

Chapter 1

GENERAL

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Article 1-1

HOW CODE DESIGNATED AND CITED

Sections:

1-1-1 Code Designation

Section 1-1-1 Code Designation

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

Article 1-2

CONSTRUCTION OF ORDINANCES

Sections:

1-2-1 Ordinance Construction

Section 1-2-1 Ordinance Construction

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

Article 1-3

DEFINITIONS

Sections:

1-3-1 General Rule Regarding Definitions

1-3-2 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; but 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 Definitions

- 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. Bond. When a bond is required, an undertaking in writing shall be sufficient.
- D. Code. The municipal code of the Town of Fountain Hills, unless the context indicates otherwise.
- E. Council. The town council of the Town of Fountain Hills.
- F. County. Maricopa 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 town 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 town officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly 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. Month. A calendar month.
- N. Oath. "Oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed".
- O. 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.
- P. Person. Includes a corporation, company, partnership, association or society as well as a natural person.
- Q. Personal Property. Every species of property, except real property as defined in this section.
- R. Preceding, Following. Next before and next after, respectively.
- S. Property. Includes lands, tenements and hereditaments and personal property.
- T. Public Place. Any thoroughfare, park, open space or building not privately owned or controlled.
- U. Real Property. Lands, tenements and hereditaments.
- V. Shall, May. "Shall" is mandatory and "may" is permissive.
- W. Shall Have Been. Includes past and future tenses.
- X. Sidewalk. Any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.
- Y. 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.
- Z. State. The State of Arizona unless the context clearly requires otherwise.
- AA. Street. Any alley, lane, court, boulevard, public way, public square, public place, sidewalk or thoroughfare.
- BB. 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.
- CC. Tenses. The present tense includes the past and future tenses, and the future includes the present.
- DD. 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; and when such time is expressed in hours, the whole of Saturday, Sunday or a holiday, from midnight to midnight, shall be excluded.

- EE. 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.
- FF. Town. The Town of Fountain Hills, Maricopa County, Arizona, except as otherwise provided. The words "in the town" or "within the town" shall mean and include all territory over which the town has jurisdiction for the exercise of its police powers or other regulatory powers as authorized by statute.
- 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

Sections:

- 1-4-1 Additional Rules of Construction**
- 1-4-2 References to this Code**
- 1-4-3 Conflicting Provisions--Different Chapters**
- 1-4-4 Conflicting Provisions--Same Chapter**

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--Different Chapters

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.

Section 1-4-4 Conflicting Provisions--Same Chapter

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

Article 1-5

SECTION HEADINGS

Sections:

1-5-1 Section Headings

Section 1-5-1 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

Sections:

1-6-1 Effect of Repeal

Section 1-6-1 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

Sections:

1-7-1 Severability of Parts of Code

Section 1-7-1 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.

Article 1-8

PENALTY

Sections:

- 1-8-1 General Provisions**
- 1-8-2 Criminal and Civil Traffic Penalty Provisions**
- 1-8-3 Civil Penalty Provisions**

Section 1-8-1 General Provisions

- A. Each day any violation of any provisions of this code or of any ordinance continues shall constitute a separate offense. In all cases where the same offense is made punishable or is created by different clauses or sections of this code the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.
- B. When two or more persons have liability to the Town or are responsible for a violation of this code, their responsibility shall be joint and several.
- C. Nothing in this Section shall in any way impair or act as a bar to any charges or costs assessed pursuant to Chapter 5 of this code.

(12-02, Added, 03/01/2012)

Section 1-8-2 Criminal and Civil Traffic Penalty Provisions

- A. Any person found guilty of violating any provisions of this code where no specific penalty is provided therefor and no other penalty provision is referenced shall be guilty of a misdemeanor, and upon conviction thereof 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.
- B. Unless otherwise specified, any violation of or failure or refusal to do or perform any act designated as a civil traffic violation is subject to A.R.S. Title 28, Chapter 5, and amendments thereto.
- C. Any person who is found or pleads guilty to a misdemeanor criminal offense in the municipal court and who, as a consequence, is incarcerated in any jail facility, may as a part of any sentence imposed by the municipal court, be required to reimburse the Town for any costs of such incarceration charged to the Town by the jail facility in which the person was incarcerated.

(17-02, Amended, 06/01/2017; 12-02, Amended, 03/01/2012, Prior Section 1-8-1 name: Penalty Provisions; 12-02, Renumbered, 03/01/2012, Previously numbered 1-8-1)

Section 1-8-3 Civil Penalty Provisions

- A. This Section applies whenever in this code or in any ordinance of the Town any act is prohibited

or is made or declared to be unlawful or an offense, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and where a civil penalty is declared to be applicable.

B. Unless otherwise specified, written notice and/or civil citation may be issued for the failure to do or perform any act required by this code.

C. Notice of Violation.

1. The Town may seek voluntary compliance with the provisions of this code before issuing a civil citation or criminal complaint, as applicable. This shall include a written notice of violation given to the responsible party.
2. A notice of violation may be issued by the Town Manager or authorized designee.
3. The notice of violation shall set forth the nature of the violation, a reference to the sections(s) violated, the action required to come into compliance with the provision of the code, the time period provided to come into compliance, and the person at the Town to contact for further information.
4. The Town shall use reasonable efforts to ensure that notices of violation are received by the responsible party; provided, however, failure of the responsible party to receive a notice of violation shall not preclude the subsequent issuance of a civil citation or criminal complaint, as applicable.
5. Nothing in this Section shall prevent the Town from taking immediate action to protect the public from an imminent hazard to health or safety as otherwise provided by law.

D. Civil Citations.

1. Unless otherwise designated as a criminal offense, if a violation continues past the compliance time set forth in the notice of violation, a civil citation may be issued to the person or entity responsible for the violation.
2. A civil citation may be issued by the Town Manager or authorized designee.
3. The civil citation shall include the date of the violation, a reference to the sections(s) violated and, if applicable, the location of the property or site at issue.
4. The civil citation shall direct the defendant to pay the fine imposed pursuant to subsection 1-8-3(E) below or appear in the Fountain Hills Municipal Court on the date noted on the citation, which date shall not be less than ten days after citation issuance.
5. The civil citation shall provide notice that if the defendant fails to pay the fine or appear in the Fountain Hills Municipal Court as directed, a default judgement will be entered in the amount of the fine designated on the citation for the violation. In addition, a default fee may be imposed for failure to appear.
6. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

- a. Hand delivering the citation to the defendant. If the defendant is a business, service may be by hand delivery to the business owner, any adult manager of the business, or any adult employee of the business.
- b. Mailing a copy of the citation by certified or registered mail, return receipt requested, to the defendant's last known address. If the defendant is a business, service may be by certified or registered mail, return receipt requested, to the current business address.
- c. Any means allowed by the Arizona Rules of Civil Procedure for the Superior Courts of Arizona.

E. Civil Penalties.

1. A person or entity convicted of a violation of the code pursuant to this Section, unless otherwise specified, shall be punishable by a base fine of not more than \$500.
2. Any defendant who fails to pay the fine or appear in the Fountain Hills Municipal Court as directed by a citation issued pursuant to this Section, or who fails to appear at the time and place set for trial of a matter arising under this Section, shall be subject to an additional default fee in an amount established by the Fountain Hills Municipal Court.
3. Any judgments issued by the Fountain Hills Municipal court shall be subject to all surcharges and fees imposed by state law in addition to the base civil fines required by this Section.
4. Judgments shall be collected in the same manner as any other civil judgment as provided by law.

F. Recidivist Properties/Persons.

1. The recidivist process is designed to provide relief via an expedited enforcement process for problems with persons or entities who repeatedly violate any provision of this code or Town ordinance and who have demonstrated an unwillingness to comply with this Section 1-8-3. Any violation of this chapter, whether initially deemed civil or criminal in nature, which is committed by a person deemed a recidivist as set forth in Subsection 1-8-3(F)(2) below, shall be deemed a misdemeanor and shall be addressed as set forth in Subsection 1-8-2(A) above.
2. A person or entity shall be deemed a "recidivist" if such person or entity has been issued a notice of violation and/or civil citation, and/or criminal charges filed for two or more times within the last two-year period relating to violations of the same provisions of this code.
3. To address frequently occurring violations on recidivist parties or entities, the Town Manager or authorized designee may initiate non-complaint based inspections/code enforcement on recidivist parties or entities after case resolution to check for a recurrence of the same violation(s).
4. Cases for which the persons or entities involved have been designated a recidivist shall be submitted to the Town Prosecutor for further action consistent with this chapter.

G. The penalties set forth in this Section shall be in addition to any penalty, fine, fee assessment or surcharge that may be assessed pursuant to state law.

(15-01, Amended, 03/19/2015; 12-02, Added, 03/01/2012)

Article 1-9

REPEAL OF EXISTING ORDINANCES

Sections:

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 town except those specially exempted in this article, now in force and effect are hereby repealed effective at twelve o'clock noon on the twenty-eighth day of June, 1990, 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 modify or affect:

- 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

Sections:

1-10-1 Effective Date

Section 1-10-1 Effective Date

Each and every 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 28th day of June, 1990 except that where a later effective date is provided it shall prevail.

Chapter 2

MAYOR AND COUNCIL

Articles:

2-1	COUNCIL
2-2	MAYOR
2-3	COUNCIL ELECTION
2-4	COUNCIL PROCEDURE
2-5	ORDINANCES, RESOLUTIONS AND CONTRACTS
2-6	INITIATIVE AND REFERENDUM
2-7	PLANNING AND ZONING COMMISSION
2-8	BOARD OF ADJUSTMENT
2-9	QUALIFIED ELECTORS AND PETITION CIRCULATORS

Article 2-1

COUNCIL

Sections:

- 2-1-1 Elected Officers**
- 2-1-2 Corporate Powers**
- 2-1-3 Assumption of Duties**
- 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 Statement**
- 2-1-9 Prohibition on Holding Appointive Town Office**

Section 2-1-1 Elected Officers

- A. The elected officers of the Town shall be a Mayor and six Councilmembers. The Mayor and Councilmembers shall constitute the Council and shall continue in office until assumption of duties of office by their duly elected or appointed successors, as set forth in Sections 2-1-3 and 2-1-4 of this Article.
- B. The term of office of the Mayor shall be two years.
- C. Councilmembers shall serve four-year, overlapping terms.
(12-08, Amended, 12/20/2012; 99-02, Amended, 01/21/1999)

Section 2-1-2 Corporate Powers

The corporate powers of the Town shall be vested in the Council and shall be exercised only as directed or authorized by law. All powers of the Council shall be exercised by ordinance, resolution, order or motion.
(12-08, Amended, 12/20/2012)

Section 2-1-3 Assumption of Duties

Councilmembers shall assume the duties of office at the first regularly scheduled Council meeting in December following the election at which the Councilmembers were elected.
(12-08, Amended, 12/20/2012; 99-02, Amended, 01/21/1999)

Section 2-1-4 Vacancies in Council

- A. The Council shall fill any vacancy that may occur in the Council by any method provided by ARIZ. REV. STAT. §9-235, as amended.
- B. In the case of a vacancy that may occur in the Office of the Mayor, the Council shall appoint,

from the remaining Councilmembers, one person to serve as Mayor for the remainder of the Mayor's term. The Council shall then fill, in the manner set forth in Subsection 2-1-4(A) above, the vacancy in the Council that was created by appointing a Councilmember to serve as Mayor.

