent with the City's other policies, ordinances and resolutions, by which the City seeks to ensure the accumulation of adequate capital for the initial creation, expansion, improvement or modification, of existing and planned facilities necessary for the general health and welfare.

B. In addition to the Development Impact Fees, the City may finance qualifying capital expenditures through the issuance of bonds, certificates of participation, formation of assessment districts, direct or guaranteed loans, including loans or grants from state and federal agencies, the creation of improvement districts, community facilities districts and any other method available to the City under Arizona law.

Section 16-1-13Annual Development Impact Fee Review

Prior to January 1, 2001, and annually thereafter, the City shall, acting through its City staff, review the Development Impact Fee schedules and the City Manager shall prepare updated development fee schedule recommendations for consideration by the City Council.

Section 16-1-14Development Impact Fee Calculations [1]

All Development Impact Fees (DIF) assessed under this regulation shall bear a rational relationship to the proportional share of the City's capital cost and benefit conferred on new development in order to ensure that the DIF's are non-discriminatory. Individual DIF components shall be calculated using the current capital investment of specific facilities, divided by the population being served, multiplied by the average number of household residents throughout the City or such other factor as is appropriate. Additionally, such relevant factors as water usage, wastewater volume and associated capital costs, shall be included.

A. Police and Fire Development Impact Fee Schedule

Police and Fire Development Impact Fees shall fund emergency services capital items, such as patrol and fire vehicles, buildings (such as police and fire stations) and communications equipment. Because the capital expenditure requirements for emergency services are influenced by population and the nature and size of commercial developments, emergency services development impact fees shall be calculated as follows:

1. Residential Police and Fire Development Impact Fee Calculations - Shall be based on the historic capital cost of providing city-wide police and fire protection. During the ten year period ending June 30, 1998, the total general fund capital expenditures for police and fire department requirements is calculated as being $1,100,000. Approximately eighty percent of the existing structures, based on square footage in use, is represented by residential structures.

2. Single Family Residential Police and Fire Development Impact Fee Calculation - Using the existing 2000 residential structures and an average enclosed living area measuring 2,000 square feet per unit, the residential development impact fee shall be $440.00, calculated as follows:

   TCE = Total Capital Expenditures
   Capital Expenditures = CE
   TCE = $1,100,000. x 80% = $880,000.

   $880,000. CE/2,000 resident. units = $440. per sngl.fam.res.unit

3. Multi-Family Residential Police and Fire Development Impact Fee Calculations - Multi-Family Residential Police and Fire Development Fees shall be based on the single family residential fee calculations at the rate of $.22 per square foot subject to a single living unit minimum fee calculated on the basis of 500 square feet.

4. Commercial Police and Fire Development Impact Fee Calculations - Based on square footage, approximately 20% of Benson's structures are of a commercial nature. Therefore, 20% of the total police and fire

[1] Ordinance 544

department capital investment, or $220,000., is proportionately chargable to commercial entities. The commercial development impact fee is calculated as follows:

TCE - TOTAL CAPITAL EXPENDITURES
CE - CAPITAL EXPENDITURES

TCE 1,100,000. x 20% = $220,000.

$220,000. CE/800,000 total commercial square footage =
.$275 per sq.ft. or $275.00 per 1000 sq. ft.

5. Initial Phase In Period Discount - During the initial two year phase-in period of these regulations, all new development shall receive a police and fire development impact fee credit of fifty percent of the amount due, as hereinabove set forth.

B. Administrative Development Impact Fees.

In order to offset the capital expenditures required for general government operations purposes, all new development shall be assessed an Administrative Development Impact (ADI) Fee. ADI fees collected shall only be expended to acquire capital assets reasonably necessary for the City's efficient and timely administration. Examples of expenditures of proper ADI fees would be new or upgrades of computer systems, system components and software, administrative buildings and building components, vehicles, communications systems and office furniture.

1. Administrative Development Impact Fees - ADI Fees should all be based on the City's Administrative Department capital items budget during the ten years ended June 30, 1998, referred to herein as the "base period". During the base period, the total administrative capital items budget was $407,264. In calculating Administrative Development Impact Fees, the ratio of eighty percent residential structures floor space to twenty percent commercial floor space shall be used.

2. Residential Administrative Development Impact Fee Calculation - The ADI fee to be charged for each new residence unit, whether single family or multi-family, shall be based on the base period capital expenditures and the total residential floor space within the City and calculated as follows:

TACE - TOTAL ADMIN CAPITAL EXPENDITURE

CE - CAPITAL EXPENDITURES

TACE - $407,264. x 80 % = $325,8ll.

$325,8ll.CE/2000 resident. unit = $162.90 per unit, round. to $160.

3. Commercial Administrative Development Impact Fee Calculations - The ADI fee to be charged a new commercial development shall be based on the square footage of the development's structure, which shall include areas under roof, whether or not enclosed, as well as open or enclosed patios and storage areas. Commercial ADI fees shall be based on the following calculation:

TACE - TOTAL ADMIN CAPITAL EXPENDITURE

TCFS - TOTAL COMMERCIAL FLOOR SPACE

TACE = $407,264. x 20% = $81,452.

TCFS = 800,000 sq. ft. = $.10 per sq. ft.

4. Initial Period Phase-In Discount - During the initial two year phase-in period, all new development shall receive an administrative development impact fee credit of fifty percent of the amount due, as hereinabove set forth.

C. Parks and Cultural Facilities Development Impact Fees - In order to offset the capital costs associated with the construction and development of facilities such as parks, libraries, community halls, public auditoriums, theaters, amphitheaters and art galleries, all new development shall be assessed a Parks and Cultural Facilities Development Impact (PCFDI) fee. Expenditure of funds collected as a PCFDI fee shall be limited to acquisition of land for such facilities, as described above, or the construction of buildings or related facilities and the equipping of such facilities with equipment of a non-expendable nature and considered as depreciable assets under the Internal Revenue Code. PCFDI fees shall be based on the City Parks Department and Library Department's capital budget during the ten years ended June 30, 1998, hereinafter referred to as the "base period".

1. Single Family Residential Parks and Cultural Facilities Development Impact Fees - For each new single family residential structure, the applicable PCFDI fees shall be calculated as follows:

TPCE - TOTAL PARK CAPITAL EXPENDITURES
$490,000. TPCE/2,000 residential units = $245.00 per unit

2. Multi-Family Residential Parks and Cultural Facilities Development Impact Fees - For each individual residential living unit which is part of a multi-family residential structure, the PCFDI charged shall be one-half the applicable fee for a single-family residential structure.

3. Initial Period Phase-In Discount - During the initial two year phase in period immediately following the effective date of these regulations, all new single-family residential development units shall receive an individual unit credit of $145.00 and each multi-family residential unit shall receive a credit of $72.50 for each individual living unit.

Section 16-1-15 In-Fill Incentive Development Impact Fees [1]

A. In order to encourage individuals and other developers of residentially suitable lands within the City to build within the heretofore developed city core where it is in the best interest of the City to promote building of needed affordable residential housing on existing lots and/or parcels so as to minimize expenditures for infrastructure extensions or services, specific areas are designated as the "In-fill Zone". Development Impact Fees for residential construction within the In-Fill Zone shall be limited to five hundred dollars per residential structure. For purposes of this section, the term "residential structure" shall mean a single-family dwelling or an individual dwelling unit of a multi-family residential unit. The term "residential structure" shall not include any development considered to be commercial in nature, such as a motel, hotel, nursing home or group home. A multi-family project or complex intended for occupancy by permanent residents shall not be considered to be commercial in nature regardless of its ownership.

B. The specific areas hereinafter described shall constitute the City's In-Fill Zone being part of a general area which was previously developed. All of the In-Fill Zone is located within Township 17 South, Range 20 East of the Gila and Salt River Base and Meridian and the areas are particularly described as follows:

1. SECTION 9: Northern ½ of the Northeast ¼ of the Southwest ¼ - between the center of 4th Street to the southernmost property lines of Fifth Street east to the center of Ocotillo Ave. South ½ of the southeast ¼ of the Northwest ¼-between the northern edge of green Lane south to the center of 4th Street; from westernmost edge of Quarterhorse Ave east to the center of Ocotillo Ave.
   Southeast ¼ - entire quarter section included
   Southern ¼ of the Northeast ¼ - from the center of Ocotillo Ave east to the sectional boundary, paralleling the northernmost boundary of the RR ROW.

2. SECTION 10: Entire southwest ¼ and southeast ¼.
   The Northeast ¼ laying south of I-10.
   South ½ of the Northwest ¼ -from the north edge of Walker Street, south.

3. SECTION 15: The Western ½ of the East ½ lying west of Highway 80, bounded by the western edge of Catarina Street, Post Road and the back property lines of the Post Road Properties. Northern ½ of the Northwest ¼ - following the southernmost property lines of El Sol west to the section boundary.

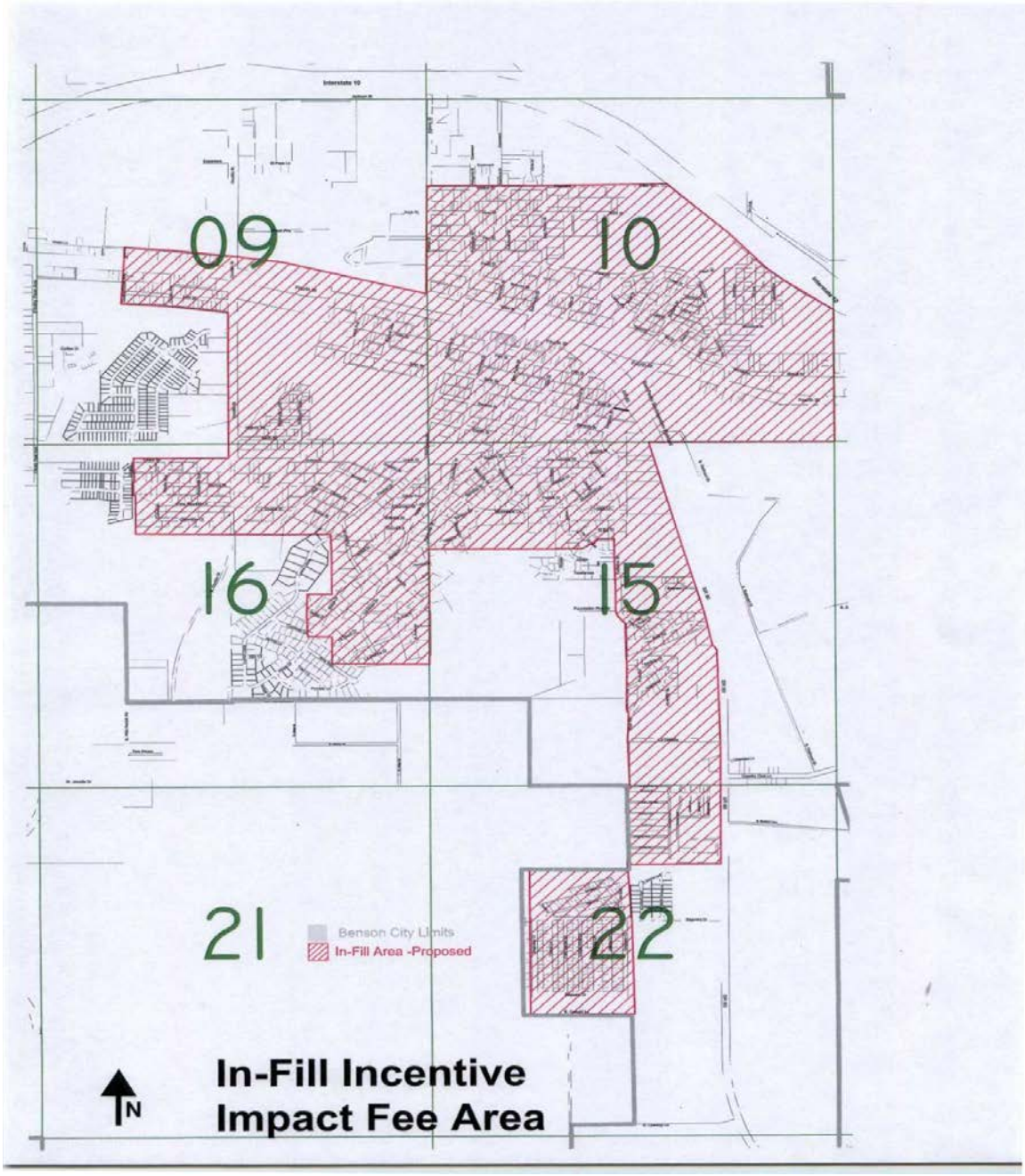
4. SECTION 16: The northern ½ of the Northeast ¼ and the southeastern ¼ of the Northeast ¼ and the Southeast ¼ of the Southeast ¼ of the Southwest ¼ of the Northeast ¼.

[1] Amended by Ordinance 534

The Northeastern ¼ of the Northwest ¼ bounded by the northern edge of Union Street and the western edge of Donald St.
Northern ½ of the Northeast ¼ of the Southeast ¼.
Northeast ¼ of the Northeast ¼ of the Northwest ¼ of the Southeast ¼.

5. SECTION 22: Northwest ¼ of the Northeast ¼.
Southeast ¼ of the Northwest ¼.
Northern ½ of the Northeast ¼ of the Southwest ¼.

In-Fill Map



Section 16-1-16Independent Standing of Each Development Impact Fee Provision

Each section of these regulations and Development Impact Fee provisions contained herein shall be considered as independent of each other section and/or Development Impact Fee provision and in the event any single section or provision is determined by a court of competent jurisdiction to be inapplicable or unenforceable, said ruling shall not invalidate any other section or provision contained herein and all other fees shall be applicable.

Section 16-1-17 Effective Date

The effective date of these regulations and the fees set forth herein shall be August 1, 2000.

ARTICLE 16-2 ADDITIONAL FEES

The City Council shall by resolution adopt appropriate fee schedules for Planning and Zoning fees, Development Review fees, Construction Administration fees, Building Permit fees and any additional or miscellaneous fees deemed to be reasonable and necessary.

FEES AS ADOPTED BY RESOLUTIONS

Administration Fees [1]

A.	Copies. The departments of the City shall charge $0.25 per page for photo copies of City records and documents. Maps, blueprints and other documents shall be provided at the cost of their reproduction plus handling costs determined by the City.	$0.25 per page
B.	Copies for Commercial Use. The departments of the City shall charge $0.50 per page for photo copies of City records and documents being used for commercial purposes. Maps, blueprints and other documents shall be provided at the cost of their reproduction plus handling costs determined by the City.	$0.50 per page
C.	Electronic copies. The City Clerk shall be authorized to charge $5.00 per CD for the reproduction of electronic documents or audio recordings. Documents that are not stored electronically will not be available.	$5.00 per CD
D.	Publications. The City Clerk shall be authorized to charge the actual cost of documents, ordinances, codes and other publications of the City plus 10 percent of the actual costs for handling.	Cost plus 10%
E.	Staff Time. A fee for the substantial use of the City staff time on efforts not involving activities covered by other fees and not specifically at the Council or Manager's direction may be charged to the individual requesting such service. Such activities would include research, writing reports, meetings, presentations, testimony and other similar activities not directly required for the operation of the City. "Substantial use of staff time" for any activity shall be determined by the City and such efforts on behalf of individuals shall be approved by the City Manager. This policy is not to inhibit the free access to information held by the City. It is to compensate the City for the provision of unusual amounts of City resources.	City Manager – $125.00 per hour City Attorney – $125.00 per hour City Engineer- $105.00 per hour Building Official- $85.00 per hour City Clerk – $65.00 per hour All Other Staff- One and one-half times the normal hourly rate for employee providing service.
F.	Recording Fees. In addition to any other fee required by this chapter, a fee of $12.00 plus $0.50 per page over five pages shall be charged for any document filed with the City Clerk, other than subdivision documents. For any other large format documents, the fee shall be $18.00 for the first sheet and $10.00 for each additional sheet.	