C. All vacancies shall be filled in a reasonable period of time from the occurrence of the vacancy.
(12-08, Amended, 12/20/2012; 09-14, Amended, 11/05/2009)

Section 2-1-5 Compensation

The compensation paid to the Mayor and Council for service in office shall be fixed from time to time by resolution of the Council.

(12-08, Amended, 12/20/2012)

Section 2-1-6 Oath of Office

Prior to assumption of the duties of office, the Mayor and each Councilmember shall take and subscribe to the oath of office and review and acknowledge the Council's Rules of Procedure.

(12-08, Amended, 12/20/2012)

Section 2-1-7 Bond

Unless a blanket bond or other equivalent coverage is provided by the Town, prior to taking office, the Mayor and 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 Town or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. Bonds shall be in such sum as set forth in ARIZ. REV. STAT. §38-251, *et seq.*, as amended, and the premium for such bonds shall be paid by the Town.

(12-08, Amended, 12/20/2012)

Section 2-1-8 Financial Disclosure Statement

Any person who qualifies as a public officer at any time during the preceding calendar year shall file by January 31 of each year, on a form prescribed by law, a financial disclosure statement setting forth such information as required by ARIZ. REV. STAT. §38-542, as amended.

(12-08, Amended, 12/20/2012)

Section 2-1-9 Prohibition on Holding Appointive Town Office

No Councilmember shall hold any compensated appointive Town office or employment until one year after the expiration of the term for which he was elected or appointed to the Council.

(12-08, Amended, 12/20/2012)

Article 2-2

MAYOR

Sections:

- 2-2-1 Selection of Mayor**
- 2-2-2 Vice Mayor**
- 2-2-3 Acting Mayor**
- 2-2-4 Powers and Duties of the Mayor**
- 2-2-5 Absence of Mayor**
- 2-2-6 Failure to Sign Documents**

Section 2-2-1 Selection of Mayor

The Mayor shall be directly elected by the qualified electors of the Town.
(12-08, Amended, 12/20/2012)

Section 2-2-2 Vice Mayor

Each member of the Council, except the Mayor, shall serve an eight month term as Vice Mayor. Terms as Vice Mayor shall be determined such that every elected Councilmember serves as Vice Mayor during the member's elected term unless the Councilmember vacates his office for any reason prior to serving as Vice Mayor. During the years of 2014, 2015, and 2016, Vice Mayor terms may be extended beyond eight months to allow for adjustments to the Town's election cycles as required by ARIZ. REV. STAT. §16-204. The Vice Mayor shall perform the duties of the Mayor during the Mayor's absence or disability.

(12-08, Amended, 12/20/2012; 99-02, Amended, 01/21/1999)

Section 2-2-3 Acting Mayor

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

(12-08, Amended, 12/20/2012)

Section 2-2-4 Powers and Duties of the Mayor

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

- A. He shall be the chief executive officer of the Town.
- B. He shall be the chairman of the Council and preside over its meetings. He may make and second motions and shall have a voice and vote in all its proceedings.
- C. He shall enforce the provisions of this Code.

- D. He shall execute and authenticate by his signature such instruments as required by act of the Council or any applicable statute, regulation, ordinance or this Code.
 - E. He shall make such recommendations and suggestions to the Council as considered proper.
 - F. He 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 Town. After declaration of such emergency, the Mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the Town, including but not limited to:
 - 1. Imposition of a curfew in all or any portion of the Town.
 - 2. Ordering the closing of any business.
 - 3. Denying public access to 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. He shall perform such other duties required by applicable law and this Code as well as those duties required as chief executive officer of the Town.
- (12-08, Amended, 12/20/2012)

Section 2-2-5 Absence of Mayor

The Mayor shall not be absent from the Town for a period longer than two consecutive weeks without having first given proper notice to the Council.

(12-08, Amended, 12/20/2012)

Section 2-2-6 Failure to Sign Documents

If the Mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring his signature for any period of five days, then a majority of the members of the Council may, at any regular or special meeting, authorize the Vice Mayor or, in his absence, an Acting Mayor 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.

(12-08, Amended, 12/20/2012)

Article 2-3

COUNCIL ELECTION

Sections:

- 2-3-1 Consolidated Election Dates**
- 2-3-2 Non-Partisan Ballot**
- 2-3-3 Primary Election**
- 2-3-4 General Election Nomination**
- 2-3-5 Candidate Financial Disclosure**
- 2-3-6 Mail Ballot Election**

Section 2-3-1 Consolidated Election Dates

All elections shall be held as pursuant to ARIZ. REV. STAT. §16-204, as amended.
(15-09, Amended, 11/05/2015, Deleted and replaced; 12-08, Added, 12/20/2012)

Section 2-3-2 Non-Partisan Ballot

Elections shall be non-partisan and nothing on the ballot in any election shall be indicative of the support of a candidate. Candidates' names shall appear on the ballot pursuant to the procedure set forth in ARIZ. REV. STAT. §16-464, as amended.
(15-09, Amended, 11/05/2015, Deleted and replaced; 12-08, Amended, 12/20/2012, and Renumbered)

Section 2-3-3 Primary Election

Any candidate who shall receive at the primary election a majority of all the votes cast at that election for the office shall be declared to be elected to the office for which the person is a candidate, effective as the date of the general election, and no further election shall be held as to such candidate. If more candidates receive a majority of votes cast than there are seats to be filled for the office, from among those candidates who receive a majority of votes cast, the candidates who receive the highest number of votes equal to the number of seats to be filled for the office shall be declared elected to that office. The majority of votes cast is determined by:

- A. Calculating the total number of actual votes cast for all candidates for an office whose names were lawfully on the ballot for that office.
- B. Dividing the sum reached pursuant to paragraph A of this section by the number of seats to be filled for the office.
- C. Dividing the number reached pursuant to paragraph B of this section by two and rounding that number to the highest whole number.

(15-09, Amended, 11/05/2015, Deleted and replaced; 12-08, Amended, 12/20/2012, and Renumbered)

Section 2-3-4 General Election Nomination

Unless otherwise proscribed by State Law, if at the primary election no candidate receives the majority of the votes cast or the number of seats to be filled for the office is more than the number of candidates who receive a majority of votes cast, of the candidates who did not receive a majority of votes cast, the number of candidates who advance to the general election shall be equal in number to twice the number of seats to be filled for the office and the candidates who received the highest number of votes for the office shall be the only candidates at the general election. If more than one candidate received an equal number of votes and that number was the highest number of votes for the office, then all candidates receiving the equal number of votes shall be candidates at the general election. The candidates equal in number to the seats to be filled for the office who receive the highest number of votes at the general election shall be declared elected to that office. If two or more candidates receive an equal number of votes cast for the same office, and a higher number than any other candidate, the candidate who shall be declared elected shall be determined by lot in the presence of the candidates.

(15-09, Amended, 11/05/2015, Deleted and replaced; 12-08, Amended, 12/20/2012, and Renumbered)

Section 2-3-5 Candidate Financial Disclosure

Pursuant to ARIZ. REV. STAT. §38-543, as amended, each candidate for the office of Councilmember shall file a financial disclosure statement on a form prescribed by law when such candidate files a nomination paper. The statement shall contain such information as required by law.

(15-09, Amended, 11/05/2016, Deleted and replaced; 12-08, Amended, 12/20/2012, and Renumbered; Ord. 11-07, Renumbered, 01/20/2011)

Section 2-3-6 Mail Ballot Election

The Town Clerk may conduct primary, general and special elections using mail ballots in accordance with ARIZ. REV. STAT. §16-409, as amended, if such elections are not consolidated with county-wide or state-wide elections.

(15-09, Amended, 11/05/2015, Deleted and replaced; 12-08, Amended, 12/20/2012, and Renumbered)

Article 2-4

COUNCIL PROCEDURE

Sections:

- 2-4-1 Council Rules of Procedure**
- 2-4-2 Boards, Committees and Commissions**
- 2-4-3 Posting Notice of Meetings**
- Section 2-4-1 Council Rules of Procedure**

The Council shall adopt such procedural rules as it deems appropriate.
(12-08, Amended, 12/20/2012; 03-17, Amended, 08/07/2003)

Section 2-4-2 Boards, Committees and Commissions

The Council may create such boards, 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. All members shall serve at the pleasure of the Council. Immediately prior to assumption of the duties of office, each appointee shall take and subscribe to the oath of office and acknowledge that he is subject to the terms and conditions of the Council Rules of Procedure. Pursuant to ARIZ. REV. STAT. §38-232, as amended, the oath of office shall be administered prior to the first regular or special meeting that the appointee attends.

(12-08, Amended, 12/20/2012; 03-17, Amended, 08/07/2003)

Section 2-4-3 Posting Notice of Meetings

Public notice of the meetings of the Council shall be posted in the following places:

- A. Fountain Hills Community Center
13001 N. La Montana Drive
Fountain Hills, Arizona
- B. Town of Fountain Hills Website
www.fh.az.gov
- C. Fountain Hills Town Hall
16705 E. Avenue of the Fountains
Fountain Hills, Arizona

(12-08, Amended, 12/20/2012; 06-24, Amended, 10/19/2006; 05-04, Amended, 06/02/2005; 03-17, Renumbered, 08/07/2003; 01-22, Amended, 12/10/2001)

Article 2-5

ORDINANCES, RESOLUTIONS AND CONTRACTS

Sections:

- 2-5-1 Prior Approval**
- 2-5-2 Introduction**
- 2-5-3 Reading of Ordinances**
- 2-5-4 Requirements for an Ordinance**
- 2-5-5 Effective Date of Ordinances**
- 2-5-6 Signatures Required**
- 2-5-7 Publishing Required**
- 2-5-8 Posting Required**

Section 2-5-1 Prior Approval

All ordinances, resolutions and contract documents shall, before presentation to the Council, be reviewed by the Town Manager and, as to form, by the Town Attorney and shall, when there are substantive matters of administration involved, be referred to the person who is charged with the administration of the matters. Such person shall have an opportunity to present his comments, suggestions and objections, if any, prior to the passage of the ordinance, resolution or acceptance of the contract.

(12-08, Amended, 12/20/2012)

Section 2-5-2 Introduction

The Town Manager, the Town Attorney, or the Town Clerk may present ordinances, resolutions and other matters or subjects to the Council, and any member of the Council may assume sponsorship thereof by moving that such ordinance, resolution, matter or subject be adopted; otherwise, they shall not be considered.