[1] Resolution 15-2011

BUILDING DIVISION [1]				
A.	**Building Permit. The fee for issuance of a building permit shall be:**			
	1.	Total valuation from $1.00 to $1000.00:		$47.00
	2.	Total valuation from $1001.00 to $2,000:		$47.00 for the first $1000.00
		a.	Additional fee for each additional $100.00 or fraction thereof to and including $2,000:	$4.00
	3.	Total valuation from $2,001 to $25,000:		$83.00 for the first $2,000
		a.	Additional fee for each additional $1,000 or fraction thereof to and including $25,000:	$16.00
	4.	Total valuation from $25,001 to $50,000:		$466.00 for the first $25,000
		a.	Additional fee for each additional $1,000 or fraction thereof to and including $50,000:	$12.00
	5.	Total valuation from $50,000.01 to $100,000:		$766.00 for the first $50,000
		a.	Additional fee for each additional $1,000 or fraction thereof, to and including $100,000:	$8.30
	6.	Total valuation from $100,001 to $500,000:		$1,181.00 for the first $100,000
		a.	Additional fee for each additional $1,000 or fraction thereof to and including $500,000:	$6.70
	7.	Total valuation from $500,001 to $1,000,000:		$3,862.00 for the first $500,000
		a.	Additional fee for each additional $1,000 or fraction thereof to and including $1,000,000:	$5.70
	8.	Total valuation from $1,000,001 and up:		$6,712.00 for the first $1,000,000
		a.	Additional fee for each additional $1,000 or fraction thereof:	$4.40
B.	**Other Inspections and Fees. The fee for other inspections and fees shall be:**			
	1.	Inspections outside normal business hours (two-hour minimum):		$56.00/hr
	2.	Re-inspection fee assessed under provision of Section 108 of the 2006 International Building Code:		$56.00 each
	3.	Inspections for which no fee is specifically indicated (one-hour minimum):		$56.00/hr

[1] Resolution 16-2011

	4.		Additional plan review required by changed additions or revisions to approved plans (charged to nearest half-hour):	$56.00/hr
	5.		Special investigation, special final inspections, etc.:	$56.00 each
	6.		Housing code compliance inspections (each dwelling unit):	$60.00
C.	**Plan review fee:**			
	1.		Single-family dwelling and miscellaneous buildings:	65 percent of building permit fee
	2.		All other buildings:	65 percent of building permit fee
		a.	Fire sprinkler	65 percent of sprinkler permit fee
		b.	Each use of model for permit:	$40.00
		c.	Each additional exterior design elevation:	$20.00
	3.		Advanced payment account charge (admin. code):	$3.00
D.	**Manufactured Buildings and Recreational Vehicle Spaces.**			
	1.		Residential. The following fees shall apply to residential manufactured housing:	
	2.		Installation permits, fees as established by the Intergovernmental Agreement w/ the State of Arizona Office of Manufactured Housing for manufactured homes, setback & tie down inspection:	$200.00
	3.		Each additional inspection after three:	$50.00
	4.		Manufactured Buildings Permit renewal:	$84.00
	5.		Recreational vehicle site utilities, per space:	
		a.	Water:	$30.00
		b.	Gas:	$30.00
		c.	Sewer:	$30.00
		d.	Septic:	$60.00
		e.	Electrical:	$15.00
		f.	Final utility connection:	$15.00
	6.		Advanced payment accounts:	$3.00
			Factory-Built Buildings. Installation. Fees as established by the State of Arizona, Office of the Department of Manufactured Housing.	Residential FBB: same as manufactured home Commercial FBB: $4.60/LF per story
E.	**Commercial Site Plan Review**			$500 + $50/ acre
F.	**Development Impact Fees**			See Article 16-1

Library Fees [1]

A.	Overdue material for 3 week items	$.05 per day per item not exceed the cost of material
B.	Overdue material for 1 week items	$.50 per day per item not to exceed the cost of material
C.	Replacement costs for lost or damaged items	Price stated in record if available. If not in record, staff will research current replacement cost.
D.	Charges for cleaning books.	Charges range between $1.00 and $3.00 depending on the severity and success of cleaning.
E.	Lost library card	$2.00
F.	Lost barcode	$1.00
G.	Photocopies are black and white only	8 ½ x 11 is $.10 per side 8 ½ x 14 is $.20 per side
H.	Replacement cost of lost/damaged Interlibrary Loan materials	Actual cost, plus any fees charged by the loaning library.
I.		

[1] Resolution 17-2001

Municipal Airport Fees [1]

	Tie-Down Sites	**2016 Daily Fee**	**2016 Monthly Fee**
A.	Small (Single Engine)	$5.00	$45.00
B.	Large (Twin Engine)	$6.00	$65.00
C.	Oversized (Special)	$20.00	$200.00
D.	Jet	$10.00	$90.00
E.	Helicopter	$10.00	$100.00
	Launch Fees	**Fee**	
A.	Balloon Fee	$500.00	
B.	UAV Fee	$500.00 for one day; $300.00 for 2-5 consecutive days; $200.00 for 6 or more consecutive days	

[1] Resolution 31-2015

PLANNING AND ZONING [1]		
A.	**Rezoning**	$1200 plus $40/acre; capped $20K
B.	**Zoning code text amendment**	$1,000
C.	**GDP amend**	$1,500
D.	**Area plans**	$3,500
E.	**Area plan amend**	$500
F.	**Plat, Tentative**	$1500 plus $25/lot
G.	**Plat, Final**	$1000 plus $10/lot
H.	**Plat, modification**	$75/hr
I.	**Plat, third submittal and thereafter**	50% of first each time
J.	**Residential Multi-family complexes**	$2500 plus $25/du; capped $8000
K.	**Com/Ind Dev Plan/Plat**	$2500 plus $50/acre; capped $8000
L.	**Dev Plan Amend**	$75/hr
M.	**Dev Plan 3rd submit**	50% of first each time
N.	**Conditional Use**	$300 Res. $500 Comm.
O.	**Conditional Use-appeal**	$150 Res. $250 Comm.
P.	**Temp Use**	$75 Res. $160 Comm.
Q.	**Board of Adjust**	$300 Res. $500 Comm.
R.	**Annexation**	$750
S.	**Public Notices**	actual cost
T.	**Street Names**	$100
	Address number	$20

[1] Resolution 18-2011

Police Department Fees [1]

A.	Fingerprints	$ 5.00
B.	Reports	$ 1.00 per page $ 2.00 per photo $ 20.00 per CD/DVD
C.	Impounded Vehicles/Check Proof	$75.00 initial + $10.00 per day to a max of $675.00
D.	30 Day Hearing for Impounded Vehicles 28-3513	$ 75.00 for Admin Hearing
E.	Animal Control Adoption Fee	$ 5.00
F.	Animal Control Daily Quarantine	$ 10.00 per day
G.	Animal Control Impoundments	$ 50.00 1st $ 75.00 2nd $ 100.00 3rd & subsequent
H.	Animal Control Euthanasia	$ 20.00 cats $30.00 small dogs 30 lbs. $ 40.00 large dogs
I.	Animal Control Out of Jurisdiction Intake	$15.00 cats $ 25.00 dogs

[1] Resolution 19-2011

PUBLIC WORKS FEE SCHEDULE [1]

CEMETERY

	Cemetery plot	$150/each
	Transfer of Ownership	$10/each transfer

DEVELOPMENT REVIEW FEES

	1.	**Construction Plans(sewer, water, paving and grading)**		
		a.	Base fee:	$350.00
		b.	Additional fee per sheet:	$85.00/sheet
		d.	The fee for the second submittal and each thereafter shall be 50 percent of the first submittal.	
	Grading Plans			
	1.	0.00 to 5.00 acres:		$700.00 plus $20.00/ac.
	2.	5.01 to 20 acres:		$725.00 plus $15.00/ac.
	3.	20.01 to 40 acres:		$825.00 plus $10.00/ac.
	4.	40.01 to 100 acres:		$925.00 plus $8.00/ac.
	5.	Over 100 acres:		$1,225.00 plus $5.00/ac.
	Drainage Report Review			
	1.	The fee schedule for drainage reports shall be:		
		a.	0.00 to 5.00 acres:	$650.00 plus $50.00/ac.
		b.	5.01 to 10 acres:	$725.00 plus $35.00/ac.
		c.	10.01 to 20 acres:	$775.00 plus $30.00/ac.
		d.	20.01 to 50 acres:	$875.00 plus $25.00/ac.
		e.	50.01 to 100 acres:	$1,125.00 plus $20.00/ac.
		f.	Over 100 acres:	$1,225.00 plus $10.00/ac.
	2.	Review of any hydrologic or hydraulic reports or surveys shall be subject to additional fees to cover independent consultant review time as determined necessary and appropriate by the City Engineer.		

[1] Resolution 20-2011

	Landscape Plan – Right-of-Way			
	1.	Base fee:		$200.00
	2.	Additional fee per sheet (excluding cover sheet):		$50.00/sheet
	3.	Second submittal and each thereafter:		$75.00
	Golf Course Plan			
	1.	Base fee:		$350.00
		a.	Additional fee per plan sheet for clearing, grading and earthwork within a proposed or existing golf course:	$25.00/sheet
	2.	Revision review:		$175.00
	3.	For clearing, grading and earthwork within a proposed or existing golf course:		
		a.	Base fee:	$75.00
		b.	Additional fee per grading plan sheet:	$15.00/sheet
	Roadway Improvement Plans & Bridge Plans			
	1.	Base fee:		$350.00
		a.	Additional fee per plan sheet (excluding cover sheets) for the first submittal and revision:	$85.00/sheet
	Improvement Plans			
	1.	Base fee:		$350.00
		a.	Additional fee per plan sheet:	$85.00/sheet
	Traffic Report (3 hour minimum)			$105/hr
	Soils Report (3 hour minimum)			$105/hr

	Environmental Assessment		$85/hr
	Abandonment		$85/hr
	Trust Assurance Agreement and Release		
	1.	Trust Assurance Agreement	Actual expense to City for Recording
	2.	Subdivision Recording	$80 + actual expense to City for recording
	3.	Substitute Assurances.	$250 + actual expense to City for recording
	4.	Release of Assurances (per form)	$80 + actual expense to City for recording

Recreation Fees [1, 2, 3, 4]

A.	Swimming General Admission includes wading pools.	13 and up $1.25 12 and under $.50
B.	Adult Swim 18 and up.	$1.25
C.	Swim Lessons per two week session; per participant ages 5 and up or as skill level permits.	$20.00
D.	Swim Lessons infant and toddler per four week session; per participant age infant to 4 years old or as skill level permits.	$10.00
E.	Seasonal Swimming Passes – Summer season only, from opening day to closing day.	18 and up - $30.00 17 – 13 years old - $20.00 12 and under - $10.00 Family - $40.00 2 Adult/2 Children each additional child same family $6.00.
F.	Pool Rental Rates – Pool rental for private group use and non- profit private use. Minimum two hour rental plus an additional cleaning deposit. Lifeguards are mandatory and included in the rental fee. Refund - Cancellations from two (2) weeks (14 days) prior to the reservation date will receive a full refund. Cancellations made no less than two (2) days prior to the reservation date refunds will be given at 50% of the rental rate. Refunds will not be given for cancellations made less than two (2) days prior to the reservation date or after the reservation date has occurred. The afore mentioned applies to rescheduling reservation dates. A refund will be given in the event of inclement weather in the following mannor: Reservations cancelled by City staff one hour or less prior to the start time of the reservation will be given at 100 percent of the rental fee. Reservations cancelled by City staff thirty minutes or more after the start time of the event will be at a rate of fifty percent of the total rental fee.	$50.00 an hour $50.00 cleaning deposit
G.	Recreational programs and camps as scheduled by the Recreation Coordinator or designee will be determined on a per camp/program;	Program(s) Current $10.00 Parade - $5.00 Vendors 1 day event(s):

[1] Resolution 21-2011
[2] Resolution 34-2011
[3] Resolution 5-2013
[4] Resolution 26-2014

	per participant basis as the City Manager and Recreation Coordinator find necessary to adjust based on program expenses. Certain activities and events sponsored by the Recreation Department are excluded from spectator fees as determined by the Recreation Coordinator or designee.	Food 10 x 20 - $45.00 Non-electric 10 x 10 - $20.00 Electric 10 x 10 - $25.00 Vendors 2 - 3 day event(s): Food 10 x 20 - $90.00 Electric 10 x 10 - $75.00 Non-electric 10 x 10 - $60.00
H.	Community Center Rentals charged at a single use rate plus a cleaning deposit. Refund Policy. Cancellations from thirty (30) days prior to the reservation date will receive a full refund. Cancellations made no less than fourteen (14) days prior to the reservation date refunds will be given at 50% of the rental rate. Refunds will not be given for cancellations made less than two (2) days prior to the reservation date or after the reservation date has occurred. The afore mentioned applies to rescheduling reservation dates.	Non-Profit - $20.00 Private Organization - $75.00 Individuals using facility for personal use - $75.00 Cleaning Deposit - $100.00
I.	Ramada Fees – Each Ramada will be available for use in four hour time blocks as determined by the Recreation Coordinator, set up and cleanup will be done within the parameter of each four hour time block and is the sole responsibility of the renter. Ramada fees will be charged per four hour time block of reservation; any reservation or use less than four hours will be the equivalent of a four hour time block. Fees to include use of electric and water only where available at designated Ramada's. Refunds - Cancellations from two (2) weeks (14 days) prior to the reservation date will receive a full refund. Cancellations made no less than two (2) days prior to the reservation date refunds will be given at 50% of the rental rate. Refunds will not be given for cancellations made less than two (2) days prior to the reservation date or after the reservation date has occurred. The afore mentioned applies to rescheduling reservation dates.	Lions Park Ramada one - $25.00 Lions Park Ramada two - $15.00 Lions Park Ramada three - $15.00 Lions Park Tin Ramada - $5.00 Pool Ramada one - $5.00 Pool Ramada two - $5.00
J.	Tournaments and private use of ball fields will be charged a daily rate; per field. Refunds - Cancellations from two weeks (14 days) prior to the reservation date will receive a full refund. Cancellations made no less than two (2) days prior to the reservation date refunds will be given at 50% of the rental rate. Refunds will not be given for cancellations made less than two (2) days prior to the reservation date or after the reservation date has occurred. The afore mentioned applies to	Little League Field - 45.00 Sand Lot - $65.00 Soccer Field - $65.00 Softball Field - $45.00

	rescheduling reservation dates.	
K.	The portion of the City's light costs to allocate to the leagues will be determined each year by City Council. League use program and service fees shall be charged at sixty percent of the City's hourly electric light costs for the previous calendar year; per field. Usage per league shall be based on its previous year's light usage. A new league's first year usage will be based on the league with the highest usage in the previous year. Each league will be allowed one day of tournament play during the league's regular season as established in (Chapter 11). Leagues requiring more than one tournament play during the season will be charged the daily field rental rate; per day. Leagues requesting use of fields during the off season (Chapter 11) shall be charged the hourly electric light rate per hour; per field; per day of use at sixty percent of the City's hourly electric light cost. City Council may adjust the rate of recovery as recommended by the City Manager. The hourly light rate per field may be increased by the City Manager as the light costs to the City increase; and Council increases the rate of recovery. Fees will be paid by the league officiator in one lump sum to the Recreation Coordinator or designee at the beginning of each season. The Recreation Coordinator will determine the City's recovery cost from the leagues using the following formula: Field = HR x PR = RL HR = Hourly Rate Per Field PR = Percent Recovered by City RL = Hourly Light Rate Allocated to League	Softball Field - $6.75 x 60% = $4.05 Little League Field – $4.05 x 60% = $2.43 Soccer Field – $9.98 x 60% = $5.99 Sand Lot – $7.40 x 60% = $4.44

CHAPTER 17 FLOOD DAMAGE PREVENTION[1]

ARTICLE 17-1 INTRODUCTION

17-1-1 Statutory Authorization
17-1-2 Findings of Fact
17-1-3 Statement of Purpose
17-1-4 Methods of Reducing Flood Losses

Section 17-1 Statutory Authorization

The Legislature of the State of Arizona has in A.R.S. ' 48-3610 enabled the city to adopt regulations in conformance with A.R.S. ' 48-3609 designed to promote the public health, safety and general welfare of its citizenry.