(12-08, Amended, 12/20/2012)

Section 2-5-3 Reading of Ordinances

Prior to a vote on passage by the Council, all ordinances shall be read in full unless the Council has been provided with complete printed or electronic copies of said ordinance.

(12-08, Amended, 12/20/2012; 06-24, Amended, 10/19/2006)

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.

(12-08, Amended, 12/20/2012)

Section 2-5-5 Effective Date of Ordinances

- A. No ordinance shall become operative until 30 days after its passage by the Council and signature by the Mayor, except measures necessary for the immediate preservation of the peace, health or safety of the Town, but such an emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become immediately operative, and unless it is approved by the affirmative vote of three-fourths of all the members of the Council.
- B. In addition to the provisions of subsection A of this Section, the Town Clerk shall certify the minutes of any Council meeting at which an ordinance, resolution or franchise, except an emergency measure is passed. The 30 day period specified in subsection A of this section shall be calculated as set forth in ARIZ. REV. STAT. §19-142, as amended.

(12-08, Amended, 12/20/2012)

Section 2-5-6 Signatures Required

Every ordinance passed by the Council shall, before it becomes effective, be signed by the Mayor and attested by the Town Clerk.

(12-08, Amended, 12/20/2012)

Section 2-5-7 Publishing Required

Only such ordinances, orders, resolutions, motions, regulations or proceedings of the Council shall be published as may be required by state law or expressly ordered by the Council.

(12-08, Amended, 12/20/2012)

Section 2-5-8 Posting Required

Every ordinance imposing any penalty, fine, forfeiture or other punishment shall, after passage, be posted by the Town Clerk in the locations designated in Section 2-4-3 of this Code and an affidavit of the person who posted the ordinance shall be filed in the office of the Town Clerk as proof of posting.

(12-08, Amended, 12/20/2012)

Article 2-6

INITIATIVE AND REFERENDUM

Sections:

- 2-6-1 Power Reserved; Time of Election**
- 2-6-2 Number of Signatures**
- 2-6-3 Time of Filing**
- 2-6-4 Sample Ballots and Publicity Pamphlets**
- 2-6-5 Mail Ballot Election**

Section 2-6-1 Power Reserved; Time of Election

- A. There is reserved to the qualified electors of the Town the power of initiative and the referendum as prescribed by the state constitution, Arizona Revised Statutes and this Code.
- B. Any proper initiative matter shall be voted on by all qualified electors at the next ensuing Town primary or general election pursuant to Subsection 2-6-3(A) of this Code.
- C. That upon presentation of a certificate to the Council by the Town Clerk that all steps required by the Arizona Constitution and the State statutes concerning referendum have been complied with, the Council may call a special election on the matter referred no less than ninety days and no more than one hundred fifty days from the presentation of the certificate by the Town Clerk; provided that within that period of time there is no regularly scheduled Town primary or general election for which the referendum matters would otherwise qualify.
- D. The call of a special election for referendum matters shall be valid only upon the affirmative vote of four members of the Council voting on said request and call. Should the required number of votes to call the special election not be obtained then the referendum matter shall appear on the ballot at the next regular Town primary or general election.
- E. If a special election on a referendum matter is called for by the Council pursuant to subsection D of this section, then in addition to all other notices required by law, the Town Clerk shall notify the person or organization that requested the referendum petition of the Council decision by first class mail, postage prepaid at the address shown upon the request for referendum petition number.

(12-08, Amended, 12/20/2012)

Section 2-6-2 Number of Signatures

- A. The total number of electors qualified to vote at the last Town election, whether regular or special, immediately preceding the date upon which any initiative petition is filed, shall be the basis for computing the number of signatures of qualified electors of the Town required to file an initiative petition.
- B. The basis for computing the number of signatures of qualified electors of the Town required to file a referendum petition shall be as determined by state law.

(12-08, Amended, 12/20/2012)

Section 2-6-3 Time of Filing

- A. Initiative petitions shall be filed at least 120 days prior to the election at which they are to be voted upon.
- B. Referendum petitions shall be filed within the time period set forth in ARIZ. REV. STAT. §19-142, as amended.
(12-08, Amended, 12/20/2012)

Section 2-6-4 Sample Ballots and Publicity Pamphlets

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

- A. A publicity pamphlet, containing the entire text of the official ballot, shall be mailed by the Town Clerk to each household within the Town in which a registered voter resides, not less than the minimum number of days prior to the election to which the sample ballot pertains, as required by state law.
- B. The pamphlet shall contain the proposition as it will appear on the ballot together with a summary of each proposition. Each summary shall be followed by any arguments supporting the proposition followed by any arguments opposing the proposition. Arguments submitted by the person filing the initiative or referendum shall appear first. The remaining arguments shall be placed in the order in which they were filed.
- C. Arguments supporting and opposing propositions appearing on the ballot shall be filed with the office of the Town Clerk by 5:00 p.m. not less than the minimum number of days prior to the election at which the propositions are to be voted upon, as required by state law. If time does not permit compliance with the deadline, the Town Clerk may establish a separate deadline for filing referendum ballot arguments. Arguments supporting or opposing propositions appearing on the ballot shall meet the following requirements:
 - 1. Arguments must relate to the propositions proposed by initiative or referred by referendum which will appear on the ballot.
 - 2. Arguments must identify the proposition to which they refer and indicate whether the argument is in support of or in opposition to the proposition.
 - 3. Arguments may not exceed three hundred words in length.
 - 4. Arguments must contain the original notarized signature of each person sponsoring it. Arguments submitted by organizations shall be signed by two executive officers of the organization, or if the argument is sponsored by a political committee it must be signed by the committee's chairman or treasurer. All persons signing documents shall indicate their residence or post office address and a telephone number, which information shall not appear in the publicity pamphlet.
 - 5. No person or organization shall submit more than one argument for each proposition to be voted upon.

6. Each argument shall be accompanied by a payment in the amount established by the Council, either as part of the Town's annual budget or by separate resolution, to offset proportional costs of printing. This requirement shall not be waived on any account.

(12-08, Amended, 12/20/2012; 11-07, Amended, 01/20/2011)

Section 2-6-5 Mail Ballot Election

The Town Clerk may conduct initiative and referendum elections using mail ballots in accordance with ARIZ. REV. STAT. §16-409, as amended, if such elections are not consolidated with county-wide or state-wide elections.

(15-09, Amended, 11/05/2015; 12-08, Amended, 12/20/2012; 11-07, Added, 01/20/2011)

Article 2-7

PLANNING AND ZONING COMMISSION

Sections:

- 2-7-1 Creation**
- 2-7-2 Membership**
- 2-7-3 Officers**
- 2-7-4 Duties**
- 2-7-5 Meetings; Rules; Minutes**
- 2-7-6 Conduct of Business**
- 2-7-7 Fees**

Section 2-7-1 Creation

The Planning and Zoning Commission of the Town of Fountain Hills is hereby established.
(12-08, Amended, 12/20/2012)

Section 2-7-2 Membership

- A. The Planning and Zoning Commission shall be composed of a total of seven members who shall be residents of the Town. The members of the Commission shall be appointed by the Mayor, subject to the approval of the Council. These appointments shall be for a period of two years each, with the terms of members staggered such that the terms of no more than four members shall expire in any one year. All members shall be appointed for full two year terms, except that in the event of death or resignation of a member, the vacancy may be filled for the unexpired term. The terms of all members shall extend until their successors are appointed and qualified. Members shall serve at the will and pleasure of the Council. However, three successive unexcused or unexplained absences from any regular or special meeting shall result in automatic removal without the necessity of a hearing or notice and such action shall be final.
- B. All members shall serve without pay. However, members of said Commission may be reimbursed for actual expenses incurred in connection with their duties upon authorization or ratification by the Commission and approval of such expenditures by the Council.

(12-08, Amended, 12/20/2012; 06-30, Amended, 12/07/2006)

Section 2-7-3 Officers

The Commission shall elect a chair and vice-chair from among its own members, who shall serve for one year and until their successors are elected and qualified. The chair shall preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization. The vice-chair shall perform the duties of the chair in the chair's absence or disability. Vacancies created by any cause shall be filled for the unexpired term by a new election.

(12-08, Amended, 12/20/2012; 06-30, Amended, 12/07/2006)

Section 2-7-4 Duties

It shall be the duty of the Commission:

1. To formulate and administer any lawful plan duly adopted by the Council for growth and development.
2. To make or cause to be made a continuous study of the best and future use to which land and buildings shall be put within the Town of Fountain Hills.
3. To recommend to the Council revisions in such plans that, in the opinion of the Commission, are in the best interest of the citizens of the Town of Fountain Hills.
4. To hold public hearings when necessary or when required by law.
5. To make recommendations to the Council on all matters concerning or relating to the creation of Zoning Ordinances, the boundaries thereof, the appropriate regulations to be enforced therein, and amendments of the Town of Fountain Hills Zoning Ordinance.
6. To carry out the specific duties as prescribed by this Code and the Town of Fountain Hills Zoning Ordinance.
7. To undertake all activities usually associated therewith and commonly known as "planning and zoning;" provided, however, that Commission members shall not interfere with, or participate in, the administrative duties of the Town's Planning and Zoning Division.
8. To confer and advise with other town, county, regional, or state planning agencies and commissions.

(12-08, Amended, 12/20/2012; 06-30, Amended, 12/07/2006)

Section 2-7-5 Meetings; Rules; Minutes

All meetings of the Commission shall be open to the public in accordance with state law. The Council shall provide rules of procedure for the Commission relating to the conduct of its members and its meetings. The minutes of all Commission proceedings shall be filed in the office of the Town Clerk.

(06-30, Amended, 12/07/2006)

Section 2-7-6 Conduct of Business

Four members shall constitute a quorum. The affirmative vote of a majority of a quorum shall be required for passage of any matter before the Commission. In this connection, the minutes of the meetings shall reflect the "ayes" and "nays" cast on a particular measure and shall reflect the vote of each member present. A member may abstain from voting only upon a declaration that he or she has a conflict of interest, in which case such member shall take no part in the deliberations on the matter in question.