Section 17-1-2 Findings of Fact

A. The flood hazard areas of Benson are subject to periodic inundation which results 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.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage, also contribute to the flood loss.

Section 17-1-3 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:

A. To protect human life and health;

B. To minimize expenditure of public money for costly flood control projects;

C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. To minimize prolonged business interruptions;

E. 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;

[1]Established by Ordinance No. 305

F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;

G. To insure that potential buyers are notified that property is in an area of special flood hazard;

H. To insure that those who occupy the areas of special flood hazard assume responsibility for their actions and

I. To maintain eligibility for State disaster relief.

Section 17-1-4 Methods of Reducing Flood Losses

In order to accomplish its purposes, this chapter includes methods and provisions for:

A. 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;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging and other development which may increase flood damage and,

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

ARTICLE 17-2 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.

A. "Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

B. "Area of shallow flooding" means a designated AO Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate and velocity flow may be evident.

C. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

D. "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building support or foundation system.

E. "Critical feature" means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.

F. "Development" means 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 located within the area of special flood hazard.

G. "Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to states.

H. "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of flood water,

2. The unusual and rapid accumulation or runoff of surface waters from any source, and/or

3. 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.

I. "Flood Boundary Floodway Map" means the official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

J. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

K. "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the Flood Boundary Floodway Map, and the water surface elevation of the base flood.

L. "Floodplain or flood-zone area" means any land area susceptible to being inundated by water from any source (see definition of Aflooding").

M. "Floodplain administrator" means the zoning administrator who is hereby authorized by the floodplain board to administer the provisions of this chapter.

N. "Floodplain board" means the city council at such times as they are engaged in the enforcement of this chapter.

O. "Floodplain management" means 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.

P. "Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances and erosion control ordinances) and other applications of police power. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Q. "Flood protection system" means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

R. "Flood proofing" means any combination of structural and nonstructural 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.

S. "Flood-related erosion" means 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 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.

T. "Floodway" means the channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation more than one foot.

U. "Functionally dependent use" means 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 facilities, 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.

V. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

W. "Levee" means a man-made structure,usually an earthen embankment, 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.

X. "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Y. "Lowest floor"' means the lowest floor of the lowest enclosed area (including basement). 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.

Z. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

AA. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

BB. "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a communitiy's Flood Insurance Rate Map are referenced.

CC. "New construction" means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.

DD. "Person" means an individual or his agent, firm, partnership, associate or corporation, or agent of the aforementioned group, or this state or its agencies or political subdivision.

EE. "Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

FF. "Program deficiency" means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the NFIP standards.

GG. "Regulatory flood elevation" means an elevation one foot above the base flood elevation.

HH. "Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

II. "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

JJ. "Special flood hazard area" means a area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, A0, Al-30, AE, A99 or AH.

KK. "Start of construction" includes substantial improvement, and means, the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction 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. "structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

LL. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure, either before the improvement or repair is started, or if the structure has been damaged,and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic places.

MM. "Variance" means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

NN. "Violation" means 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 such time as that documentation is provided.

ARTICLE 17-3 GENERAL PROVISIONS

17-3-1 Lands to which this Chapter Applies
17-3-2 Basis for Establishing the Areas of Special Flood Hazard
17-3-3 Compliance
17-3-4 Abrogation and Greater Restrictions
17-3-5 Interpretation
17-3-6 Warning and Disclaimer of Liability
17-3-7 Statutory Exemptions
17-3-8 Declaration of Public Nuisance
17-3-9 Abatement of Violations
17-3-10 Unlawful Acts
17-3-11 Severability

Section 17-3-1 Lands to Which this Chapter Applies

This chapter shall apply to all areas of special flood hazards within the corporate limits of the city.

FLOOD DAMAGE PREVENTION

Section 17-3-2 Basis For Establishing The Areas of Special Flood Hazard

The area of special flood hazard identified by the Federal Insurance Administration (FIA) in a scientific and engineering report entitled "The Flood Insurance Study for Benson" with an accompanying Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at city hall. The Flood Insurance Study is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the floodplain board by the floodplain administrator.

Section 17-3-3 Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.

Section 17-3-4 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 chapter, ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 17-3-5 Interpretation

In the interpretation and application of this chapter, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and,

C. Deemed neither to limit nor repeal any other powers granted under state statutes.

Section 17-3-6 Warning and 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 areas of special flood hazards 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 city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Section 17-3-7 Statutory Exemptions

A. In accordance with A.R.S. ' 48-3609, nothing in this chapter shall:

1. Affect existing uses of property or the right to continuation of the use under conditions which existed on April 1, 1988.

2. Affect repair or alteration of property for the purposes for which such property was used on April 1, 1988; providing such repair or alteration does not exceed fifty percent of the value of the property prior to the repair or alteration; and provided the repair or alteration does not decrease the carrying capacity of the watercourse.

3. Affect or apply to facilities constructed or installed pursuant to a certificate of environmental compatibility issued under the authority of A.R.S. ' Title 40, Chapter 2, Article 6.2.

B. 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 intersection a watercourse.

2. The construction of storage dams for watering livestock or wildlife, structures on banks of a creek, stream, river, wash, arroyo or other watercourse to prevent erosion of or damage to adjoining land or dams for the conservation flood waters as permitted by A.R.S. ' Title 48, Chapter 21.

3. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does no exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in any watercourse.

4. Any flood control district or other political subdivision from exercising powers granted to it under A.R.S. ' Title 45, Chapter 21.

C. Before any construction authorized by subsection B of this section may begin, the responsible person must submit plans for the construction to the board for review and comment.

D. These exemptions do not preclude any person from liability if that person=s actions increase flood hazards to any other person or property.

Section 17-3-8 Declaration of Public Nuisance

Every new structure, building, fill, excavation or development located or maintained within any area of special flood hazard after September 15, 1984 in violation of this chapter is a public nuisance per se.

Section 17-3-9 Abatement of Violations

Within thirty 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 said violation.

A. Within 30 days of receipt of this report, the floodplain board shall either:

1. Take any necessary action to effect the abatement of such violation; or

2. Issue a variance to this chapter in accordance with the provisions of Article 17-6; or

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 thirty days of such order, and he shall submit an amended report to the floodplain board within twenty days. At their next regularly scheduled public meeting, the floodplain board shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Article 17-6.

B. If the owner of the property refuses to comply, the floodplain administrator shall submit to the administrator of the Federal Insurance Administration and Arizona Department of Water Resources 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 National Flood Insurance Act of 1968 as amended.

Section 17-3-10 Unlawful Acts

A. It is unlawful for any person to divert, retard or obstruct the flow of waters in any watercourse whenever it creates a hazard to life or property without securing the written authorization of the floodplain board.

B. Any person violating the provisions of this chapter shall be guilty of a class 2 misdemeanor.

Section 17-3-11 Severability

This chapter and the various parts thereof 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.

FLOOD DAMAGE PREVENTION

ARTICLE 17-4 ADMINISTRATION

17-4-1 Establishment of Development Permit
17-4-2 Duties and Responsibilities of the Floodplain Administrator

Section 17-4-1 Establishment of Development Permit

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 17-3-2. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

A. Proposed elevation in relation to mean sea level, of the lowest habitable floor (including basement) of all structures; in Zone AO elevation of existing grade and proposed elevation of lowest habitable floor of all structures.

B. Proposed elevation in relation to mean sea level to which any structure will be floodproofed;

C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 17-5-1 (C)(3) and,

D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

Section 17-4-2 Duties and Responsibilities of the Floodplain Administrator

Duties of the Floodplain Administrator shall include, but not be limited to:

A. Review all development permits to determine that:

1. The permit requirements of this chapter have been satisfied;

2. All other required state and federal permits have been obtained;

3. The site is reasonably safe from flooding and

4. The proposed development does not adversely affect the carrying capacity of the floodway. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 17-3-2, 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 Article 17-5. Any such information shall be submitted to the floodplain board for adoption.

C. Obtain and maintain for public inspection and make available as needed for flood insurance policies:

1. The certified elevation required in Section 17-5-1(C)(1);

2. The certification required in Section 17-5-1(C)(2);

3. The floodproofing certification required in Section 17-5-1(C)(3) and

4. The certified elevation required in Section 17-5-4(B).

D. Whenever a watercourse is to be altered or relocated:

1. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;

2. Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

E. Within one hundred twenty 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.

F. Advise the Flood Control District of Cochise County and any adjacent jurisdiction having responsibility for floodplain management in writing and provide a copy of development plan of all applications for floodplain use permits or variances to develop land in a floodplain or floodway within one mile of the corporate limits of the city. Also, advise the Flood Control District of Cochise County 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 District's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the District no later than three working days after having been received by the floodplain administrator.

G. 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 17-6-1.

H. Take actions on violations of this chapter as required in Section 17-3-9.

FLOOD DAMAGE PREVENTION

ARTICLE 17-5 PROVISIONS FOR FLOOD HAZARD REDUCTION

17-5-1 Standards of Construction
17-5-2 Standards for Storage of Materials and Equipment
17-5-3 Standards for Utilities
17-5-4 Standards for Subdivisions
17-5-5 Standards for Manufactured Homes
17-5-6 Floodways

Section 17-5-1 Standards of Construction

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

2. All manufactured homes shall meet the anchoring standards of Section 17-5-5(B).

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Elevation and Floodproofing.

1. New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the regulatory flood elevation. Nonresidential structures may meet the standards in Section 17-5-1(C)(3). Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.

2. New construction and substantial improvement of any structure in Zone AO shall have the lowest floor, including basement, higher than the highest adjacent grade at least one foot higher than the depth number on the FIRM, or at least two feet if no depth number is specified. Non-residential structures may meet the standards in Section 17-5-1(C). Upon completion of the structure a registered professional engineer shall cerfify to the floodplain administrator that the elevation of the structure meets this standard.

3. Nonresidential construction shall either be elevated in conformance with Section 17-5-1(C)(1) or (2) or together with attendant utility and sanitary facilities:
   a. Be floodproofed so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator.

4. Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that 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 a registered professional engineer or architect to meet or exceed the following minimum criteria:

a. A minimum of two openings 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.

b. The bottom of all openings, shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

5. Within Zones AH and AO, adequate drainage paths around structures on slopes shall be required to guide flood waters around and away from proposed structures.

6. Manufactured homes shall meet the above standards and also the standards in Section 17-5-5.

Section 17-5-2 Standards for Storage of Materials and Equipment

A. 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.

B. 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.

Section 17-5-3 Standards for Utilities

A. All new and 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 floodwaters.

B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

C. Waste disposal systems shall not be installed wholly or partially in a floodway.

Section 17-5-4 Standards for Subdivisions

A. All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.

B. All final subdivision plans will provide the elevation of proposed structure(s) and pads. If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.

C. All subdivision proposals shall be consistent with the need to minimize flood damage. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

Section 17-5-5 Standards for Manufactured Homes

All new and replacement manufactured homes and additions to manufactured homes shall:

A. Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at the regulatory flood elevation; and

B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

Section 17-5-6 Floodways

Located within areas of special flood hazard established in Section 17-3-2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. All new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Article 17-5.

ARTICLE 17-6 VARIANCE PROCEDURE

17-6-1 Appeal Board
17-6-2 Conditions for Variances

Section 17-6-1 Appeal Board

A. The floodplain board of the city shall hear and decide appeals and requests for variances from the requirements of this chapter.

B. 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.

C. In passing upon such applications, the floodplain board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and;

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger of life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

7. The compatibility of the proposed use with existing and anticipated development;

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in time of flood for ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and

11. 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 and water systems, and streets and bridges

D. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the requirements in 17-6-1(C)(1) through (11) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

E. Upon consideration of the factors of subsections 17-6-1(A) through (D) and purposes of this chapter, the floodplain board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

F. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

Section 17-6-2 Conditions for Variances

A. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

C. Variances shall only be issued upon a determination that variance is the minimum necessary, considering the flood hazard, to afford relief.

D. Variances shall only be issued upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

3. 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 Article 17-2 of this chapter in the definition of AFunctionally Dependent Use."); and

4. A determination that the granting of a 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.

E. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of State land pursuant to the flood relocation and land exchange program provided for by the A.R.S. ' Title 26, Chapter 2, Article 2. A copy of the notice shall be recorded by the Floodplain Board in the office of the Cochise County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

CHAPTER 18 BOARDS, COMMISSIONS AND COMMITTEES

ARTICLE 18-1 RESERVED FOR FUTURE USE[1, 2]

ARTICLE 18-2 SENIOR CITIZEN ADVISORY BOARD[3]

A. There shall be a seven member Senior Citizen Advisory Board for the City of Benson and all of said members shall be appointed by the Council and serve at the pleasure of the Council.

B. The Senior Citizen Advisory Board shall have the power and duty to:

1. Act in advisory capacity to the Council and the City Manager in matters pertaining to Senior Citizens and the Senior Center Building.

2. Consider provisions of the annual budget for Senior Citizen purposes during the process of the preparation of the budget and make recommendations with respect thereto to the City Council.

3. Assist in the planning of a Senior Citizen program for the inhabitants of the City.

4. Perform such other duties not inconsistent with this Article as may be requested by the City Council.

C. No member of the Senior Citizen Advisory Board shall be financially interested, directly or indirectly, in any contract, sale or transaction to which the City is a party and which comes before the Board unless said interest is fully disclosed in writing to the Council and the Board prior to any action being taken on the matter.

D. Appointments to the Board shall be made by the Mayor and the City Council and said appointees shall serve at the pleasure of the Council who shall retain the right to rescind said appointment at any time upon motion, duly seconded, at any regular Council meeting. Not less than five members of the Board shall be residents of the City and a majority of Board members shall be at least 55 years of age at the time of appointment. Appointments, except interim appointments, shall be for a term of two years and all appointments and terms established under Resolution 38-81 shall continue in full force and effect subject to the provisions of this Article.

E. As soon as practicable following the first day of January of every year, the Board shall organize by electing one of its members to serve as presiding officer at the pleasure of the Board. The Board shall hold such regular and special meetings as may be required. All proceedings shall be open to the public.