(12-08, Amended, 12/20/2012; 06-30, Amended, 12/07/2006)

Section 2-7-7 Fees

The Council shall be authorized to establish a uniform schedule of fees for services relating to Planning and Zoning, either as part of its adoption of the Town's annual budget or by separate resolution.
(06-30, Amended, 12/07/2006)

Article 2-8

BOARD OF ADJUSTMENT

Sections:

2-8-1	Creation
2-8-2	Membership
2-8-3	Officers
2-8-4	Duties
2-8-5	Nonconforming Use
2-8-6	Variances
2-8-7	Limitation of Authority
2-8-8	Appeals
2-8-9	Filing Fees for Appeals
2-8-10	Meetings
2-8-11	Conduct of Business

Section 2-8-1 Creation

The Board of Adjustment of the Town of Fountain Hills is hereby established.
(12-8, Amended, 12/20/2012)

Section 2-8-2 Membership

- A. The Board of Adjustment shall be composed of a total of five members who shall be residents of the Town. The members of the Board shall be appointed by the Mayor, subject to the approval of the Council. These appointments shall be for a period of two years each, with the terms of members staggered such that the terms of no more than three members shall expire in any one year. All members shall be appointed for full two year terms, except that in the event of death or resignation of a member, the vacancy may be filled for the unexpired term. The term of all members shall extend until their successors are appointed and qualified. Members shall serve at the will and pleasure of the Council. However, three successive unexcused or unexplained absences from any regular or special meeting shall result in automatic removal without the necessity of a hearing or notice and such action shall be final.
- B. All members shall serve without pay. However, members of said Board may be reimbursed for actual expenses incurred in connection with their duties upon authorization or ratification by the Board and approval of such expenditures by the Council.

(12-08, Amended, 12/20/2012; 06-30, Amended, 12/07/2006)

Section 2-8-3 Officers

The Board shall elect a chair and vice-chair from among its own members, who shall serve for one year and until their successors are elected and qualified. The chair shall preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization. The chair shall have the power to administer oaths and to take evidence. The vice-chair shall perform the duties of the chair in the chair's absence or disability. Vacancies created by any cause shall be filled for the unexpired term by a new election.

(12-08, Amended, 12/20/2012)

Section 2-8-4 Duties

- A. It shall be the duty of the Board of Adjustment to hear appeals concerning the interpretation or administration of the zoning code made by the zoning administrator. The Board may reverse, affirm, wholly or partially or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.
- B. It shall be the duty of the Board of Adjustment to hear and decide appeals for variances from the terms of the zoning code only, if because of special circumstances applicable to the subject property, including its size, shape, topography, location or surroundings, the strict application of the zoning code will deprive such property owner of privileges enjoyed by owners of other property of the same classification in the zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
- C. The Board of Adjustment may not:
 - 1. Make any changes in the uses permitted in any zoning classification or zoning district, make any changes in the terms of the zoning code or make changes to the zoning map; provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this Article.
 - 2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

(12-08, Amended, 12/20/2012)

Section 2-8-5 Nonconforming Use

No nonconforming use or violations of this Article with respect to neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for granting a variance.

(12-08, Amended, 12/20/2012)

Section 2-8-6 Variances

Every variance shall be personal to the applicant and shall run with the land only after completion of any structure or structures authorized thereby.

Section 2-8-7 Limitation of Authority

Nothing herein contained shall be construed to empower the Board to authorize uses which violate any other Town code or ordinance, to effect changes in the zoning map or to add to or change the uses permitted in any zoning district.

(12-08, Amended, 12/20/2012)

Section 2-8-8 Appeals

The decision of the Board shall be final; provided, however, that any person aggrieved by a decision of the Board may, at any time within 30 days after the filing of the decision in the office of the Development Services Department, file a special action in the nature of certiorari with the Arizona Superior Court in and for Maricopa County for review of the Board's decision. Allowance of the writ shall not stay proceedings upon the decision appealed from, unless the court shall grant a restraining order. If a special action is brought for review of a matter in which the Board held a hearing which was not stenographically or electronically recorded, then upon request of any party to the special action or the court, the Board shall forthwith notice a hearing as herein provided for the purpose of causing a stenographic or electronic record to be made of the evidence presented by the parties. If evidence is presented at this hearing which is new or different from that originally presented, the same shall be noted in the record by the Board chair.

(12-08, Amended, 12/20/2012)

Section 2-8-9 Filing Fees for Appeals

- A. Upon filing an application for appeal, the appellant shall pay a filing fee in an amount established by a schedule adopted by the Council as part of the Town's annual budget or by separate resolution. No part of the filing fee shall be returnable. Payment of filing fee shall be waived when the petitioner is a town, city, county, state or federal government.
- B. In the case of an appeal for a variance to more than one provision of the zoning code, the filing fee shall equal the total amount chargeable for all provisions as prescribed by the fee schedule.

(12-08, Amended, 12/20/2012; 06-30, Amended, 12/07/2006)

Section 2-8-10 Meetings

The Board shall provide in its rules for its meetings; provided, however, that special meetings may be called by the chair, or in his or her absence the vice-chair. In addition, any three members of the Board may make written request to the chair of the Board for a special meeting and in the event such meeting is not called, such members may call a special meeting in such manner and form as may be provided in the Board rules.

(12-08, Amended, 12/20/2012)

Section 2-8-11 Conduct of Business

Three members shall constitute a quorum. The affirmative vote of a majority of a quorum shall be required for passage of any matter before the Board. In this connection, the minutes of the meetings shall reflect the "ayes" and "nays" cast on a particular measure and shall reflect the vote of each member present. A member may abstain from voting only upon a declaration that he or she has a statutory conflict of interest, in which case such member shall take no part in the deliberations on the matter in question.

(12-08, Amended, 12/20/2012)

Article 2-9

QUALIFIED ELECTORS AND PETITION CIRCULATORS

Sections:

2-9-1 Qualified electors; definition

2-9-2 Petition circulators

Section 2-9-1 Qualified electors; definition

- A. Every resident of the Town is qualified to register and vote in Town elections if he:
1. Is a citizen of the United States;
 2. Will be eighteen (18) years of age or more on or before the date of the next Town election following registration;
 3. Will have been a resident of the Town 29 days next preceding the date of the next Town election;
 4. Is able to write his or her name, or make a mark, unless prevented from doing so by physical disability;
 5. Has not been convicted of treason or a felony, unless restored to civil rights; and
 6. Has not been adjudicated an incapacitated person as defined by ARIZ. REV. STAT. §14-5101, or its successor statute.
- B. For the purposes of this Article, "resident" means an individual who has actual physical presence in the Town, combined with an intent to remain. A temporary absence shall not result in a loss of residence if the individual has intent to return following his or her absence. An individual has only one residence for purposes of this Article.

(12-08, Amended, 12/20/2012; 98-33, Added, 12/03/1998)

Section 2-9-2 Petition circulators

All circulators of nomination petitions for Mayor or Councilmember and all circulators of recall, referenda or initiative petitions or petitions for other measures, shall be qualified to register to vote in this State. Pursuant to ARIZ. REV. STAT. §16-315, as amended, if the petition circulator is not a resident of the State, the petition circulator shall register as a circulator with the Secretary of State before circulating the petition.

(12-08, Amended, 12/20/2012; 98-33, Added, 12/03/1998)

Chapter 3

ADMINISTRATION

Articles:

- 3-1 OFFICERS IN GENERAL**
- 3-2 MERIT SYSTEM**
- 3-3 PROCUREMENT**
- 3-4 DISPOSITION OF PROPERTY**
- 3-5 CIVIL PREPAREDNESS AND DISASTER**

Article 3-1

OFFICERS IN GENERAL

Sections:

- 3-1-1 Town Manager**
- 3-1-2 Town Attorney**
- 3-1-3 Town Presiding Judge**
- 3-1-4 Town Clerk**
- 3-1-5 Town Marshal/Law Enforcement Agent**
- 3-1-6 Department Directors**
- 3-1-7 Additional Officers**
- 3-1-8 Vacancies; Deputies; Holding More than One Office**
- 3-1-9 Additional Powers and Duties**

Section 3-1-1 Town Manager

- A. Office Created. The office of the Town Manager is hereby created and established. The Town Manager shall be appointed by the Council on the basis of executive and administrative qualifications with special reference to actual experience in or knowledge of accepted practice in respect to the duties of office as hereinafter set forth; and he shall hold office for and at the pleasure of the Council.
- B. Eligibility. Residence in the Town at the time of appointment shall not be required as a condition of appointment. However, within six months from the date of appointment, the Town Manager must become a resident of the Town, unless an extension of time is granted by the Council.
- C. Bond. Unless a blanket bond or other equivalent coverage is provided by the Town, prior to taking office, the Town Manager 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 Town and to and for the use and benefit of the Town or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. Bonds shall be in such sum as set forth in ARIZ. REV. STAT. § 38-251 *et seq.*, as amended, and the premium for such bonds shall be paid by the Town.
- D. Absence. The Deputy Town Manager shall perform the duties of the Town Manager during his absence. In the event the Deputy Town Manager is unable or unavailable to perform such duties, the Town Manager may appoint such other Town Employee as he deems appropriate to serve as the acting Town Manager. If the Town Manager is unable to make such appointment to perform the duties of Town Manager during the temporary absence or disability of the permanent Town Manager, the Council may designate a qualified administrative officer to perform the Town Manager's duties.
- E. Removal. The Town Manager may be removed by the Council by a majority vote of its members immediately for cause or upon such notice as is set forth in the Town Manager's employment contract without cause. As used herein and as it relates to the termination of employment of the Town Manager, the term "for cause" shall mean malfeasance in office or willful breach or habitual neglect of duties, as such duties are described in this Section, illegal activity within or without the conduct of this office or any other cause set forth in the Town

Manager's employment contract.

- F. Resignation. The Town Manager shall give such notice as set forth in his employment contract prior to resigning the office of Town Manager.
- G. Compensation. The Town Manager shall receive such compensation as the Council shall from time to time determine, and said compensation shall be a proper charge against such funds of the Town as the Council shall designate. The Town Manager shall be reimbursed for all sums necessarily incurred or paid by him in the performance of his duties, or incurred when traveling on business pertaining to the Town as approved by the Council; reimbursement shall be made only when a verified, itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented and approved by the Town Finance Division.
- H. Powers and Duties. The Town Manager shall be the administrative officer of the Town government and shall be responsible to the Council for the proper administration of all affairs of the Town under the specific direction and control of the Council. In addition to the general powers as the chief administrative officer and not as a limitation thereon, it shall be the Town Manager's responsibility and authority:
 - 1. To see that all laws and ordinances of the Town are duly enforced, and that all franchises and privileges granted by the Town are faithfully observed.
 - 2. To appoint and, when necessary, suspend or remove all employees of the Town, except those officers appointed by the Council. All appointments and removals shall be based upon merit and upon the qualifications and disqualifications of such employee without regard to any political belief or affiliation.
 - 3. To coordinate the administrative functions and operations of the various departments, divisions, services, boards, committees and commissions of the Town government, and on its behalf to carry out policies, rules, regulations and ordinances adopted by it, relating to the administration of the affairs of such departments, divisions, services, boards, committees or commissions. Such powers and duties to be subject to the following provisions:
 - a. That the organizational structure under which municipal services are performed shall be specified in an organization chart approved by the Council.
 - b. That prior to any creation, combination, consolidation or deletion of any positions of employment, written job descriptions or amendments thereto shall have been approved by the Council.
 - 4. To attend all meetings of the Council unless excused therefrom and to attend, or designate appropriate Town Staff to attend all board, commission and committee meetings.
 - 5. To recommend to the Council for adoption such matters, ordinances and resolutions as are necessary.
 - 6. To recommend to the Council at periodic intervals changes needed in the Town Code.
 - 7. To keep the Council at all times fully advised as to the financial conditions and needs of the Town. To provide whatever reports to the Council as it may deem necessary.