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[1]Resolution 26-88

[2]Ordinance 521

[3]Resolution 39-86

F. The members of the Board shall serve without compensation for their services as such but may receive reimbursement for necessary travel and other expenses incurred on official duty when such expenditures have received prior authorization by the Council or City Manager.

G. Any vacancies on the Board shall be filled by appointment by the Mayor and Council. Upon a vacancy occurring during an unexpired portion of a term, the appointment to fill such vacancy shall be an interim appointment for the unexpired portion of such term. The office of a Board member may become vacant, if so declared by the Mayor and Council, under the following conditions:

1. If a member is absent from three consecutive regular meetings of the Board without first having obtained permission from the presiding officer of the Board; or,

2. If a member is convicted of a crime involving moral turpitude; or,

3. If a member is a resident of the City when appointed, but later loses his status as a resident of the City; or,

4. If a member is removed by a majority vote of the Council as provided in this Article.

H. The Mayor, with the consent of the Council, may from time to time appoint ex-officio members to the Board who shall serve at the pleasure of the Mayor and Council. Ex-officio members shall not be entitled to vote on any matter brought before the Board.

ARTICLE 18-3 HISTORIC PRESERVATION COMMISSION[1]

18-3-1 Commission Established; Membership; Responsibilities
18-3-2 Designation of Landmarks or Historic Districts

Section 18-3-1 Commission Established; Membership; Responsibilities

A. There is hereby created a commission to be known as the City of Benson Historic Preservation Commission.

B. The commission shall consist of nine (9) members to be appointed, to the extent available in the community, by the City Council as follows:

Preferably at least one shall be an historian;
Preferably at least one shall be a licensed real estate broker;
Preferably at least one shall be a resident of an historic district;
Preferably at least one shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment or volunteer activity in the field of historic preservation, or other serious interest in the field;

[1]Ordinance 243, 336 and 441

and all members, including at large members, shall have a known interest in historic preservation and architectural development within the City of Benson.

C. Commission members shall serve a term of three years, and the terms shall be staggered so that at least three seats are up for reappointment each year.

D. The Chairman and Vice-Chairman of the Commission shall be elected by and from among the members of the Commission.

E. The responsibilities of the Commission shall include:

1. Promulgation of rules and regulations as necessary for the conduct of its business.

2. Adoption of criteria for the identification of significant historic, architectural and cultural landmarks and for the delineation of historic districts.

3. Conduct of surveys of significant historic, architectural and cultural landmarks and historic districts within the City.

4. Recommendation to the City Council of Benson the designation of identified structures or resources as landmarks and historic districts.

5. Acceptance on behalf of the City government of the donation of facade easements and development rights; the making of recommendations to the City Council concerning the acquisition of facade easement or other interests in real property as necessary to carry out the purposes of this Article.

6. Increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs.

7. Making recommendations to the City Council concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the city.

8. Recommending acquisition of a landmark structure by the City where its preservation is essential to the purposes of this Article and where private preservation is not feasible.

9. Approval or disapproval of applications for certificates of appropriateness pursuant to this Article.

F. The Commission shall meet at least monthly, but meetings may be held at any time on the written request of any two of the commission members or on the call of the Chairman or the Mayor.

G. A quorum for the transaction of business shall consist of five of the Commission's members, but no less than two thirds of the membership may grant or deny a Certificate of Appropriateness.

Section 18-3-2 Designation of Landmarks or Historic Districts

A. The Commission may recommend to the City Council that an individual property be designated as a landmark if it:

1. Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation; or

2. Is identified with historic personages; or

3. Embodies the distinguishing characteristics of an architectural style; or

4. Is the work of a designer whose work has significantly influenced an age; or

5. Because of a unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood,

6. and the owner(s) of the property concur with the designation.

B. The Commission may recommend to the City Council that a group of properties be designated as an historic district if it:

1. Contains several properties which meet one or more of the criteria for designation of a landmark; and

2. By reason of possessing such qualities, it constitutes a distinct section of the City, and

3. The owner(s) of the properties concur with the designation.

The boundaries of each historic district designated henceforth shall be specified in detail and shall be filed, in writing, in the City Clerk's Office for public inspection.

C. Notice of a proposed designation shall be sent by registered mail to the owner(s) of the property proposed for designation, either by the Commission or by the owner, describing the property proposed and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general circulation at least fifteen days prior to the date of the public hearing. Once the Commission has issued notice of a proposed designation, no building permits shall be issued by the building inspector until the Commission has made its decision.

ARTICLE 18-4 PARKS AND RECREATION COMMISSION

18-4-1 Established
18-4-2 Powers and Duties
18-4-3 Membership
18-4-4 Conflicts of Interest
18-4-5 Organization; Meetings
18-4-6 Compensation
18-4-7 Removal from Office; Filling of Vacancies
18-4-8 Ex-Officio Members

Section 18-4-1 Established

There shall be a parks and recreation commission for the city which shall consist of seven members.

Section 18-4-2 Powers and Duties

The parks and recreation commission shall have the powers and duties to:

A. Act in an advisory capacity to the council in all matters pertaining to parks and recreation.

B. Consider provisions of the annual budget for park and recreation purposes during the process of the preparation of the budget and make recommendations with respect thereto to the council.

C. Assist in the planning of a recreational program for the citizens of the city; promote and stimulate public interest therein and, to that end, solicit to the fullest extent possible the cooperation of school authorities and other public and private agencies interested therein.

D. Advise the council with respect to the acceptance of money, personal property or real estate donated or offered to the city for park or recreational purposes.

E. Perform such other duties not inconsistent with this chapter as may be requested by the council.

Section 18-4-3 Membership

Appointments to the parks and recreation commission shall be made by the mayor with the consent of the council from among residents of the city. At all times four members of the commission shall be qualified electors of the city. Appointments shall be for a term of three years. Members first appointed shall so classify themselves by agreement or lot so that each succeeding August 1, the term of at least two members shall expire.

Section 18-4-4 Conflicts of Interest

No member of the parks and recreation commission shall be financially interested, directly or indirectly, in any contract, sale or transaction to which the city is a party and which comes before the commission.

Section 18-4-5 Organization; Meetings

A. As soon as practicable following the first day of August of each year, the commission shall organize by electing one of its members to serve as the presiding officer at the pleasure of the commission. The commission shall hold such regular and special meetings as may be required and all proceedings shall be open to the public.

B. The affirmative vote of a majority of the commission shall be necessary for it to take any action except to adjourn.

C. A member of the commission shall serve as secretary for the recording of minutes for the commission and shall keep a record of its proceedings and transactions. The commission may prescribe rules and regulations for the conduct of its internal affairs, which shall be consistent with this chapter, and copies of which shall be kept on file in the office of the clerk, where they shall be available for public inspection.

Section 18-4-6 Compensation

The members of the commission shall serve without compensation for their services as such but may receive reimbursement for necessary travel and other expenses incurred on official duty when such expenditures have received prior authorization from the council.

Section 18-4-7 Removal from Office; Filling of Vacancies

A. The council may remove any member of the parks and recreation commission from office for cause.

B. The office of commission member shall become vacant and shall be so declared by the council, under the following conditions:

1. If a member is absent from three consecutive regular meetings of the commission without first having obtained permission from the commission, said permission to be expressed in the minutes of the commission meetings.

2. If a member is convicted of a crime involving moral turpitude.

3. If a member is a qualified elector of the city when appointed, but later loses his status as a qualified elector of the city.

C. Any vacancies in the parks and recreation commission, from whatever cause arising, shall be filled by appointment by the mayor and council within sixty days. Upon a vacancy occurring, leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of said term.

Section 18-4-8 Ex-Officio Members

The mayor, with the consent of the council, may from time to time appoint ex-officio members to the commission. Such members shall serve at the pleasure of the mayor and council. Ex-officio members shall not be entitled to vote on any matter brought before the commission.

ARTICLE 18-5 LIBRARY BOARD

18-5-1 Library Board
18-5-2 Duties and Responsibilities of Board

Section 18-5-1 Library Board[1]

A. There is hereby created a library board to consist of seven members to be appointed by the city council. Four library board members shall be residents of the city. Three board members may reside outside the city, but within the service area of the library.

B. The terms of said board members shall be for three years and shall commence on the first day of August of each year and end on the thirty-first day of July three years thereafter, or until their successors are duly appointed and qualified. Such terms shall be so staggered that the terms of no more than two members shall conclude in any given year.

Section 18-5-2 Duties and Responsibilities of Board

The library board shall advise the mayor and city council and the city manager as to the following:

A. Qualifications of the librarian.

B. Recommend a prospective librarian to be employed whenever the position is vacant;

C. In cooperation with the librarian, present a capital and operating budget for the city manager=s use in preparing the proposed annual city budget;

D. Assist the librarian in preparing library employee job descriptions;

E. Recommend library hours and staffing requirements to the city manager;

F. Recommend a comprehensive collection policy and suggested enforcement action;

G. Do any and all things necessary or desirable for the promotion of the library and encouragement of its use by the community.

[1]Ordinances 318 and 372

BOARDS, COMMISSIONS AND COMMITTEES

ARTICLE 18-6 [1]

ARTICLE 18-7 [2, 3]

[1]Ordinance 509, 539, 568, 580
[2]Ordinance 571
[3]Ordinance 575

CHAPTER 19 AIRPORT OPERATING REGULATIONS[1]

Article 19-1 GENERAL PROVISIONS AND DEFINITIONS[2]

19-1-1 Definitions
19-1-2 Compliance with Federal Aviation Act and Federal Aviation Regulations
19-1-3 Compliance with Applicable Rules and Laws
19-1-4 Compliance with Rules by Flight Instructors and Students
19-1-5 Duties and Powers of the City and the City Council
19-1-6 Hours of Airport Operation
19-1-7 Interference with Airport Use Prohibited
19-1-8 Entrance on Restricted Areas Prohibited
19-1-9 Animals at Airport
19-1-10 Liability for Airport Use
19-1-11 Use of Airport for Commercial Activities
19-1-12 Lease or Permit Required to Conduct Commercial Business
19-1-13 Flying Clubs
19-1-14 Reporting of Accidents
19-1-15 Disposal of Garbage
19-1-16 Damage to Airport Property
19-1-17 Commercial Photography and Filming
19-1-18 Religious, Charitable and Political Activities
19-1-19 Financial Responsibility
19-1-20 Fees, Rates and Charges

Section 19-1-1 Definitions

As used herein, unless the context clearly indicates otherwise, the following definitions shall apply:

A. "Aircraft" means and includes any and all contrivances now or hereinafter used for navigation or flight in air or space, including but not limited to: airplanes, airships, dirigibles, free balloons, helicopters, gyro planes, gliders, ultra-lights, amphibians, and seaplanes.

B. "Airman" means an individual who engages, as the person in command or as pilot, mechanic or member of the crew, in the navigation of aircraft, or an individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft, aircraft powerplants, propellers or associated accessories.

C. "Airport" means the Benson Municipal Airport.

D. "Airport operations area" means that portion of the airport designated and used for landing, taking off or surface maneuvering of aircraft.

E. "Based aircraft" means any aircraft assigned a reserved parking space, tie down or hangar space at the airport, whether or not such assignment is made under written agreement with the City of Benson and regardless of the length of time.

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[1]Ordinance 450

[2]Ordinance 521

F. "City" means the political subdivision known as the City of Benson, Arizona, its elected Mayor and Council, authorized appointed officer or assigned agent.

G. "Council" means the City Council of Benson, Arizona.

H. "FAA" means the Federal Aviation Administration of the United States of America, as defined in the Federal Aviation Act of 1958, or any subsequent and successor to that agency created for the control and operation of aviation and its related functions.

I. "Fire Marshal" means the Fire Marshal of Benson or his/her designee.

J. "Fixed Base Operator" means a person or entity that has obtained a lease or permit to operate as a commercial general aviation concessionaire at the airport.

K. "Owner" means the registered or legal owner of an aircraft according to the records of the Federal Aviation Administration or the Aeronautics Division of ADOT.

L. "Person" means individuals, firms, companies, corporations, public agencies and any other person.

M. "Restricted area" means any portion of any airport not intended for use by the general public and so posted by the City.

N. “Rules and regulations" refer to the provisions of this Chapter contained herein and other notices that may be posted at the airport.

O. "Vehicle" means a device in, upon or by which any person or property is or may be propelled on the ground and includes, but is not limited to, automobiles, motorcycles, trucks, off-road vehicles, tractors, bicycles, buses and trailers.

Section 19-1-2 Compliance with Federal Aviation Act and Federal Aviation Regulations.

A. The Federal Aviation Act of 1958 authorizes the Administrator of the Federal Aviation Administration to prescribe air traffic rules and regulations governing the flight of aircraft. The Federal Aviation Regulations promulgated by the Administrator therefore cover all flights on or in the vicinity of the Benson Municipal Airport.

B. Aircraft operators, pilots, airmen and other users of the airport are required to be familiar with and comply with the Federal Aviation Regulations and, in particular, Part 91, General Operating and Flight rules, of said regulations.

C. All aeronautical activities at the airport and all flying of aircraft departing from, over-flying or arriving at said airport, shall be conducted in conformity with the Federal Aviation Regulations.

Section 19-1-3 Compliance with Applicable Rules and Laws

All persons using the airport shall be subject to, and governed by, the rules and regulations contained herein, and all other applicable provisions of City Ordinances and Resolutions, County Ordinances and Resolutions, State and Federal laws, and the Federal Aviation Regulations.

Section 19-1-4 Compliance with Rules by Flight Instructors and Students

All based flight instructors shall inform their students of the rules and regulations contained herein. All flight instructors shall be responsible for the conduct of students under their direction during dual instruction.

Section 19-1-5 Duties and Powers of the City and the City Council

A. The rules and regulations contained herein apply specifically to the airport and are supplemental to the Federal Aviation Regulations.

1. The City shall at all times have authority to take such actions as maybe deemed necessary to safeguard the public in attendance at the airport. Every fixed base operator, pilot, airman, mechanic or other person employed on or using the airport shall cooperate with the manager to enforce these rules and regulations and to see that all persons upon the premises use care to prevent injury to persons or damage to public or private property.

2. The City may suspend or restrict any or all operations at the airport whenever such action is deemed necessary in the interest of safety.

3. The City may suspend, as a means of safeguarding the airport and the public, the privileges of the airport and its facilities to any person refusing to comply with these rules and regulations.

4. The City shall have authority to restrict airport operations to such portion(s) of the airport as it may deem necessary or desirable. Any part of the airport temporarily unsafe for aircraft operation, which is not available for normal use, shall be clearly marked in accordance with recommendations of the FAA.

5. The City may issue use permits for use of the airport as authorized herein.

6. The City in any contingency or emergency not specifically covered by these rules and regulations is authorized to make such decisions as to him/her may seem proper.

B. Benson City Council - As the owner of the Airport, the Benson City Council will approve/disapprove all grant applications, all improvements to the airport, all ground leases and all site plans.

Section 19-1-6 Hours of Airport Operation

The airport shall be open for public use at all hours of the day and night, subject to these rules and regulations and subject to the condition of the landing area, as may be determined by the City.

Section 19-1-7 Interference with Airport Use Prohibited

No person shall unreasonably obstruct, impair or interfere with the use of the airport by another person, or unreasonably obstruct, impair or interfere with the passage and safe, orderly and efficient use of the airport by any other person, vehicle or aircraft.

Section 19-1-8 Entrance on Restricted Areas Prohibited

No person shall enter any portion of the airport designated a restricted area unless authorized to do so by the City.

Section 19-1-9 Animals at Airport

No person shall enter any airport operations area, airport terminal or landing area with any animal, excepting a guide dog for the blind, hearing-impaired or a leased animal taken to and from an aircraft. Animals may be permitted in other areas of the airport if restrained by a leash or confined in such a manner as to be under control at all times.

Section 19-1-10 Liability for Airport Use

A. The City, its agents or employees operating the airport assume no responsibility for damage to property stored thereon or property thereon of persons using the airport facilities, by reason of fire, theft, vandalism, windstorm, flood, earthquake or collision, nor does it assume any liability by reason of injury to persons while on the airport or while using the facilities of same.

B. The privilege of using the airport and its facilities shall be conditioned upon the assumption of full responsibility and risk by the user thereof, and such user shall release, hold harmless and indemnify the city, its officers, agents and employees, against claims arising from use of the airport.

Section 19-1-11 Use of Airport for Commercial Activities

Subject to applicable orders, certificates or permits of the FAA or their successors, no person shall use the airport or any portion thereof, or any of its improvements or facilities, for revenue-producing commercial business or activities without compliance with the requirements of this chapter and other provisions of the Benson City Municipal Code. Such business or commercial activities shall include, but not be limited to any business for the operation, service or repair of aircraft; any solicitation of data or statistical information; peddling of any goods, merchandise or food; any advertisements or promotion of goods or services; any offer to sell, rent or lease goods or services directed to the public. An aircraft owner, however, is permitted to advertise and sell his/her aircraft on a noncommercial basis.

AIRPORT OPERATING REGULATIONS

Section 19-1-12 Lease or Permit Required to Conduct Commercial Business

A. No commercial business shall be conducted on the airport without the operator thereof having a current lease which has been approved by the City Council. Additionally all commercial businesses must obtain a city business license.

1. Such lease or permit shall define the areas of airport land and facilities to be used by the tenant or operator.

2. Such lease or permit shall stipulate services to be rendered and that the operation may charge reasonable fees for such services.

B. It shall be unlawful for any person not so authorized by lease or permit to engage in any commercial business at the airport including the operation, service or repair of aircraft for hire on airport premises.

Section 19-1-13 Flying Clubs

A. A flying club must be organized as a nonprofit corporation under the laws of the state or of the United States, or as a duly organized and functioning, unincorporated association for the purpose of fostering flying for pleasure, developing skills in aeronautics, including pilotage, navigation and developing public awareness and appreciation of aviation requirements and techniques in the field of aviation and aeronautics.

B. A current roster of officers and directors must be filed with the City.

C. All aircraft owned, leased or used by the flying club must be registered with the City. Club members cannot engage in, and club aircraft cannot be used for, commercial ventures, purposes or operations and must comply with these rules and regulations.

Section 19-1-14 Reporting of Accidents

Any person involved in an accident at the airport, which results in damage or injury to one or more persons or to public or private property shall promptly report such occurrence to the Benson Police Department.

Section 19-1-15 Disposal of Garbage

No person shall dispose of garbage, papers, refuse or other material on the airport except in receptacles provided for that purpose. No person shall abandon any personal property on the airport. Property abandoned for thirty days or longer shall become the property of the City and may be disposed of in any manner deemed appropriate by the City. All costs associated by such disposition of abandoned property will be charged to the person who had abandoned the same.

AIRPORT OPERATING REGULATIONS

Section 19-1-16 Damage to Airport Property

It is unlawful for any person to destroy, damage or deface or cause to be destroyed, damaged or defaced any public property located at the airport. Any person causing or responsible for such destruction or damage shall report such damage to the City and upon demand of the City shall reimburse the airport for the full amount of the damage. Any person failing to report or reimburse the airport for damage may be refused the use of any facility until and unless said report or reimbursement is made.

Section 19-1-17 Commercial Photography and Filming

No person shall take still, motion, sound or video pictures for commercial purposes on the airport without a written permit from the City. This section shall not apply to representatives of the press and other news services reporting on persons or events, which are on the news, excepting that all such persons must obtain permission from the City prior to entrance on the airport operations area.

Section 19-1-18 Religious, Charitable and Political Activities

A. No person or organization shall sponsor or conduct any of the following activities on the airport without first obtaining a special activity permit from the City. The City shall determine if such events also require approval by the City Council. All such permits shall require thirty days advance written notification:

1. Any private parade or rally demonstration;

2. Any public distribution or offer for sale of pamphlets, circulars or other written materials for religious, charitable, political or other noncommercial uses;

3. The carrying, posting or displaying of any signs or placards for religious, charitable, political or other noncommercial purposes;

4. Solicitation of contributions. For purposes of this section,"contributions" shall mean and include: donations, money, alms, food, clothing, subscriptions, property, credit, financial assistance or other thing of value;

5. Any air show or other special air events;

6. Any public exhibition, show, commercial demonstration or similar event on airport property;

7. Any other special event on airport property, which is open to the general public.

B. A verified application for a permit shall be filed with the City in a form and manner as provided for by the City.

C. The City may condition the issuance of a permit by imposing reasonable requirements concerning the time, place and manner of the activity and such requirements as are necessary to protect the safety of persons and property, normal operations of the airport and compliance with all applicable laws.

Section 19-1-19 Financial Responsibility

All owners of aircraft regularly situated at the airport shall be financially responsible. Any such owner shall, upon request, furnish the City with evidence of financial responsibility. The minimum financial responsibility required pursuant to this section shall be as follows:

A. Bodily injury or death, including occupants of aircraft, one person-fifty thousand dollars ($50,000).

B. Bodily injury or death, excluding occupants of aircraft, two or more persons-three hundred thousand dollars ($300,000).

C. Property damage - three hundred thousand dollars ($300,000).

Evidence of financial responsibility shall consist of a certificate of insurance or a bond issued by an insurance company or a surety company duly authorized to transact business in the State of Arizona. If the owner of an aircraft regularly situated at the airport fails or refuses to furnish the City with the required evidence of financial responsibility when requested, the owner shall thereafter be prohibited from basing any aircraft, which he/she may own at the airport until such time as he/she complies with the provisions of this section.

Section 19-1-20 Fees, Rates and Charges

A. A schedule of fees, rates and charges for use of airport areas and facilities shall be established from time to time by resolution of the City Council.

B. The City shall have the authority to lock up any lessee's aircraft and/or hanger for failure to pay any fees and charges assessed pursuant to this article. Such fees and charges are considered delinquent after thirty days of the due date.

Article 19-2 MOTOR VEHICLES AT AIRPORT

19-2-1 Compliance with State Law
19-2-2 Parking in Designated Areas
19-2-3 For-hire Vehicles
19-2-4 Parking on Parallel Taxiway or on Runway Prohibited
19-2-5 Driving in Excess of Posted Speed Limit Prohibited
19-2-6 Vehicles to Yield Right-of-Way to Aircraft and Pedestrians

Section 19-2-1 Compliance with State Law

AIRPORT OPERATING REGULATIONS

Every person who operates any motor vehicle or mobile equipment on the airport shall comply with all applicable provisions of the laws of the state and any special regulations prescribed herein for the control of such vehicles excepting in cases of emergency involving life or property.

Section 19-2-2 Parking in Designated Areas

A. The City shall designate by appropriate posting the following:

1. Places where vehicles may or may not be parked on the airport. Vehicles shall never be left parked on taxiways.

2. The period of time for which vehicles may be parked at any place on the airport.

B. The City shall be authorized to remove any vehicle parked on any roadway, parking area or other posted area of the airport in violation of this chapter, and to impound the same at the owner's expense and without liability to the City for damages which may result from or in the course of such moving and storage.

Section 19-2-3 For-hire Vehicles

No common carrier vehicle or vehicle-for-hire shall load or unload passengers or stand at the airport at any place other than in the area designated by the City, nor shall such conveyance operate on the airport without a permit from the airport.

Section 19-2-4 Parking on Parallel Taxiway or on Runway Prohibited

Motor vehicles, except emergency vehicles, shall not be driven onto the parallel taxiway or runway without the express permission of the City. Such authorized vehicles shall be distinctly painted or marked in accordance with the provisions of the current FAA requirements for marking of vehicles used on landing areas. Automobile parking may be permitted in specified general aviation aircraft parking areas for loading and unloading aircraft.

Section 19-2-5 Driving in Excess of Posted Speed Limit Prohibited

No vehicles shall be driven upon any road or upon other areas within the perimeter of the airport in excess of fifteen miles per hour. All vehicles, except airport employees, must remain on paved roads.

Section 19-2-6 Vehicles to Yield Right-of-Way to Aircraft and Pedestrians

All vehicles, except emergency vehicles engaged in emergency activity, shall at all times yield the right-of-way to any and all aircraft and pedestrians.

Article 19-3 AIRCRAFT ON GROUND

19-3-1 Aircraft Parking in Designated Areas
19-3-2 Parking in Areas not Under Lease
19-3-3 Parking in Taxiway Areas Prohibited
19-3-4 Unattended Aircraft
19-3-5 Run-up of Aircraft Powerplants
19-3-6 Use of Aircraft Apron Area Restricted
19-3-7 Removal of Disabled Aircraft

Section 19-3-1 Aircraft Parking in Designated Areas

Aircraft shall be parked in designated areas administered by the City and on aprons or hangars leased to commercial operators.

Section 19-3-2 Parking in Areas Not under Lease

No aircraft shall be parked in areas not under lease without special written permission of the City, who may authorize such parking as a temporary measure or as an interim measure pending the execution of a lease or agreement.

Section 19-3-3 Parking in Taxiway Areas Prohibited

Taxiway areas shall be maintained open to taxiing aircraft at all times, and no aircraft shall be parked in such taxiway areas or left unattended in such a manner as to interfere with the free flow of traffic.

Section 19-3-4 Unattended Aircraft

No aircraft shall be left unattended on the airport unless properly secured in a tie down or within a hangar. Owners of aircraft shall be responsible for damage resulting from failure to comply with this section.

Section 19-3-5 Run-up of Aircraft Powerplants

Aircraft powerplants shall be run-up only in designated areas. At no time shall powerplants be run-up when aircraft, hangers, shops, other buildings or persons in observation areas are in the path of the propeller slipstream or jet blast.

Section 19-3-6 Use of Aircraft Apron Area Restricted

No persons except airmen, duly authorized personnel, passengers or other persons going to or from aircraft personally conducted by airman or airport attendants, shall be permitted to enter an aircraft apron area. Any person or persons so excepted does not have the privilege of unrestricted use of the apron. These privileges are confined to the necessary use of such space in connection with flights or routine duties.

Section 19-3-7 Removal of Disabled Aircraft

A. Aircraft owners, their agents and pilots shall be responsible for the prompt removal of disabled aircraft and their parts from the airport, except for salvage and repair conducted under the terms of a permit within an enclosed hanger. An exception is made when an airman is directed to delay this action by a duly authorized representative of the FAA, National Transportation Safety Board or City, pending investigation of an accident.

B. If any person refuses or is unable to move an aircraft in a timely manner as directed by the City, said aircraft may be towed away or otherwise removed and stored by the Airport Manager at the owner's or operator=s expense, and without liability for damage which may result in the course of, or after, such moving and storage. The same shall apply to removal and storage of a wrecked or damaged aircraft and its parts.

Article 19-4 AIRCRAFT TAXIING, LANDING AND TAKEOFF

19-4-1 Aircraft Movement Areas Defined
19-4-2 Use of Taxiway
19-4-3 Location of Aircraft During Power Plant Run-up
19-4-4 Taxiing under Power into or out of Hangar Prohibited
19-4-5 Runway to Be Used for Takeoffs and Landings
19-4-6 Exceptions for Emergencies

Section 19-4-1 Aircraft Movement Areas Defined

Aircraft movement areas at the airport are defined as the runway, taxiways, the apron and other areas designated for special operations.

Section 19-4-2 Use of Taxiway

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All landing aircraft returning to the airport flight line shall exit at the taxiway as quickly as practical in order to clear the runway for approaching aircraft.

Section 19-4-3 Location of Aircraft During Power Plant Run-up

Taxiing aircraft shall be stopped at a distance from the runway, as marked by FAA standard broken yellow lines, for the purpose of power plant run-up. Prior to taxiing onto the runway, aircraft shall be turned to provide the pilot with a clear view of approaching aircraft, and it shall be his/her responsibility to remain clear of other traffic. No aircraft shall be taxied onto a runway until ready for takeoff.

Section 19-4-4 Taxiing under Power into or out of Hangar Prohibited

Aircraft shall not be taxied under power into or out of any hangar, nor shall aircraft powerplants be started or run inside any hangar.

Section 19-4-5 Runway to Be Used for Takeoffs and Landings

Landings and takeoffs shall be made on the runway most nearly aligned with the wind indicator at the airport. When wind conditions allow, Runway 10 should be used so that exiting at the taxiway is facilitated.

Section 19-4-6 Exceptions for Emergencies

Exceptions to the rules and regulations governing landing and takeoff specified in this chapter shall only be made in an emergency requiring immediate action as provided in Part 91.3 of the Federal Aviation Regulations.

Article 19-5 AIRCRAFT TRAFFIC PATTERNS

19-5-1 Compliance with FAA Rules
19-5-2 Airport Traffic Patterns
19-5-3 Aircraft Approaching to Determine Airport Conditions
19-5-4 Helicopters

Section 19-5-1 Compliance with FAA Rules

All aircraft arriving at or departing from the airport shall conform to the FAA rules for operations at airports without a control tower.

Section 19-5-2 Airport Traffic Patterns

Except for ultra light aircraft, which are governed by Article 19-8 of this chapter, the traffic patterns for the airport shall be as follows:

A. Standard left-hand pattern for Runways 10 and 28.

B. Traffic pattern altitude is established at four thousand eight hundred twenty-eight (4,828) feet above mean sea level (1,000 feet above airport elevation).

Section 19-5-3 Aircraft Approaching to Determine Airport Conditions

All aircraft approaching to determine airport conditions should remain at 500' or more above the traffic pattern altitude ready to enter the pattern. It is recommended that aircraft entering or remaining in the pattern announce their intentions and locations on the UNICOM radio frequency.

Section 19-5-4 Helicopters

Helicopters arriving at or departing from the airport shall operate clear of the fixed-wing aircraft traffic patterns as specified in this chapter and shall operate on or over the field well clear of fixed-wing aircraft.

Article 19-6 AIRCRAFT FUELING AND DEFUELING

19-6-1 General
19-6-2 Fueling and Defueling Restrictions
19-6-3 Smoking Restrictions During Fueling and Defueling
19-6-4 Spillage of Fuel
19-6-5 Static Discharge Precautions
19-6-6 Fire Extinguishers Required
19-6-7 Restrictions on Power Plant Start-up
19-6-8 Fueling Hoses and Defueling Equipment
19-6-9 Grounding Devices for Fueling and Defueling Operations
19-6-10 Self-fueling Operations

Section 19-6-1 General

Aviation fuels and/or lubricants shall not be sold or dispensed into any aircraft or other containers on the airport except in such a manner and under such terms and conditions as may be prescribed by the City.

Section 19-6-2 Fueling and Defueling Restrictions

No aircraft shall be fueled or defueled while the aircraft power plant(s)is running or while such aircraft is in a hangar or enclosed space. Hot refueling of helicopters may be permitted by the City on a case by case basis.

Section 19-6-3 Smoking Restrictions During Fueling and Defueling

No smoking shall be permitted within fifty feet of the aircraft fuel tanks while the aircraft is being fueled or defueled or within fifty feet of any fuel carrier utilized for fueling or defueling of aircraft.