8. To prepare and submit to the Council a proposed annual budget for the next fiscal year, including financial projections for the subsequent four fiscal years.
 9. To analyze the functions, duties and activities of the various departments, divisions, services, boards, committees and commissions of the Town government and of all employees thereof, and to make such recommendations to the Council to achieve the highest degree of efficiency in the overall operation of the Town government.
 10. To investigate all complaints in relation to matters concerning the administration of the Town, its departments and all services provided to it by contract with another entity.
 11. To exercise general supervision over all public buildings, public parks and other public property that are under the control and jurisdiction of the Council.
 12. To devote as much time to the duties of the office of Town Manager and the interest of the Town as necessary.
 13. To perform such other duties and exercise such other powers as may be delegated from time to time by ordinance, resolution or affirmative vote of the Council.
- I. Council to Act Through Town Manager. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the Town Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the Town Manager either publicly or privately.

(13-04, Amended, 11/21/2013)

Section 3-1-2 Town Attorney

The Town Attorney shall be appointed by and serve at the pleasure of the Council and shall act as the legal counselor and advisor of the Council and, as such, shall give his opinion in writing when requested. He shall draft or supervise the drafting of all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments before final approval or acceptance thereof by the Council. He shall ensure that the Town is represented by legal counsel in the prosecution or defense of all suits, actions or causes where the Town is a party and shall report to the Council, when required, the condition of any suit or action to which the Town is a party.

(13-04, Amended, 11/21/2013)

Section 3-1-3 Town Presiding Judge

The Town Presiding Judge shall be appointed by the Council and shall be the presiding officer of the municipal court. He shall perform those functions necessary to the maintenance of the municipal court as provided by state law and shall have the powers and duties as set forth in Chapter 5 of this Code.

(13-04, Amended, 11/21/2013; 02-03, Amended, 03/21/2002)

Section 3-1-4 Town Clerk

- A. Records. The Town Clerk shall be the Town's custodian of records and shall keep a true and correct record of all business transacted by the Council and any other records that either pertain to the business of the Town or that the Council directs. The Town Clerk or authorized designee shall keep such records in the manner set forth in the records retention process approved for Arizona municipalities by the Arizona State Library, Archives and Public Records Division and pursuant to any other applicable statutory requirements.
- B. Public Inspection of Records. The Town Clerk shall keep convenient for public inspection all public records and public documents under his control, as provided by state law.
- C. Minutes. The Town Clerk shall prepare or cause to be prepared all minutes of Council proceedings and ensure their correctness and accuracy.
- D. Ordinances, Resolutions, Budgets and Notices. The Town Clerk or authorized designee 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.
- E. Election Official. The Town Clerk shall be the Town election official and perform those duties required by state law.
- F. Administrative Duties. The Town Clerk shall perform those administrative responsibilities and duties that are conferred upon him by the Town Manager in addition to those specified in state law or in this Code.

(13-04, Amended, 11/21/2013)

Section 3-1-5 Town Marshal/Law Enforcement Agent

The Town Manager or authorized designee shall serve as the Town Marshal/Law Enforcement Agent and shall provide for enforcement of Town codes, ordinances or other regulations. The Town shall have the authority to enter into an intergovernmental agreement or contract for the provision of law enforcement services.

(13-04, Amended, 11/21/2013; 06-14, Amended, 05/18/2006)

Section 3-1-6 Department Directors

- A. There are hereby created the following departments, each of which shall be under the immediate direction of a department director or the Town Manager, as designated in the adopted organizational chart:
 - 1. Administration Department
 - 2. Community Services Department
 - 3. Development Services Department
 - 4. Fire Department

5. Police Department

- B. Each department director shall be selected by and report to the Town Manager; provided, however, that selection of the department directors for the Police and Fire Departments shall be in accordance with the contracts for those services. Department directors, except for Police and Fire, shall be subject to the merit system.

(13-04, Amended, 11/21/2013; 06-14, Amended, 05/18/2006)

Section 3-1-7 Additional Officers

The Council may appoint and remove from time to time such other officers as it may deem necessary and that are not provided for in this Code or state statute.

(13-04, Amended, 11/21/2013)

Section 3-1-8 Vacancies; Deputies; Holding More than One Office

- A. A vacancy in any office not subject to Council appointment shall be filled by the Town Manager.
- B. The powers and duties of any of the offices enumerated in Section 3-1-6 may be performed by a deputy upon authorization of the Town Manager.
- C. It shall be lawful for one person to hold more than one office, but such person shall be compensated only for one office to which he has been regularly appointed, unless specified otherwise by the Council.

(13-04, Amended, 11/21/2013)

Section 3-1-9 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 offices as the Council may provide.

(13-04, Amended, 11/21/2013)

Article 3-2

MERIT SYSTEM

Sections:

- 3-2-1 Creation and Scope**
- 3-2-2 Conditions of Employment; Non-discrimination**
- 3-2-3 Rules and Regulations**
- 3-2-4 Political Activity**

Section 3-2-1 Creation and Scope

- A. There is hereby created and adopted a merit system governing the employees of the Town, except those enumerated in this Section, for the purpose of regulating the conditions of employment and removal of employees of the Town.
- B. The merit system adopted by this Article shall not apply to elected officials; officers subject to appointment and removal by the Council; consultants hired on a contract basis; contract employees; temporary employees; volunteer workers who receive no regular compensation from the Town and members of boards, committees and commissions established by the Council.

(13-04, Amended, 11/21/2013)

Section 3-2-2 Conditions of Employment; Non-discrimination

The appointment, promotion and tenure of all employees identified in Section 3-2-1 shall be conditioned solely on merit, fitness and the satisfactory performance of the duties and responsibilities assigned. No employee or applicant for employment shall be discriminated against on the basis of age, race, color, religion, gender, political affiliation, disability or impairment.

(13-04, Amended, 11/21/2013)

Section 3-2-3 Rules and Regulations

The Council shall adopt by ordinance or resolution written rules and regulations to give effect to this Article.

(13-04, Amended, 11/21/2013)

Section 3-2-4 Political Activity

- A. All employees will remain free from any political activity while on duty.
- B. An employee may exercise his rights as a citizen to vote and to express opinions as an individual citizen, but not as a representative of the Town.
- C. No paid employee will seek election to public office with the Town while still employed by the Town.

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- D. No paid employee will use his position to sell, solicit or distribute any campaign material during working hours or while in a uniform or with visible identification used by or identified with the Town government.
- E. No paid employee will use his position to introduce, guide or recommend any candidate for public office on Town property.

(13-04, Amended, 11/21/2013)

Article 3-3

PROCUREMENT

Sections:

PART I – GENERAL PROVISIONS

- 3-3-1 Purposes**
- 3-3-2 Policies**
- 3-3-3 Application; Exclusions**
- 3-3-4 Definitions**
- 3-3-5 Budgeting**
- 3-3-6 Procurement Agent**
- 3-3-7 Procurement by Dollar Value; Execution**
- 3-3-8 On-line Bidding**
- 3-3-9 Purchase Orders**
- 3-3-10 Reserved**

PART II – ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES

- 3-3-11 Ethical Standards**
- 3-3-12 Ethical Violations**
- 3-3-13 Unauthorized Purchases, Violation, Liability, Enforcement**
- 3-3-14 Reserved**
- 3-3-15 Reserved**

PART III – BIDDING PROCEDURES

- 3-3-16 Applicability**
- 3-3-17 Public Notice**
- 3-3-18 Bonds**
- 3-3-19 Confidential Information**
- 3-3-20 Invitation for Bids**
- 3-3-21 Request for Proposals**
- 3-3-22 Requests for Qualifications**
- 3-3-23 Construction Contracts**
- 3-3-24 Withdrawal or Cancellation of Bids or Proposals**
- 3-3-25 Emergency Procurements**
- 3-3-26 Non-Competitive Procurement**
- 3-3-27 Cooperative Purchasing**
- 3-3-28 Protests; Informal and Formal**
- 3-3-29 Debarments and Suspensions**
- 3-3-30 Acceptance of Work Completed**
- 3-3-31 Attestation of Contracts by the Town Clerk**

PART I – GENERAL PROVISIONS

Section 3-3-1 Purposes

The purposes of this Article are to:

- A. Establish standard policies and practices for the Procurement of Materials and Services and permit the continued development of Procurement policies and practices.

- B. Serve as an aid in providing all Materials and Services at the appropriate time, place, quantity, purpose and Price to meet the operational requirements of the Town.
- C. Ensure the fair and equitable treatment of all Persons who participate in the Procurement system of the Town and foster effective broad-based competition within the free enterprise system.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-2 Policies

The Town shall procure all Materials and Services deemed necessary for the delivery of quality service to its residents using competitive bids, Proposals, Vendor quotations or direct purchases. A complete history of each purchase of Materials or Services will be maintained through the use of purchase requisitions, purchase orders, check requests, petty cash vouchers and any other appropriate forms as authorized by this Article and as set forth in the Procurement Policy. Every effort will be made to obtain all Materials and Services at the most economical prices available. All Procurement Contracts shall be drawn by or under the supervision of the Town Attorney.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

Section 3-3-3 Application; Exclusions

- A. This Article shall apply to every expenditure of public monies by the Town, relating to Procurement of Materials and Services, except as otherwise specified in this Article. Nothing in this Article shall prevent any Town department from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. In the event of a conflict between the terms of this Article and the terms of any federal or state grant, the terms of any such grant shall govern.
- B. This Article shall not apply to the following:
 - 1. Contracts between the Town and the federal government, the State of Arizona and political subdivisions of the State of Arizona.
 - 2. Contracts for expert services, if the purpose of such services is to provide for Professional Services relating to an existing or probable lawsuit in which the Town is or may become a party or to Contracts for special investigative Services for law enforcement or administrative investigation purposes.
 - 3. Agreements negotiated by legal counsel representing the Town in settlement of pending litigation or threatened litigation.
 - 4. Development agreements, as defined in ARIZ. REV. STAT. § 9-500.05, as amended.
 - 5. Contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated in connection with a Contract for purchase or sale of real property.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-4 Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Best Interests of the Town” means advantageous to the Town.
- B. “Bid” means a price-based Proposal that is submitted in response to an Invitation for Bids.
- C. “Bid or Proposal Guarantee” means a form of security that indemnifies the Town against a successful bidder’s failure to execute the Contract documents and proceed with performance.
- D. “Bid Opening” means the date and time set forth in the Solicitation for opening of sealed Bids.
- E. “Business” means any Person authorized to do business in the State of Arizona.
- F. “Change Order” means a written order signed by an authorized agent of the Town that directs the Contractor to make changes that are authorized by the Town, but which does not change the Contract amount by more than as authorized in Section 3 3 6 below.
- G. “Closing Date” means the date and time set forth in a Solicitation for the receipt of Bids or Proposals by the Town, after which no Bid or Proposal shall be considered.
- H. “Confidential Information” means that portion of a Bid, Proposal, offer, Specification or protest that contains information that the Person submitting the information believes should be withheld, provided (i) such Person submits a written statement advising the Town of this belief at the time of the submission and (ii) the information is so identified wherever it appears.
- I. “Construction” means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, but does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
- J. “Contract” means all types of Town agreements, regardless of what they may be called, for the Procurement of Materials and Services, the demolition or Construction of public facilities, or the acquisition and disposal of real and personal property.
- K. “Contractor” means any Person having a Contract with the Town.
- L. “Cooperative Purchasing” means Procurement conducted by, or on behalf of, more than one public Procurement unit.
- M. “Data” means documented information, regardless of form or characteristic.
- N. “Days” means calendar days unless otherwise specified.
- O. “Debarment” means disqualification by the Procurement Agent of a Vendor to receive the award of a Contract with the Town for a specified period of time, not to exceed three years, commensurate with the seriousness of the offense causing the disqualification, which may result from misconduct or failure or inadequacy of performance.