Section 19-6-4 Spillage of Fuel

Persons engaged in the fueling or defueling of aircraft shall exercise all caution to prevent spillage of fuel, including the filling of tanks to the point where they would overflow from heat expansion. Any spillage of fuel shall be expeditiously cleaned up in an environmentally sound manner. Any spillage of fuel totaling more than two gallons shall be reported in a timely manner to the City.

Section 19-6-5 Static Discharge Precautions

No person shall use any material or create any condition likely to cause astatic discharge during fueling or defueling of aircraft.

Section 19-6-6 Fire Extinguishers Required

Adequate fire extinguishers shall be within ready reach of persons engaged in fueling and defueling operations at all times.

Section 19-6-7 Restrictions on Power Plant Start-up

No person shall start the power plant of any aircraft when there is an appreciable quantity of fuel on the ground under the aircraft.

Section 19-6-8 Fueling Hoses and Defueling Equipment

Fueling hoses and defueling equipment shall be maintained in a safe, sound and nonleaking condition at all times.

Section 19-6-9 Grounding Devices for Fueling and Defueling Operations

During fueling and defueling, the aircraft and dispensing device shall be properly grounded.

Section 19-6-10 Self-fueling Operations

All self-fueling operations shall be conducted in full compliance with all federal, state, local and airport rules, regulations and procedures.

AIRPORT OPERATING REGULATIONS

Article 19-7 AIRPORT FIRE SAFETY RULES

19-7-1 Compliance with Applicable Fire Safety Rules
19-7-2 Storage of Material and Equipment
19-7-3 Maintenance and Cleaning of Hangars
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19-7-8 Smoking Restrictions
19-7-9 Electrical Wire, Fixtures and Appliances
19-7-10 Fixed Base Operators to Provide Fire Safety Training
19-7-11 Portable Fire Extinguishers
19-7-12 Duty to Report Fire
19-7-13 Fire Marshal Drills and Inspections

Section 19-7-1 Compliance with Applicable Fire Safety Rules

All persons using the airport shall comply with the airport fire safety rules contained in this article and with all fire safety laws, ordinances and regulations established by any governmental entity having jurisdiction for fire protection at airports.

Section 19-7-2 Storage of Material and Equipment

A. No person shall store or stock material or equipment so as to constitute a fire hazard.

B. No person shall store or place any flammable liquids, solids, gases, signal flares or similar hazardous materials within any hangar or building, except in areas, rooms or containers specifically approved by the Fire Marshal, in accordance with the Uniform Fire Code. Such storage shall be in approved containers bearing the label of the Underwriters= Laboratories, Inc. (five gallon maximum container).

Section 19-7-3 Maintenance and Cleaning of Hangars

A. All owners or tenants of buildings shall maintain the floors of hangars, hangar ramps and adjacent areas free and clear of oil, grease and other flammable materials.

B. No person shall use flammable substances for cleaning floors of hangars or other buildings.

Section 19-7-4 Cleaning of Aircraft Powerplants and Parts

The cleaning of aircraft powerplants or other parts using solvents shall be limited in scope and only nonflammable or high flashpoint solvents shall be used. Drip and collecting pans shall be used during any cleaning process. Solvents and cleaning materials shall be property disposed of in an environmentally sound manner.

Section 19-7-5 Disposal of Gasoline and Other Flammable Waste Products

No person shall dispose of gasoline, oil, solvent or other flammable waste products in any drain, manhole, open ditch or other airport areas. All such products shall be properly disposed of in an environmentally sound manner utilizing a state licensed service.

Section 19-7-6 Painting and Doping of Aircraft

Painting and doping of aircraft with flammable liquids shall be conducted only within areas or buildings approved by the Fire Marshal and the Building Official.

Section 19-7-7 Cutting, Welding and Spray-Painting

Cutting, welding and spray-painting operations shall be conducted only within areas or buildings approved by the Fire Marshal and the Building Official.

Section 19-7-8 Smoking Restrictions

No person shall smoke any cigarette, cigar or pipe or strike any match or kindle any flame whatsoever within fifty feet of any aircraft while being fueled, or within fifty feet from fuel islands or any flammable liquid container, or within any aircraft workshop located upon the airport. Smoking shall be permitted only within areas designated by the Fire Marshal.

Section 19-7-9 Electrical Wire, Fixtures and Appliances

All electrical wiring, fixtures and appliances shall be installed and maintained in accordance with the National Electric Code and all outside shall comply with existing City ordinances.

Section 19-7-10 Fixed Base Operators to Provide Fire Safety Training

Each Fixed Base Operator shall institute training programs for employees in the use of portable fire extinguishing equipment and methods of evacuating or relocating occupants of the premises in case of fire or other emergency.

Section 19-7-11 Portable Fire Extinguishers

A. Portable fire extinguishers shall be provided and installed by each Fixed Base Operator within the operator's leased area, as directed by the Fire Marshal as to number, type and location.

B. At least one portable fire extinguisher shall be located in each hangar space.

C. Portable fire extinguishers shall not be moved from designated locations for any reasons other than as a precaution against an immediate hazard or to be recharged.

D. Access to all fire extinguishing equipment shall be kept free and unobstructed at all times. Portable fire extinguishers shall be inspected periodically by the Fire Marshal.

Section 19-7-12 Duty to Report Fire

Every person who becomes aware of any fire or smoldering combustion of any unwarranted or insidious nature or which is a hazard to the premises shall report said fire or smoldering combustion without delay to the local fire department.

Section 19-7-13 Fire Marshal Drills and Inspections

Fire prevention inspections shall be conducted by the Fire Marshal, and fire drills shall be held at his/her discretion.

Article 19-8 ULTRA-LIGHT AIRCRAFT

19-8-1 Rules and Regulations Governing Ultra-light Aircraft
19-8-2 VHF Radio
19-8-3 Yielding Right-of-way
19-8-4 Compliance with Federal Aviation Regulations

Section 19-8-1 Rules and Regulations Governing Ultra-light Aircraft

All air vehicles not licensed by the FAA are considered ultra-light aircraft. Due to the unique operating characteristics, licensing procedures and minimal Federal Aviation Regulations, this article shall establish specific rules and regulations governing ultra-light aircraft operators as defined in FAR Part 103. All other provisions of these regulations, except Article 19-5 governing aircraft traffic patterns, are applicable to ultra-light aircraft operators.

Section 19-8-2 VHF Radio

For the safety of all aircraft, it is recommended that all ultra-light operations at this airport communicate with other aircraft via VHF radio.

Section 19-8-3 Yielding Right-of-way

In accordance with FAR Part 103.13, ultra-light operators shall maintain vigilance so as to see and avoid conventional aircraft and shall yield the right-of-way to all conventional aircraft. At the discretion of the City, multiple ultra light arrival and departure operations may be disapproved.

Section 19-8-4 Compliance with Federal Aviation Regulations

All ultra-light aircraft arriving at or departing from the airport shall conform to the Federal Aviation Regulations for ultra-light aircraft operations at airports without a control tower.

Article 19-9 VIOLATIONS AND PENALTIES

Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars ($1,000) or six months in jail, or both such fine and imprisonment.

Article 19-10 SITE PLANS, LEASES AND BUILDING PERMITS

19-10-1 Site Plan Requirements
19-10-2 Ground Leases
19-10-3 Building Permits
19-10-4 Fire Suppression Requirements

Section 19-10-1 Site Plan Requirements

A. A scaled site plan will be an integral part of any ground lease and must be approved by the City Department Heads and the Benson City Council prior to a ground lease being approved.

B. All site plans must meet the set-back requirements as shown on the Airport Layout Plan or those established by FAA regulation or FAA circular.

C. Building heights **shall be in compliance with current Federal Aviation Administration regulations and must be shown on all site plans. Additionally, the dimensions of all buildings, paved areas for vehicle parking, paved aprons and taxi lanes will be shown on the plan.** (Amended by Ordinance 465)

D. All areas not paved will have ground cover either by vegetative landscaping or by decorative gravel. Leaseholder is responsible for maintaining his lease area free of weeds and other debris. In the Pad A-E area, this area includes from the building to the taxi lane.

E. Building colors for all metal hangars will be light tan for the outside walls and white for all roofing. All colors must be pre-approved by the city to insure the uniformity and the aesthetics of the airport landside development.

F. All buildings should have a 50' wide, all-weather access on all sides for fire department access, unless waived by the Fire Chief.

G. All storage of equipment and materials will be contained within enclosed buildings. An external trash container may be permitted if it is of commercial quality, with a secure lid and at least 1.5 yard capacity.

H. All parking spaces shall be a minimum of nine feet wide and twenty feet in length if marked, exclusive of access drives and aisles. The parking space requirement is one space per employee. Unmarked parking areas shall allow two hundred and eighty feet per vehicle, which includes aisles. All vehicle parking spaces, access roads and aisles will be paved with a minimum of a double chip seal coating.

Section 19-10-2 Ground Leases

In accordance with ARS ' 28-8425, no initial lease period will exceed forty years. The length of each lease will be established on a case-by-case basis depending on the amount of the capital investment being made. In general, a $100,000 investment, measured in 2002 dollars, will earn a 20-year lease.

A. All leases will have an inflation clause tied to the Consumer Price Index.

B. All leases will have a reversion clause that specifies when title to the Building and other permanent improvements transfers to the City of Benson.

Section 19-10-3 Building Permits

All building construction at the airport is subject to the same building permit, plan check, impact fee and inspection requirements as elsewhere in the City.

Section 19-10-4 Fire Suppression Requirements

A. All building plans, lease agreements and building uses shall be reviewed and evaluated on a case-by-case basis by the Benson Fire Department as to fire suppression requirements prior to Council approval.

B. Unless exempt by the Fire Department under those conditions specified in Part (c) "Exemptions" of this section or otherwise waived by Council, all building and hangers shall meet those fire suppression requirements as specified under Part (D) "Minimum Requirements" of this section.

C. "Exemptions": Exemptions shall only apply to Foam Sprinkler System requirements of commercial buildings or hangers and said exemption shall be at sole discretion of the

Benson Fire Department. Exemptions are conditional upon the execution and Council approval of a "Hold Harmless Agreement" between the commercial business requesting the exemption, the City of Benson and the Benson Volunteer Fire Department Inc. The Agreement shall relieve the City and the Benson Volunteer Fire Department Inc. of all liability from all fire damage, death or injury resulting from the exemption of the foam sprinkler system.

D. “Minimum Requirements": The following are the minimum requirements for fire suppression for the Benson Municipal Airport.

1. Foam sprinklers, smoke detectors and audible alarm with remote transmitter to the Benson Police Department shall be required for all commercial hangers.

2. Smoke detectors, heat detectors, audible alarms and remote transmitter to the Benson Police Department shall be required on all general/private hangers.

3. The minimum required separation distance between hangers shall be fifty feet for all groups of hangers.

4. A six-inch curb shall be provided between each aircraft space to prevent the flow of liquid from one space to adjacent spaces.

5. Sprinkler activation shall be remotely transmitted to the Benson Police Department along with an audible local alarm.

6. When a hanger in a cluster of hangers is used for commercial business, then the whole building cluster shall be required to be foamed sprinkled.

7. All non-hangar commercial building shall be required to be water sprinkled.

CITY CODE

Containing
Chapter 20, Procurement Code

PREFACE

This chapter contains the Procurement Code of the City of Benson to be used by all City personnel involved with procurement of materials, services, and construction needed by the city.

The purpose of this Code is to simplify, clarify and modernize the law governing procurement by the City; and, permit the continued development of procurement policies and practices followed for government procurement; and, ensure fair and equitable treatment of all persons dealing with the procurement system of the City; and, provide increased economy in City procurement activities, to maximize to the extent practicable the purchasing value of public monies; and, promote effective competitive competition within the free enterprise system; and, provide safeguards to the procurement system; and, obtain in a cost effective manner the materials, services and construction required by the City.

The numbering system used in this Code is similar to a system used in many state and municipal codes and is compatible to the system used in the Arizona Revised Statues. Each section number consists of three component parts separated by a dash, the figure preceding the dash refers to the chapter number and the figure following the dash refers to the position of the section within the chapter, the third digit represents the provision within the section. Thus the first section of chapter 20 is numbered Section 20-1-1.

New articles and divisions may be included in the same way, or in the case of articles, may be placed at the end of the chapter embracing the subject, and, in case of divisions may be placed at the end of the article embracing the subject the next successful number being assigned to the article or division. Changes to the code will carry a sequential revision number such as *Revision*.

This Code may be amended from time to time and the pertinent amended pages and a synopsis of the amendment will be distributed to all holders of the Code. The successful maintenance of this Code will depend largely upon the holder. As revised sheets are received it will become the responsibility of the holder to have them inserted. It is strongly recommended that all such amendments be inserted immediately upon receipt to avoid misplacing them, and that all deleted pages be preserved and filed for purposes of historical reference.

CHAPTER 20 - BENSON PROCUREMENT CODE

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Article 20-2 Procurement Director Authority §§20-2-1 thru §§20-2-2
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Article 20-5 Procurement of Professional Design Services and Capital Improvements

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Article 20-6 Contract Clauses

Section 20-6-1 Contract Clauses

ARTICLE 20-1 GENERAL PROVISIONS

Sections:

20-1-1 Applicability
20-1-2 Definitions
20-1-3 Supplementary General Principals of Law
20-1-4 Requirement of Good Faith
20-1-5 Confidential Information

Section 20-1-1 Applicability

A. This Chapter applies to all expenditures of public monies by this City irrespective of their source, including federal assistance monies, except that this Chapter does not apply to grants or contracts between this City and other governments. Nothing in this Chapter shall prevent this City from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

B. The provisions of this Chapter are not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which this City is or may become a party or to contracts for special investigative services for law enforcement purposes.

C. Agreements negotiated by the City Attorney in settlement of litigation or threatened litigation are exempt from the provisions of this Chapter.

D. The award of financial participation agreements, master-operating agreements, memoranda of understanding, and Community Development Block Grants are exempt from this Chapter. Such contracts shall be awarded in accordance with applicable administrative directives.

E. The provisions of this Chapter are not applicable to contracts for municipal improvement districts. Such contracts shall be awarded in accordance with Arizona Revised Statutes, Title 48, Chapter 4.

Section 20-1-2 Definitions

In Chapter 20, unless the context otherwise requires:

A. **"A.R.S."** refers to the Arizona Revised Statutes

B. "**Business"** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private entity..

C. **"Change Order"** means a written order signed by the Director or his designee which

directs the contractor to make changes that the contract authorizes the Director to order, with or without the consent of the contractor, as applicable

D. "**City**" means the municipal corporation now existing and known as the City of Benson

E. **"Construction"** means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings or real property.

F. **"Construction services"** as applied to construction-manager at risk, design-build and job-order-contracting project delivery methods and means either of the following:

1. Construction, excluding through the construction-manager-at-risk or job-order- services contracting project delivery methods.

2. A combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and pre-construction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this chapter, Article §20-5 , Section §20-5-1.

G. "**Contract**" means all types of City agreements, regardless of what they may be called, for the procurement of materials, services, or construction or the disposal of materials.

H. **"Contract Amendment"** means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

I. **Contractor"** means any person who has a contract with the City.

J. "**Contract Officer"** means the Director or any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts. Contract Officer also includes an authorized representative acting within the limits of the officer's authority.

K. **"Days"**, unless otherwise specified, means calendar days and shall be computed pursuant to Arizona Revised Statutes, A.R.S. §1-243.