- P. “Emergency” means a threat to the public health, welfare, property or safety.
- Q. “Employee” means an individual drawing a wage or a salary through the payroll process of the Town, whether elected or not.
- R. “Exempt Construction” means:
1. For any building, structure, addition or alteration, Construction with a total cost of work that does not exceed the limitations in ARIZ. REV. STAT. § 34 201(C).
 2. For any street, road, bridge, water or sewer work, Construction with a total cost of work that does not exceed the limitations in ARIZ. REV. STAT. § 34 201(D).
 3. For recreational projects, including trails, playgrounds, ball parks and other similar facilities, excluding buildings, structures, building additions and alterations to buildings, structures and building additions, when such improvements are completed by workers provided by a non-profit organization, Construction with a total cost of the work that does not exceed the limitations in ARIZ. REV. STAT. § 34 201(F).
 4. Contributions to finance public infrastructure made pursuant to a development agreement if such contribution to a single development does not exceed the limitations in ARIZ. REV. STAT. § 34 201(G)
- S. “Interested Party” means an actual or prospective bidder or Offeror whose economic interest may be affected substantially and directly by the issuance of a Solicitation, the award of a Contract, or by the failure to award a Contract. Whether an actual or prospective bidder or Offeror has an economic interest will depend upon the circumstances of each case.
- T. “Invitation for Bids” means all documents including those attached or incorporated by reference, utilized for soliciting Bids in accordance with Section 3-3-20 below.
- U. “Materials” means all personal property, including equipment, supplies, printing, insurance and leases of personal property.
- V. “Offeror” or “Respondent” means any Person that responds to an Invitation for Bids, Request for Proposals, Solicitation, offer, or any other invitation or request by which the Town invites a Person to participate.
- W. “Open Market Purchase” means procedures used for Procurement of Materials and Services readily available to the general public on the open market which, by their nature, are subject to competition from multiple competing Vendors.
- X. “Payment Bond” means a form of security required to be provided by a Contractor for the protection of claimants supplying labor and/or Materials to the Contractor or its Subcontractors.
- Y. “Performance Bond” means a form of security provided by a Contractor that secures the Contractor’s obligation to properly complete its work in accordance with the Contract.
- Z. “Person” means any individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity, governmental entity, union, committee, club, other organization or group of individuals. It includes a trustee,

receiver or similar representative.

- AA. “Price” means the total expenditure for a defined quantity of a Material or Service.
- BB. “Procurement” means the purchasing, renting, leasing or otherwise obtaining any Material or Service. The term includes all functions that pertain to the obtaining of any Material or Service, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of Contract administration.
- CC. “Procurement Agent” means the Town Manager or authorized designee.
- DD. “Procurement Policy” means the administrative policy created by the Town Manager to assist with the implementation of this Article.
- EE. “Professional Services” means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the Person(s) rendering the services are of primary importance. Professional Services shall include, but are not limited to, services provided by architects, attorneys, accountants, financial advisors, construction and project managers, dentists, design professionals, planning professionals, engineers, assayers, geologists, land surveyors, mediators, human resources consultants, plan review and/or inspection professionals, translators, election services, materials testing firms, water quality testing firms, fee consultants, revenue study consultants, physicians, nurses, psychologists, teachers and facilitators, veterinarians and health care providers, that provide a combination of professional and paraprofessional services or any other professions and services defined as Professional Services by state law. Professional Services do not include Construction or Exempt Construction.
- FF. “Proposal” means a written offer, solicited or unsolicited, for consideration as a basis for awarding or modifying a Contract.
- GG. “Request for Proposal” means all documents, including those attached or incorporated by reference, utilized for soliciting Proposals in accordance with Section 3-3-21 below.
- HH. “Request for Qualifications” means all documents, including those attached or incorporated by reference, utilized for soliciting qualifications-based Proposals in accordance with Section 3-3-23 below.
- II. “Responsible Bidder” or “Responsible Offeror” means a bidder or Offeror who has (i) the capability to fully perform the Contract requirements and (ii) the reliability that will ensure good faith performance.
- JJ. “Responsive Bidder” or “Responsive Offeror” means a bidder or Offeror who has submitted a Bid or Proposal that conforms in all material aspects to the Solicitation.
- KK. “Service” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. This term does not include “Professional Services” provided by those Persons as defined in this Section.
- LL. “Solicitation” means an Invitation for Bids, a Request for Proposals, a Request for Qualifications or any other invitation or request by which the Town invites a Person to participate in a Procurement.

- MM. “Specification” means any description of the physical characteristics, functional characteristics, or the nature of a Material or Service item. The term may include a description of any requirements for inspecting, testing, or preparing a Material or Service item for delivery.
- NN. “Subcontractor” means a Person that contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the Town.
- OO. “Suspension” means an action taken by the Procurement Agent disqualifying a Person or entity from participation in Town Procurement.
- PP. “Technical Registrant” means a Person who provides any of the Professional Services listed in ARIZ. REV. STAT., Title 32, Chapter 1, as amended, and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects.
- QQ. “Town” means the Town of Fountain Hills, an Arizona municipal corporation.
- RR. “Vendor” means any Person operating a Business that has, or proposes to, provide a Material or Service to the Town.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-5 Budgeting

- A. Procurements shall be contracted for or made only where sufficient funds have been budgeted in the year in which funds have been appropriated.
- B. Budgeted line items specifically identifying one-time operational or recurring Materials or Services that have been approved by the Council in the review and adoption of the annual Town budget, and for which an award is within the allocated expenditure set forth in the budget, may be approved by the Procurement Agent without further Council approval. Awards that exceed the allocated expenditure or deviate from the identified description and/or scope shall require Council approval.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

Section 3-3-6 Procurement Agent

The Procurement Agent shall (i) serve as the Contract administrator for the Town and as such shall supervise the execution and completion of all Contracts entered into by or on behalf of the Town and (ii) have general supervision, responsibility and authority to:

- A. Procure, contract for and execute agreements in any amount less than \$50,000.00 for Materials and Services, including rentals, Service agreements, and leases needed by any Town department, in accordance with this Article.
- B. Approve and sign Change Orders to Contracts authorized by the Council in an amount equal to the lesser of 10% of the Contract amount or \$50,000.00; provided that Change Orders that increase the Contract amount shall be approved by a Contract amendment in the form approved by the Town Attorney.

- C. Establish and amend the Procurement Policy and all regulations, forms, procedures and rules necessary and proper to implement the provisions of this Article. Modifications to the Procurement Policy shall be made with the concurrence of the Town Attorney.
- D. Have the authority to suspend or debar Vendors.
- E. Centralize Procurement, consistent with this Article, by which Materials and Services for all Town departments are purchased.
- F. Inform Town Employees and contractors of the ethical standards for public contracting.
- G. Designate another representative of the Town to have the authority to perform any or all of the above tasks.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-7 Procurement by Dollar Value; Execution

- A. Any purchase not exceeding \$50,000.00 may be made by the Procurement Agent in accordance with this Article and the Procurement Policy adopted pursuant to this Article. Contract requirements shall not be artificially divided so as to create multiple purchases of lesser amounts. Except as set forth in Subsections 3-3-5(B) and 3-3-6(B) above, any purchase exceeding \$50,000.00 shall be authorized by the Council. When it is advantageous to the Town, annual Contracts should be initiated for Services and Materials regularly purchased.
- B. The Procurement Agent may sign Contracts (1) for purchases not exceeding \$50,000.00 without Council approval and (2) in any amount after such Contract has been approved by the Council either as part of the annual budget or as a separate item. The Mayor may sign any Contracts of any amount as long as such Contracts have been approved by the Council.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998; 96-44, Amended, 11/07/1996)

Section 3-3-8 On-line Bidding

- A. If the Procurement Agent determines that electronic, on-line bidding is in the Best Interests of the Town and the competitive Procurement process is facilitated thereby, the Procurement Agent may use on-line bidding to obtain Bids electronically for the purchase of Materials and Services.
- B. An on-line bidding Solicitation must designate an opening date and time.
- C. The Closing Date and time for an on-line Solicitation may be fixed or remain open depending on the structure of the item being bid on-line. Information regarding the Closing Date and time must be included in the Solicitation. At the opening date and time, the Procurement Agent must begin accepting on-line Bids and must continue accepting Bids until the Bid is officially closed.
- D. All on-line Bids must be posted electronically and updated on a real-time basis.
- E. The Procurement Agent may:
 - 1. Require bidders to register before the opening date and time and, as part of that registration,

require bidders to agree to any terms, conditions or other requirements of the Solicitation.

2. Prequalify bidders and allow only those bidders who are prequalified to submit Bids on-line.
- F. All Bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws and timelines that govern Bids received through the sealed Bid process.
- G. All remedies available to the Town and to bidders through the sealed Bid process under this Article are also available to the Town and to bidders in an on-line bidding process.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-9 Purchase Orders

The Procurement Agent shall provide forms of purchase orders that shall be used for the purchase of all Materials and Services for or on behalf of the Town. Open purchase orders may be utilized for the routine purchase of regularly-supplied items, provided that an open purchase order shall be limited to a single source and shall not be valid for more than \$10,000 in the aggregate.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-10 Reserved

PART II – ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES

Section 3-3-11 Ethical Standards

It is the policy of the Town for Employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. These standards apply to Town Employees internally as well as when interacting with citizens and Vendors. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to providing the Town with Materials or Services. To further this policy, the Town has promulgated ethical standards as set forth below. The Procurement Agent is authorized to take steps to ensure compliance with the following standards:

- A. It is an affirmative obligation for Town Employees to perform their responsibilities in such a manner to ensure fair competitive access to governmental Procurement by responsible Vendors.
- B. No Employee of the Town shall engage in acts that, in the reasonable judgment of the Procurement Agent, would result in a loss of confidence in the integrity of the Town's Procurement operation. Such acts include, but are not limited to (1) receipt of gifts or services of more than a nominal value from a prospective Vendor, (2) statements to a Vendor that it will be awarded the Contract based on personal knowledge or relationships with Town Employees without an evaluation of its submittal, (3) failure of a Town Employee sitting on a review committee to disclose any prior or current business or financial relationship with a proposed Vendor, (4) criticism of one Vendor to another Vendor who is competing for the same Procurement prior to Bid or Proposal award or (5) any acts similar to those outlined in clauses (1) through (4) of this Subsection. For purposes of this Article, "nominal value" is defined as \$25.00 or less from any single party during any single calendar year.

- C. Town Employees responsible for participation in Procurement by virtue of their positions shall take reasonable efforts to ensure that Contractors doing business with the Town are expected to observe these same ethical standards. Violation of these standards shall constitute grounds for termination of a Contract with the Town and Debarment of the Contractor from doing any further business with the Town.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-12 Ethical Violations

- A. In addition to any applicable state laws, it is a violation of this Article:

1. For any Person to attempt to or influence any Town Employee to violate the provisions of ethical conduct set forth in this Article.
2. For any Person preparing Specifications or plans pursuant to this Article or any policy or procedure of the Town to receive any direct pecuniary benefit from the utilization of such plans or Specifications, other than compensation owed for preparation of the Specifications or plans.
3. For any Employee or agent acting on behalf of the Town to directly or indirectly participate in or benefit or receive any pecuniary benefit from a Procurement in violation of state or federal law.
4. For any Person to offer, give or agree to give any Employee or former Employee of the Town or for any Employee or former Employee of the Town to solicit, demand, accept, or agree to accept from another Person, any valuable thing or valuable benefit that would not accrue in the performance of his official duties or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing content of any Specification or Procurement standard, rendering of advice, investigation, auditing or in any advisory capacity in any proceeding or application request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement of a Contract or subcontract, or to any Solicitation or Proposal therefore. No action taken for violations of this Subsection shall be construed to preclude criminal prosecution of an Employee or former Employee or any other Person under the provisions of state or federal law.
5. For any payment, gratuity or offer of employment to be made by or on behalf of a Subcontractor under a Contract to the prime Contractor or higher tier Subcontractor or any Person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a Contract with the Town and Debarment of the Vendor from doing any further business with the Town. This information shall be included as a term and condition of all Town Contracts.
6. For a Person to be retained, or to retain a Person, to solicit or secure a Town Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide established sales and brokerage agencies for the purpose of securing business.
7. For any Employee who is participating directly or indirectly in a Procurement process to become the Employee of any Person under Contract with the Town concerning any matters that the Employee participated in during the same Procurement process for a period of twelve

months following his employment with the Town.

8. For any Employee or former Employee of the Town to disclose or use Confidential Information acquired by the Employee in the performance of his official duties for the actual or anticipated pecuniary benefit of any Person.

- B. It is no defense to a violation of this Section that the Employee to whom a benefit or offer of employment was made, or agree to be made, was not qualified to act in the desired manner.
- C. An Employee or Person may violate this Section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation. The Person's state of mind shall only be considered in imposing the penalty for such violation.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

Section 3-3-13 Unauthorized Purchases, Violation, Liability, Enforcement

- A. Except as provided in this Article, it shall be improper for any Town Employee to order the purchase of Materials or Services or to attempt to enter into Contracts within the purview of this Article other than through the Procurement Agent. Purchase Orders or Contracts made contrary to the provisions hereof shall not be approved by the Procurement Agent and the Town shall not be bound thereby. Further, the Procurement Agent may impose discipline on Employees who violate this Article in accordance with the Town's codes and personnel administrative regulations.
- B. A Person who knowingly contracts for or purchases any Materials, Services or Construction in a manner contrary to the requirements of this Article violates the ethical standards contained in this Article shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney's fees and damages arising out of the violation. Further, the Procurement Agent may impose discipline on Employees who (1) contracted for or purchased any Materials, Services of Construction in a manner contrary to the requirements of this Article or (2) engaged in violations of the provisions set forth in Sections 3-3-11 and 3-3-12 above in accordance with the Town's codes and personnel administrative regulations.
- C. The Town Attorney shall assist the Procurement Agent or authorized designee in enforcing the provisions of this Article.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-14 Reserved

(13-04, Deleted, 11/21/2013; 96-44, Added, 11/07/1996)

Section 3-3-15 Reserved

(13-04, Deleted, 11/21/2013)

PART III – BIDDING PROCEDURES

Section 3-3-16 Applicability

The bidding process set forth in this Article shall be utilized for all purchases not designated as eligible for purchases under petty cash, Open Market Purchase or small purchase in the Procurement Policy; provided, however, that the bidding process set forth in this Part may be supplemented by the Procurement Policy. Informal purchases (petty cash, Open Market Purchase and small purchases) shall be governed solely by the Procurement Policy; the Procurement Policy shall also designate the process for determining which bidding process will be required for all Procurements.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-17 Public Notice

- A. Public notice of Invitations for Bids, Requests for Proposals or Requests for Qualifications shall be in a manner that is reasonable in the judgment of Procurement Agent given the commercial context of the Solicitation. The advertisement shall specifically state the character of the Town purchase contemplated. Notice may be given in any publication that is reasonably available to prospective bidders in the judgment of Procurement Agent. For purposes of this Article, reasonable notice shall be defined as (1) not less than five business days for an Invitation for Bids and (2) not less than 21 Days for a Request for Proposals or a Request for Qualifications; provided, however, that any such notice shall comply with the ARIZ. REV. STAT. § 9 812 and 34 201, as amended.
- B. Public notice shall also be provided in a manner that is reasonable in the judgment of the Procurement Agent in publications of limited circulation, with the intent to encourage participation of as many qualified Businesses as reasonably possible, including disadvantaged business enterprise firms.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-18 Bonds

- A. The Procurement Agent may require a Bid or Proposal Guarantee be submitted with any Bid or Proposal. The Procurement Agent may waive the Bid or Proposal Guarantee requirement if he finds that the requirement will have a significant negative impact on the ability of disadvantaged business enterprises to compete for Town purchases or if he determines, in his reasonable discretion, that such waiver is in the Best Interests of the Town. The Procurement Agent shall require a Bid or Proposal Guarantee for Construction Contracts pursuant to ARIZ. REV. STAT. § 34 201(A), as amended.
- B. Performance Bonds and Payment Bonds shall be submitted prior to execution of any Contract for Construction or Exempt Construction.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-19 Confidential Information

- A. If a Person believes that a Bid, Proposal, Offer, or Specification contains information that should

be withheld from public disclosure, a statement advising the Procurement Agent of this belief and the basis for exemption from such disclosure shall accompany this submission and the information shall be specifically identified wherever it appears.

- B. The Procurement Agent shall make a determination whether the information shall be subject to public disclosure and shall advise in writing the party submitting the information of the final determination.
- C. All information contained in the Proposals shall be deemed as temporarily exempt from public disclosure based on the Town's need to avoid disclosure of contents prejudicial to competing Offerors during the process of negotiation. The Proposals shall not be open for public inspection until after Contract award. Except to the extent the Offeror designates, and the Town concurs, trade secrets or other proprietary Data contained in the Proposal shall remain exempt from public disclosure only to the extent permitted by law.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Amended, 11/21/2013)

Section 3-3-20 Invitation for Bids

- A. When the Procurement Policy directs that an Invitation for Bids shall be utilized for Procurement, the Invitation for Bids shall include Specifications and all contractual terms and conditions applicable to the Procurement.
- B. Bids shall be by sealed Proposals only and under such regulations as may be prescribed by the Procurement Agent. The Procurement Agent shall have the power to reject any or all Bids, and to advertise for Bids again.
- C. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each Bid, and such other relevant information as the Procurement Agent deems appropriate, together with the name of each bidder, shall be recorded; the record of Bids shall be open to public inspection immediately, but individual Bids shall be open to public inspection only after the Contract is awarded.
- D. Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based upon the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the Bid Price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in Bid evaluation that is not set forth in the Invitation for Bids, this Article or the Procurement Policy.
- E. Correction or withdrawal of inadvertently erroneous Bids before or after Bid Opening, or cancellation of awards or Contracts based on such Bid mistakes, may be permitted where appropriate at the Town's sole discretion. After Bid Opening, no changes in Bid Prices or other provisions of Bids prejudicial to the interest of the Town or fair competition shall be permitted. In lieu of Bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its Bid in the sole discretion of the Town and only if one of the following occurs:
 - 1. The mistake is clearly evident on the face of the Bid document but the intended correction Bid is not similarly evident.

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 award or Contracts based on Bid mistakes, shall be supported by a written determination made by the Procurement Agent.
 - F. The Contract shall be awarded to the Offeror that is determined to be a Responsive Bidder and a Responsible Bidder and whose Bid (1) is the lowest cost and (2) meets the requirements and criteria set forth in the Invitation for Bids. The amount of applicable transaction privilege or use tax of the Town shall be included in the Bid prices and shall not be a factor in determining the net lowest Bid. In the event the lowest responsive and responsible Bid for a Construction project exceeds available funds as certified by the Procurement Agent, and such Bid does not exceed such funds by more than five percent, the Procurement Agent is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the Bid Price with the low Responsive Bidder and Responsible Bidder in order to bring the Bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation for Bids.
 - G. When it is considered impractical to initially prepare a purchase description to support an award based on Price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first Solicitation.
 - H. All Vendors and contractors must be in compliance, at the time set for opening the Bid, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.
- (16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-21 Request for Proposals

- A. When the Procurement Agent determines that the use of an Invitation for Bids is either not practicable or not advantageous to the Town, a Contract may be entered into by use of the competitive sealed Proposals or other approved methods that are defined as a Request for Proposals.
- B. Proposals shall be solicited through a written Request for Proposals.
- C. Proposals shall be submitted at the time and place designated in the Request for Proposals.
- D. As provided in the Request for Proposals, discussions may be conducted with Responsible Offerors who submit Proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of Proposals and such revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from Proposals submitted by competing proposers.
- E. The award shall be made to the Offeror that is determined to be a Responsible Offeror and a Responsive Offeror whose Proposal is determined, in writing, to be the most advantageous to the Town and best meets the overall needs of the Town taking into consideration only the evaluation

factors set forth in the Request for Proposals. The Request for Proposals shall state the relative importance of Price and other evaluation factors; specific numerical weighing is not required. The amount of applicable transaction privilege or use tax of the Town shall be included in the Bid prices and shall not be a factor in determining the net lowest Bid.