L. "**Department**" means a duly authorized department of the Director.

M. "**Designee**" means a duly authorized representative of the Director

N. "**Director**" means the City Manager or his designee.

O. **"Disposal of material"** means sale of surplus, unclaimed and seized property by

public auction, electronic auction, competitive sealed bidding, small purchases or other appropriate method designated by this chapter.

P. "**Electronic**" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Q. **"Grant"** means the furnishing by this City of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

R. "**Materials**" means all the property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property..

S. "**Person**" means any corporation, consultant, business, individual, committee, club, other organization or group of individuals.
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T. **"Procurement"** means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

U. "**Procurement Contract Officer**" means the Department Head or any person duly authorized to enter into and administer contracts and make written determinations with respect to contracts. Contract Officer also includes an authorized representative acting within the limits of the officer's authority.

V. **"Services"** means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or sub consultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, auditing, technical, professional design, construction, purchase-of-client services and professional services, excluding legal counsel.

W. **"Subcontractor or sub consultant"** means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subcontractor as a part of a contract with the City.

X. "**Written or in Writing**" means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved and reproduced, including information that is electronically transmitted and stored.

Y. **"Using Agency**" means any organizational unit of the City, which utilizes an materials, services or construction procured under this chapter.

Section 20-1-3 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**.** Further, the Director shall award and administer contracts services in accordance with the requirements of Title 34 of the Arizona Revised Statutes.

Section 20-1-4 Requirement of Good Faith

This Chapter requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

Section 20-1-5 Confidential Information

Confidential information shall be designated as follows:

A. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the contract officer of this fact shall accompany the submission and the information shall be so identified wherever it appears.

B. The information identified by the person as confidential may not be disclosed until the Director makes a written determination.

C. The Director shall review the statement and information and may determine in writing whether the information shall be withheld.

D. If the Director determines to disclose the information, the Director shall inform the person in writing of such determination.

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ARTICLE 20-2 PROCUREMENT DIRECTOR AUTHORITY

Sections:

20-2-1 Director Designation
20-2-1 Authority of Director
20-2-2 Written Determinations
20-2-3 Retention of Records

Section 20-2-1 Authority of the Director

A. Except as otherwise provided in this Chapter, the Director may adopt operational procedures, consistent with this Article, governing the materials, procurement and management of all services and construction to be procured by this City and the disposal of materials.

B. The Director shall serve as the central Contracting Officer of this City.

C. Except as otherwise provided in this Chapter, the Director shall:

1. Procure or supervise the procurement of all materials, services and construction needed by this City.

2. Establish guidelines for the management of all inventories of materials belonging to this City.

3. Sell, trade or otherwise dispose of surplus materials belonging to this City.

4. Prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services and construction required by this City.

5. Establish and maintain programs for the inspection, testing, and acceptance of materials. services, and construction.

D. The Director may delegate procurement authority to designees or to any department or official of the City.

E. The Director shall have the authority to cancel any solicitation at any time in accordance with §20-3-10.

Section 20-2-2 Written Determinations

All written determinations prepared by the Director as required by this Chapter shall be retained in the Finance Department.

Section 20-2-4 Records Retention

All original procurement records shall be retained in the Finance Department and. shall be disposed of in accordance with the records retention and disposition schedule for Arizona municipalities pursuant to A.R.S. § 41-1351.

ARTICLE 20-3 SOURCE SELECTION AND CONTRACT FORMATION

Sections:

20-3-2 Method of Source Selection
20-3-3 Competitive Sealed Bidding
20-3-4 Competitive Sealed Proposals
20-3-5 Contracting for Legal Counsel
20-3-6 Small Purchases
20-3-7 Sole Source Procurement
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20-3-20 Prospective Vendors List
20-3-21 Contract Form and Execution
20-3-22 Assignment of Rights and Duties

Section 20-3-1 Definitions

In this article, unless the context otherwise requires:

A. **"Best Value"** means a bid, which after an evaluation based on objective criteria, is

advantageous to and has been determined to provide the best overall value to the City.

B. **"Discussions"** means communication with an offeror or for the purpose of eliminating minor irregularities, or apparent clerical mistakes in the proposal or clarification of any offer to assure full understanding of, and responsiveness to solicitation requirements or to establish the competency or financial stability of any offeror.

C. **"Invitation for Bid"** means all documents written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with §20-3-2.

D. **"Minor informality"** means mistakes, excluding judgmental errors, that have an insignificant or minor effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other bidders or offerors

E. **"Negotiations"** means an exchange of information or any form of negotiation during which the offeror and the City may alter or otherwise change the conditions, terms, and price. Discussions may be conducted in connection with competitive sealed proposals, requests for qualifications, small purchases, sole source procurements, emergency procurements, and special procurements or contract amendments.

F. **" Proposal Revision"** means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer in accordance with the procedures outlined herein in Section § 20-3-3 *Competitive sealed bidding*.

G. "**Request for Proposal"** means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with the procedures outlined in §20-3-4.

H. "**Request for Qualifications"** means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with §20-5.

I. "**Responsible Bidder, Offeror or Respondent"** means a person who has the capability to perform the contract requirements and the integrity and reliability that will assure good faith performance.

J. **"Responsive Bidder, Offeror, or Respondent"** means a person who submits a bid, proposal or response which conforms in all material respects to the invitation for bids, request for proposals, or request for qualifications.

K. **"Solicitation"** means an invitation for bids, request for proposals, a request for qualifications, request for quotations, or any other invitation or request by which the city invites a person to participate in a procurement.

Section 20-3-2 "Methods of Source Selection".

All contracts of the city shall be awarded by competitive bidding except as otherwise provided in §20-3-4 *Competitive Sealed Proposals*, §20-3-5 *Contracting for Legal Counsel*, §20-3-6 *Small Purchases*, §20-3-7 *Sole Source Procurement*, §20-3-8 *Emergency Procurements*, §20-3-9 *Special Procurements*, §20-5-3 entitled *Procurement Design Services*, §20-5-4 *Procurement of Construction Services.*

Section 20-3-3Competitive Sealed Bidding

A. **Invitation for Bids.** All reasonable attempts shall be made to obtain competitive bids. All contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in this Procurement Code. An invitation for bids shall be issued and shall include specifications, any applicable evaluation criteria, and all contractual terms and conditions specifically applicable to the procurement. Standard contractual terms and conditions may be included within the solicitation document or incorporated by reference.

Requests for proposals shall be used when the Director or authorized designee determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City. Proposals shall be solicited through a written request for proposals. Proposals shall be submitted by interested parties at the time and place designated in the request for proposals.

B. **"Public Notice".** Adequate public notice of the invitation for bid shall be given not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the director and the rationale for the shorter period of time shall be documented and kept on file for public inspection. The public notice shall state the place, date, and time of bid opening. Notice of the invitation for bid shall be advertised in the local newspaper and shall be posted and a copu of the invitation for bids shall be available for public inspection.

C. **Late Bids.** A bid is late if it is received at the location designated in the invitation for bid after the date and time set for the bid opening. The Department's clock is the governing clock. A late bid shall be rejected and shall not be opened except for identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

D. **Bid Opening**. Bids shall be opened publicly by the City Clerk or Deputy City Clerk in the presence of one or more witnesses at the time and place designated in the invitation for bid. The amount of each bid and such other information as the Director deems appropriate together with the name of each bidder shall be recorded. The record shall be open to public inspection. In the event no attendees are present for the bid opening, the City Clerk or Deputy City Clerk shall open the bid and a "bid" or "no bid" may be recorded on the tabulation sheet

and the record shall be annotated with a statement that there were no attendees present. Unless otherwise determined by the Director, the bids shall not be opened for public inspection until after the contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with §20-1-5 entitled Confidential Information.

E. **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid. The invitation for bid shall set forth the criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

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F. **Correction or Withdrawal of Bids and Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before and after bid opening, or cancellation of awards based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the department prior to the time set for bid opening. After bid opening corrections in bid 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. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

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

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

G. **Contract Award.**

1.**General.** The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bid.

2. **Contract Award Based on Best Value.** Not withstanding § 20-3-3(G)(1) above, the contract may be awarded on best value analysis provided the criteria for analysis was included in the invitation for bids in accordance with §20-3-3(A) above. The contract shall be awarded by appropriate written notice to the response bidder determined to be the best value to the City

and whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

3. **Exceeding Available Funds**. In the event the responsive and responsible bid for a construction project determined to be the best value exceeds available funds and such bid does not exceed such funds by more than five percent (5%), the 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 said responsive and responsible bidder, in order to bring the bid within the amount of available funds.

4. **Public Record**. After the City issues a notice of intent to award or upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with §20-1-5 entitled Confidential Information

H. **Low Tie Bids**. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the Director.

Section 20-3-4 Competitive Sealed Proposals

A. **Conditions for Use**. Unless otherwise prohibited, a contract may be entered into by use of the competitive sealed proposals method when the use of competitive sealed bidding is either not practicable or not advantageous to the City.

B. **Request for Proposals.** Competitive sealed 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 §20-3-3(B) *Competitive Sealed Bidding, Public Notice.*

D. **Late Proposals**. A proposal is late if it is received at the location designated in the Request for Proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with §20-3-3(C).

E. **Receipt of Proposals**. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of award issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with §20-1-5 entitled *Confidential Information.*

F. **Evaluation of Proposals**.

1. **Evaluation Criteria.** The request for proposal shall state the criteria to be used in the evaluation of the proposals and may include their relative importance. Specific numerical weighting is not required.

2. **Selection Committee.** The Directo shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

G. **Discussion with Offerors.** Discussions may be conducted with responsible offerors.

H. **Negotiations with Responsible Offerors and Revisions to Proposals**. Negotiations may be conducted with responsible offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

1. **Concurrent Negotiations.** Negotiations may be conducted concurrently with responsible offerors for the purpose of determining source selection and/or contract award.

2. **Exclusive Negotiations**. Exclusive negotiations may be conducted with the responsible offeror whose proposal is determined in the selection process to be most advantageous to the City. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the City may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process

I. **Contract Award**. Contract award shall be made by the Director to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration price and the other evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Section 20-3-5 Contracting for Legal Counsel

No contract for the services of legal counsel may be awarded without the authorization of the Mayor and City Council.

Section 20-3-6 Small Purchases

A. General. Any contract not exceeding $20,000 may be made by the Director or a designee in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.

B. **Small Purchases over $5000**. Insofar as it is practical for small purchases in excess of $5,000 but less than $20,000, no less than

three businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation, which is most advantageous to the City and conforms in all material respects to the solicitation. 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. **Small Purchases Under $5,000**. The Director shall adopt operational procedures for making small purchases of $5,000 or less.

D. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this section and to circumvent the source selection procedures required by Sections §20-3-2 entitled *Methods of Source Selection* or §20-3-3 *Competitive Sealed Proposals* or be artificially combined to circumvent any sections in this Chapter.

Section 20-3-7 Sole Source Procurement

A contract may be awarded without competition when the Director determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using agency requesting sole source procurement shall provide written evidence to support a sole source determination. The Director may require that negotiations are conducted as to price, delivery, and terms. The Director may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

Section 20-3-8 Emergency Procurements

Notwithstanding any other provisions of this Chapter, the Director may make or authorize others to make emergency procurements of materials, services, or construction items when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with §20-3-3 *Competitive Sealed Bidding*, §20-3-4 *Competitive Sealed Proposals*, §20-5-3 *Procurement of Professional Design Services*, or §20-5-2 *Procurement of Construction Services* contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Section 20-3-9 Special Procurements

Notwithstanding any other provisions of this Chapter, the Director or his designee may make procurements above the small purchase amount specified in §20-3-6 when, due to unusual or special circumstances, it would be in the best interest of the City to accomplish the procurement without compliance with § 20-3-3 *Competitive Sealed Bidding*, §20-3-4

entitled *Competitive Sealed Proposals*, §20-5-3 *Procurement of Professional Design Services*, or §20-5-4 *Procurement of Construction Services*. Any special procurement under this Section shall be limited to those materials, services, or construction necessary to satisfy the City's need and shall be made with sound fiscal discretion. A written determination by the Director of the basis for the special procurement and for the selection of the particular contractor shall be included in the contract file. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is in the public interest, fair, honest, prudent and a wise exercise of discretion.

Section 20-3-10 Cancellation of Solicitation

A. Cancellation of Solicitation. An invitation for bids, a request for proposals, a request for qualifications or other solicitation may be cancelled, or any or all bids, proposals or statement of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the City. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid, proposal or statement of qualification may be rejected in whole or in part when in the best interests of the City.

B. **Prior to Opening**:

1. As used in this Section, "opening" means the date set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.

2. Prior to opening, a solicitation may be cancelled in whole or in part when the Director determines in writing that such action is in the City's best interest for reasons including but not limited to:

(a). The City no longer requires the materials, services, or construction;

(b). The City no longer can reasonably expect to fund the procurement; or,
(c). Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

4. When a solicitation is cancelled prior to opening, notice cancellation shall be sent to all persons solicited.

5. The notice of cancellation shall:

(a). Identify the solicitation;

(b). Briefly explain the reason for cancellation; and,

(c). Where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

C. **After Opening:**

1. After opening but prior to award, all bids, proposals or requests for qualifications may be rejected in whole or in part when the Director determines in writing that such action is in the City's best interest for reasons including but not limited to:

(a). The materials, services, or construction being procured are no longer required;

(b). Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;

(c). The solicitation did not provide for consideration of all factors of significance to the City;

(d). Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(e). All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices; or

(f). There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to Subsection 20-3-10(B)(5) of this Section.

2. If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

D. **Documentation.** The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Section 20-3-11 Rejection of Individual Bids, Proposals or Statements of Qualifications

A. A bid may be rejected if:
1. The bidder is determined to be nonresponsible pursuant to §20-3-12 *Responsibility of Bidders and Offerors;* or

2. The bid is nonresponsive in accordance with §20-3-3 *Competitive Sealed Bidding.*

B. A proposal, statement of qualifications or quotation may be rejected if:

1. The person responding to the solicitation is determined to be nonresponsible pursuant to §20-3-12 *Responsibility of Bidders and Offerors;* or,

2. It is unacceptable; or,

3. The proposed price, unless prohibited, is unreasonable; or,

4. It is otherwise not advantageous to the City.

C. Reasons for rejection shall be provided

upon request by unsuccessful bidders or offerors.

Section 20-3-12 Responsibility of Bidders And Offerors

A. **Determination of Nonresponsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Contract Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of nonresponsibility with respect to such bidderor offeror. The final determination shall be made part of the contract file and be made a public record.

B.**Right of Nondisclosure.** Confidential information furnished by a bidder, offeror or respondent pursuant to this Section shall not be disclosed by the City outside of the Department, or using agency, without prior written consent by the bidder, offeror or respondent.

C. Factors to be considered in determining if a prospective contractor is responsible include:

1. The proposed contractor's financial, physical, personnel or other resources, including subcontracts;

2. The proposed contractor's record of performance and integrity;

3. Whether the proposed contractor supplied all necessary information concerning its responsibility.

D. The Director may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation

Section 20-3-13 Bid and Contract Security, Material or Service Contracts

The Director may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Director shall consider the nature of the performance and the need for future protection to the City. The requirement for security must be included in the invitation for bids or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid, statement of qualifications or proposal.

Section 20-3-14 Types of Contracts

Subject to the limitations of this chapter, any type of contract which will promote the best interests of this City may be used.

Section 20-3-15 Approval of Accounting Systems

The Director may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract

Section 20-3-16 Multi-year Contracts

Unless otherwise provided by law, a contract for materials or services may be entered into for any period of time deemed to be in the best interest of this City, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

A. Prior to use of a multi-term contract it shall be determined that:

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

2. The contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.

B. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, 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.

Section 20-3-17 Right to Inspect

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or sub consultant that is related to the performance of any contract awarded or to be awarded by this City.

Section 20-3-18 Right to Audit Records

A. Any person who receives a contract, change order or contract modification shall maintain the books and records for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the Director.

B. The City is entitled to audit the books and records of a contractor, consultant or any subcontractor or sub consultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contractor or consultant, and by the subcontractor or sub consultant for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Director.

Section 20-3-19 Reporting of Anticompetitive Practices

If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Director and the City Attorney. This section does not require a law enforcement agency conducting an investigation into such

practices to convey such notice to the Director.

Section 20-3-20 Prospective Vendors Lists

A. The Finance Department shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of sucessfullu performing a city contract.

B. Persons desiring to be included on the prospective vendors list may notify the Director or may register with the Finance Department. The Director may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the City.

C. It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

Section 20-3-21 Contract Form and Execution

All contracts entered into under this chapter shall be executed in the name of the City by the City Manager and approved as to form by the City Attorney. Such contracts are not required to be countersigned by the City Clerk.

Section 20-3-22 Assignment of Rights and Duties

The rights and duties of a City contract are not transferable or otherwise assignable without the written consent of the Director.

ARTICLE 20-4 SPECIFICATIONS

Sections:

20-4-1 Definitions
20-4-2 Maximum Practicable Competition
20-4-3 Specifications Prepared by Parties Other Than City Personnel
20-4-4 Brand Name or Equal
20-4-5 Brand Name Specification

Section 20-4-1 Definitions

As used in this Article, "specification" is used interchangeably with "scope" or "scope of work" and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

Section 20-4-2 Maximum Practicable Competition

A. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive

B. To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

C. Proprietary specifications shall not be used unless the Director determines in writing that

such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.

D. To the extent practicable, the City shall use accepted commercial specifications and shall procure standard commercial materials.

Section 20-4-3 Specifications Prepared by Other Than City Personnel

All specifications, including those prepared by architects, engineers, consultants and others for public contracts, or subcontractors, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying this City's needs and shall not be unduly restrictive. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

Section 20-4-4 Brand Name or Equal Specification

A brand name or equal specification may be used when the Contract Officer determines in writing that use of brand name or equal specifications is advantageous to the City.

Section 20-4-5 Brand Name Specification

A brand name specification may be prepared and utilized only if the Director makes a written determination that only the identified brand name item will satisfy the City's needs

ARTICLE 20-5 PROCUREMENT OF PROFESSIONAL DESIGN SERVICES AND CAPITAL IMPROVEMENTS

Sections:

20-5-1 Definitions
20-5-2 Procurement of Construction
20-5-3 Procurement of Professional Design Services
20-5-4 Procurement of Construction Services
20-5-5 Construction by City Employees
20-5-6 Non-substantial Failure to Comply
20-5-7 Procurement of Maintenance Services and Operation Services

Section 20-5-1 Definitions

In this article, unless the context otherwise requires:

A. "**Capital Improvement"** means an outlay of funds for the acquisition or improvement Of real property, which extends the life or Increases the productivity of the real property.

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

C. "**Construction-Manager-at-Risk"** means a project delivery method in which:

1. There is a separate contract for design services and a separate contract for construction services;

2. The contract for construction services may be entered into at the same time as the contract for design services or at a later time;

3. Design and construction of the project may be in sequential phases or concurrent phases; or,

4. Finance services, maintenance services, operations services, pre-construction services and other related services may be included.

D. "**Construction Services"** means either of the following for construction-manager-at-risk, design-build and job order-contracting project delivery methods:

1. Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods: or,

2. A combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and pre-construction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

E. "**Cost**" means the aggregate cost of all materials and services, including labor performed by force account.

F. "**Design-bid-build**" means a project delivery method in which:

1. There is a sequential award of two separate contracts;

2. The first contract is for design services;

3. The second contract is for construction

4. Design and construction of the project are in sequential phases; and,

5. Finance services, maintenance services and operations services are not included.

G. "**Design-build"** means a project delivery method in which:

1. There is a single contract for design services and construction services;

2. Design and construction of the project may be in sequential phases or concurrent phases; and,

3. Finance services, maintenance services, operations services and other related services may be included.

H. "**Finance Services"** means financing for a construction services project.

I. "**Force Account"** means construction work performed by the City's regularly employed personnel.

J. "**Infrastructure Facility"** means a building structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; natural gas facilities; parks and recreation facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

K. "**Job-Order-Contracting"** means a project delivery method in which:

1. The contract is a requirements contract for indefinite quantities of construction;

2. The construction to be performed is specified in job orders issued during the contract; and,

3. Finance services, maintenance services, operations services, pre-construction services and other related services may be included.

L. "**Maintenance services**" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

M. "Operations services" means routine operation of existing facilities, structures, buildings or real property.

N. "**Pre-construction services**" means advice during the design phase.

O. "**Professional Design Services**" means architect services, assayer services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of Arizona.

Section 20-5-2 Procurement of Construction

Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in §20-5-4 *Procurement of Construction Service* §20-3-6 *Small Purchases*, §20-3-7 *Sole Source Procurement,* §20-3-8 *Emergency Procurements* and §20-3-9 *Special Procurements.* The Director shall award and administer contracts for construction in accordance with the requirements of Arizona Revised Statutes, Title 34 and the Benson Procurement Code.

Section 20-5-3 Procurement of Professional Design Services

Contracts for professional engineering design services shall be solicited through a request for qualifications for individual projects over $100,000. Contracts for professional architect services, assayer services, geologist services, landscape architect services, and land surveying service a request for qualifications for individual projects over $50,000. The Director shall award and administer contracts for professional design services in accordance with the requirements of A.R.S. Title 34 and the Benson Procurement Code.

Section 20-5-6 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 §20-3-6 *Small Purchases,* §20-3-7 *Sole Source Procurement*, §20-3-8 *Emergency Procurements* and §20-3-9 *Special Procurements.* The Director shall award and administer contracts for construction services in accordance with the requirements of Arizona Revised Statues, Title 34 and the Benson Procurement Code.

Section 20-5-7 Construction By City Employees

A building, structure, addition or alteration of a public facility may be constructed by force account if the cost does not exceed the amount established and adjusted each year in accordance with Arizona Revised Statues, Title 34.

Section 20-5-8 Nonsubstantial Failure to Comply

The Director may determine that noncompliance with any provision of this section is nonsubstantial and may allow for correction or may waive minor informalities or irregularities.

Section 20-5-9 Procurement of Maintenance Services and Operational Services

Contracts for Procurement of Maintenance services and Operations services which require certified technicians and/or certified operators shall be solicited through a request for qualifications for annual cost over $50,000. The Director shall award and administer contracts for Maintenance services and Operations services in accordance with the requirements of the Benson Procurement Code.

ARTICLE 20-6-1 CONTRACT CLAUSES

Section 20-6-1 Contract Clauses

A. Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Director, after consultation with the City Attorney, may issue clauses appropriate for material, service, or

construction contracts, addressing, among others, the following subjects:

1. The unilateral right of the City to order in writing changes in the work within the scope of the contract.

2. The unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;

3. Variations occurring between estimated quantities of work in contract and actual quantities;

4. Defective pricing;

5. Liquidated damages.

6. Specified excuses for delay or nonperformance

7. Termination of the contract for default

8. Termination of the contract in whole or in part for the convenience of the City

9. Suspension of work on a construction project ordered by the City; and

10. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:

(a) When the contract is negotiated;

(b) When the contractor provides the site or design; or

(c) When the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price Adjustments.

1. Adjustments in price resulting from the use of contract clauses required by Subsection (A) of this Section shall be computed in one or more of the following ways:

(a). By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b). By unit prices specified in the contract or subsequently agreed upon;

(c). By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d). In such other manner as the contracting parties may mutually agree; or

(e). In the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment by the Director.

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price.

C. Standard Clauses and Their Modification.

The Director, after consultation with the City Attorney, may establish standard contract clauses for use in City contracts. If the Director establishes any standard clauses addressing the subjects set forth in Subsection (A) of this Section, such clauses may be varied with the Director's approval or the Director's designee.

CHAPTER 21 BENSON PUBLIC LIBRARY

ARTICLE 21-1 ESTABLISHMENT

The Department of Library Services is hereby established. This department shall consist of the Director of Library Services, who shall be the head of the department, and all other officers and employees assigned thereto, who shall perform their duties under the supervision of the Director. The Director shall manage and supervise the department in accordance with all City ordinances, regulations, policies and directives, including applicable intergovernmental agreements with Cochise County Library District.

ARTICLE 21-2 POWERS AND DUTIES

21-2-1 Library Director
21-2-2 Library Advisory Board

Section 21-2-1 Library Director

The Library Director shall:

A. Administer the care, operation and maintenance of the Benson Public Library and all library facilities and programs, including closely coordinating the activities and programs of the Benson Public Library with the Cochise County Library District; plan for future development and operation of all library facilities and programs; and exercise supervisory duties of all library employees and volunteers; all under the general supervision and pursuant to lawful directives of the City Manager. Whenever possible, the Library Director will incorporate recommendations of the Library Advisory Board into the practices and procedures of the Benson Public Library, as appropriate.
B. Prepare and submit yearly a proposed departmental budget to the City Manager.
C. Inform the general public of the services and facilities provided by the Benson Public Library; address professional civic groups on library subjects; solicit suggestions from the general public on increasing the effectiveness of the library programs; cooperate with governmental and voluntary agencies or organizations in solving library problems; provide advisory assistance to community organizations, related to library service programs.
D. Advise the City Council, City Manager and community groups as appropriate concerning the expenditure of public funds for library services; maintain effective and cooperative relations with all city officials, employees, state and federal agencies.
E. Act as executive secretary to the Library Advisory Board, keeping them informed of all relevant current and future library programs and activities; and soliciting input from them and community members to tailor such programs and activities to the needs and desires of the library users in our community.
F. Perform such other duties as assigned by the City Manager.

Section 21-2-2 Library Advisory Board

A. An advisory body is hereby established to be called the “Advisory Board of the Benson Public Library.”
B. The Board shall consist of five members, all of whom shall reside within the service area of the Benson Public Library.

C. The City Council shall appoint the Chairman and the City Manager shall appoint the remaining four members.
D. The term of office shall be for three years, commencing with the first day of August and expiring on the 31st day of July three years thereafter.
E. The initial terms of office for three members shall be shortened as necessary so that each year one or two members' terms shall expire.
F. The chairman shall preside at all meetings of the Board. The members shall elect a vice-chairman, who shall act as chairman in the temporary absence of the chairman.
G. The Library Director shall serve ex officio as a non-voting executive secretary to the Board, and shall develop by-laws and rules of procedure, which shall include a time for regular monthly meetings and a procedure for calling special meetings. The rules of procedure shall be adopted by the Board and approved by City Manager.
H. The Board shall comply with the Arizona open meetings laws.
I. A quorum for all business shall consist of a majority of members then holding office.
J. The Board, with the assistance of City staff, may establish a working relationship with the Friends of the Benson Public Library for the purpose of raising funds, soliciting and accepting gifts and bequests, and any related activities that benefit the Benson Public Library.

ARTICLE 21-3 REGULATION OF LIBRARY USE

21-3-1 Prohibitions
21-3-2 Library Policies, Standards of Conduct and Appeals Process
21-3-3 Definitions

Section 21-3-1 Prohibitions

A. It shall be unlawful for any person to commit Library Theft, or to maliciously cut, tear, deface, break or damage any Library Material.
B. It shall be unlawful and is hereby declared to be a trespass for any person to enter or to remain within the Premises of a Library Facility after having been instructed by the Library Director or authorized designee that the person has been ejected or excluded for a period of time from the Library Premises.
C. It shall be unlawful and is hereby declared to be a public nuisance for any person to enter or to remain within the Premises of a Library Facility, when due to that person's conduct, attire and/or hygiene the person unreasonably disturbs or prevents the peaceful enjoyment of the Library Facility by other Library patrons or staff.
D. Except as authorized by law, no person shall possess a dangerous weapon or firearm within the Premises of a Library Facility.
E. The restrooms of a Library Facility shall not be used for bathing, shampooing, washing of clothes or for any lewd or offensive activity.

Section 21-3-2 Library Policies, Standards of Conduct and Appeals Process

A. The Library Director, with consent of the City Manager and upon recommendation by the Library Advisory Board, shall develop and disseminate

Library Policies, Standards of Conduct for library patrons and an Appeals Process.

B. The Library Policies shall control the general operating practices of the Benson Public Library, including hours of operation, terms and conditions for issuing a Library Card, terms and conditions for borrowing Library Materials, selection and procurement of Library Materials, use of library bulletin boards, use of library computers, and fees for library services.

C. The Standards of Conduct for library patrons shall establish the minimum norms of conduct within the Premises of a Library Facility, which shall include regulations and policies to control rowdy or loud behavior, unhygienic attire, unattended children, possession of weapons, use of tobacco products, threatening, fighting or other criminal behavior, use of restrooms, and consumption of food and beverages within the Premises of a Library Facility.

D. The Appeals Process shall allow any person who has been aggrieved by application of a Library Policy or Standards of Conduct, such as by being denied a Library Card, access to a library computer, or having been ejected or excluded from the Premises of a Library Facility or other similar regulatory action, to expeditiously pursue an administrative appeal to the City Manager or his designee, whose decision shall be final.

Section 21-3-3 Definitions

The following definitions apply to this Article:

Library Card. Card or plate issued by a library facility for purposes of identifying the person to whom the *Library Card* was issued, as authorized to borrow library material(s), subject to all limitations and conditions imposed on borrowing by the library facility issuing the card.

Library Material. Any book, plate, computer disc, picture, photograph, engraving, painting, sculpture, statue, artifact, drawing, map, newspaper, pamphlet, magazine, manuscript, document, coin, model, apparatus or other work of literature or art or mechanics, objects of curiosity, letter, microfilm, sound recording, audiovisual material, magnetic or other tape, electronic data processing record or other documentary, written or printed material regardless of physical form or characteristics, or any part thereof, belonging to, or on loan to, or otherwise in the custody of, a library facility.

Library Theft. A person commits a *Library Theft* by doing any of the following acts:

(a) Intentionally or knowingly removes any Library Material from the Premises of a Library Facility without authority to do so.

(b) Intentionally or knowingly conceals any Library Material upon his or her person or among his or her belongings and removes Library Material beyond the last point in the premises of the library facility at which Library Material may be borrowed in accordance with procedures established by the library facility for the borrowing of Library Material.

(c) With the intent to deceive, borrows or attempts to borrow, any Library Material from a library facility by use of a library card issued to another, or use of a Library Card knowing that it is revoked, canceled or expired, or use of a Library Card knowing that it is falsely made, counterfeit or materially altered.

(d) Fails to return overdue Library Material within a reasonable period of time.

Premises of a Library Facility. The interior of a building, structure or other enclosure in which a library facility is located and in which the library facility keeps, displays and makes available for inspection or borrowing Library Material, but for purposes of this section such premises do not include the exterior appurtenances to the building, structure or enclosure nor the land on which the building, structure or other enclosure is located.