- F. The Contract file shall contain the basis upon which the award is made.
- G. All Vendors and Contractors must be in compliance, at the time set for opening the Proposal, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-22 Requests for Qualifications

- A. The Town may procure Professional Services by soliciting statements of qualifications for providing such services. The Town may procure such Professional Services by direct selection pursuant to the Procurement Policy, subject to the limitations in ARIZ. REV. STAT., Title 34, as amended. If determined by the Procurement Agent to be inappropriate for direct selection, Professional Services shall be procured through the use of statements of qualifications as follows:
 - 1. The Procurement Agent shall give adequate notice of the need for such services through a Request for Qualifications. The request shall describe the services required, list the types of information and Data required of each Offeror and state the relative importance of particular qualifications.
 - 2. Persons engaged in providing the designated types of Professional Services may submit statements of qualifications in providing such Professional Services.
 - 3. The Procurement Agent may appoint a committee to review qualifications. If appointed, the committee shall consist of the Procurement Agent and one or more professionals licensed, registered or admitted to the profession that is the subject of the Procurement. Discussions with Offerors who submit Proposals may be conducted to determine qualifications for further consideration. Award shall be made to the Offeror determined, in writing, to be the best qualified. Compensation shall be negotiated after an award is made.
 - 4. The Procurement Agent shall conduct negotiations with the Offeror determined to be the most qualified to establish fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified Offeror, then negotiations will be formally terminated with the selected Offeror. If Proposals were submitted by one or more other Offerors determined to be qualified, negotiations may be conducted with such other Offeror or Offerors, in the order of their respective qualification ranking, and the Contract may be awarded to the Offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 - 5. The Contract award shall be made to the Offeror determined in writing by the Procurement Agent or authorized designee to be best qualified based upon (a) the evaluation factors set forth in the Request for Qualifications and (b) agreement between the Town and the Offeror as to fair and reasonable compensation.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-23 Construction Contracts

All Construction Contracts for public improvement projects shall be awarded in accordance with ARIZ. REV. STAT., Title 34, as amended. Public competitive bidding is not required for Exempt Construction Contracts; the requirements of this Article shall apply. In the event of a conflict between this Chapter and ARIZ. REV. STAT., Title 34, as amended, the provisions of Title 34 shall govern.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-24 Withdrawal or Cancellation of Bids or Proposals

- A. Prior to opening of the Bids or Proposals, the Invitation for Bids or the Request for Proposals may be delayed or canceled, or any or all Bids or Proposals may be rejected, in whole or in part, by the Procurement Agent, when determined to be in the Best Interests of the Town.
- B. After opening of the Bids or Proposals, the Procurement Agent may reject all Bids or Proposals.
- C. A bidder or proposer may withdraw its Bid at any time prior to Bid Opening or the deadline for receipt of the Bid or Proposal by delivering written notice to the Procurement Agent.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-25 Emergency Procurements

Notwithstanding any other provisions of this Article, in the event of an Emergency, the Procurement Agent may make or authorize Emergency Procurements based upon a threat to the public health, welfare, property or safety. Such Emergency Procurements shall be made with such competition as is practicable under the circumstances and in conformance with the Procurement Policy. The written determination for the Emergency and the selection of the Contractor shall be included in the Contract file.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-26 Non-Competitive Procurement

A Procurement may be made or Contract awarded by the Procurement Agent without competition only pursuant to the process set forth in the Procurement Policy. Non-competitive Procurement shall be avoided, except when no reasonable alternatives exist. A record of non-competitive Procurements shall be maintained as a public record.

(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-27 Cooperative Purchasing

- A. The Procurement Agent shall have the authority to (1) participate with a state, other political subdivisions of a state and the federal government for the Procurement of Materials or Services with Cooperative Purchasing agreements including through on-line Procurement processes and (2) directly enter into agreements with Vendors who have been awarded Contracts with other governmental entities for Materials and Services, provided the Procurement methods of the other party comply with the intent of this Article.

- B. If a Procurement under this Section involves the expenditure of state or federal assistance or Contract monies, the Procurement Agent shall comply with state or federal law and regulations which are mandatory and which are not reflected in this Article or guidelines adopted by the Town. It shall be the responsibility of the requesting department to provide the Procurement Agent with the applicable acquisition requirements concurrent with its requisition.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-28 Protests; Informal and Formal

- A. Any Interested Party to a Contract may protest (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order or (4) Debarment from the Procurement process of the Town, by filing a written informal protest containing the protestor's name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- B. Protests shall be filed with the Procurement Agent within five Days from the time the alleged instance occurred. The Procurement Agent will make the initial contact in an attempt to resolve the matter.
- C. The Procurement Agent shall render a decision in writing within 15 Days from the date the informal protest is filed. Copies of the decision shall be furnished to all interested parties by first class mail at the last address on file with the Town. If the Procurement Agent fails to render a decision within the required period, the informal protest shall be deemed denied and a formal protest may be filed.
- D. After conclusion of the informal protest process, any Interested Party to a Contract may file a formal appeal protesting (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order, (4) Debarment from the Procurement process of the Town or (5) denial of an informal protest, by filing a formal protest in the manner provided by this Section.
- E. A formal protest shall be in writing signed by an authorized party, containing the protestor's name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- F. The formal protest shall be filed within five business days following (1) the decision of the Procurement Agent on an informal protest or (2) the end of the 15-Day informal protest process, if no decision was issued.
- G. The formal protest shall be heard by a hearing officer appointed by the Procurement Agent for such purposes within 10 business days after filing of the formal protest, unless extended by the hearing officer.
- H. The hearing officer (i) may (a) reject the protest in whole or in part or (b) sustain the protest in whole or in part and (ii) shall provide for an appropriate remedy. In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the Procurement or proposed Procurement including, but not limited to the seriousness of the Procurement deficiency, the degree of prejudice to other Interested Parties or to the integrity of the

Procurement system, the good faith of the parties, the extent of performance, costs to the Town, the urgency of the Procurement and the impact of the relief upon the Town.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-29 Debarments and Suspensions

The Procurement Agent has the sole authority to debar or suspend a Vendor from participating in a Town Procurement. The Vendor may be suspended or debarred based upon the following factors:

- A. The Vendor does not have sufficient financial ability, equipment or personnel to perform the Contract.
 - B. The Vendor has repeatedly breached contractual obligations to public or private agencies.
 - C. The Vendor fails to comply with the requests of a background investigation.
- (16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-30 Acceptance of Work Completed

- A. Notice of Acceptance. When a contracting party providing Materials or Services to the Town makes a request for acceptance by the Town of work as completed, the Procurement Agent or authorized designee shall indicate acceptance on behalf of the Town on a certificate of final completion or other form designated for that purpose. Until the notice of acceptance is issued, no public work completed on behalf of the Town shall be considered as the property of the Town, and the Town shall assume no responsibility therefore.
 - B. Release of Retainage; Conditions. The Town shall not release any funds due but which are held as retainage until the Contract administrator is satisfied that the work has been completed in accordance with the Specifications of the Contract.
- (16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Section 3-3-31 Attestation of Contracts by the Town Clerk

All Contracts entered into by the Town shall be attested to by the Town Clerk and shall not be binding on the Town until so attested. The Town Clerk shall retain the original of all Contracts and agreements according to the retention schedule adopted by the Council and shall provide to the Procurement Agent such documents as are necessary for orderly administration of the Town's business.
(16-13, Amended, 12/01/2016, and Restated; 13-04, Added, 11/21/2013)

Article 3-4

DISPOSITION OF PROPERTY

Sections:

- 3-4-1 In General**
- 3-4-2 Definitions**
- 3-4-3 Property Administrator**
- 3-4-4 Sale, Lease or Disposal of Surplus or Obsolete Town or Personal Property**
- 3-4-5 Unclaimed Personal Property**
- 3-4-6 Disposition of Real Property**

Section 3-4-1 In General

No property belonging to the Town shall be disposed of except in accordance with this Code and such rules as the Council may adopt pursuant to this Code.

(13-04, Amended, 11/21/2013)

Section 3-4-2 Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Disposition” means the sale, lease or other means of divestiture of title or the right to possession of any property belonging to the Town.
- B. “Personal Property” means property which is tangible and movable without damage, but may include fixtures attached to Real Property.
- C. “Property Administrator” means the Town Manager or designee assigned as custodian of all property belonging to the Town.
- D. “Real Property” means property consisting of land or structures affixed to land.

(13-04, Amended, 11/21/2013)

Section 3-4-3 Property Administrator

The Town Manager shall serve as the Property Administrator for the Town and shall have custody of all property, real or personal, belonging to the Town. The Town Manager may designate some other employee of the Town as Property Administrator, and such designee shall report to the Town Manager. The Property Administrator shall maintain a complete and current inventory of the property of the Town, which inventory shall be available for public review.

(13-04, Amended, 11/21/2013)

Section 3-4-4 Sale, Lease or Disposal of Surplus or Obsolete Town or Personal Property

The Town shall have the right to sell, lease, exchange, donate or otherwise dispose of Town property in the Best Interests of the Town. The disposal of surplus or obsolete property shall be done in as competitive a manner as the Town Manager or authorized designee determines to be practicable.

(13-04, Amended, 11/21/2013)

Section 3-4-5 Unclaimed Personal Property

- A. Personal Property shall be deemed abandoned if the owner thereof fails to make satisfactory claim and proof of ownership within 30 days after the giving of notice as provided below.
- B. The Town Manager or authorized designee having in his possession Personal Property shall from time to time prepare a notice in writing containing the following information:
 - 1. Contact information for the Town Employee responsible for the property.
 - 2. A description of the Personal Property that has come into the possession of the Town since giving of the last periodic notice.
 - 3. A demand that all owners of the property described in the notice make claim and proof of ownership satisfactory to the Town Manager or authorized designee within 30 days from the date of the notice.
 - 4. A statement that any of the described Personal Property not claimed within such 30-Day period shall be deemed to be abandoned, and that the same may be sold at public auction or otherwise disposed of in accordance with this Article.
 - 5. The notice shall be published in a newspaper of general circulation in the Town at least once each week for two consecutive weeks and copies thereof shall be posted in three public places within the corporate limits of the Town, including the Town's website, and a copy of such notice shall be mailed to the owner, if known, at his/her last known mailing address.
- C. Claim and proof of ownership.
 - 1. Except as provided in this Article, if the Personal Property described in the notice in Subsection 3-4-5(B) above remains in the possession of the Town Manager or authorized designee without any person making satisfactory claim and proof of ownership therefor for a period of 30 days from the date of the notice provided as set forth in Subsection 3-4-5(B), the Personal Property shall be deemed to be abandoned, and title thereof shall be deemed to be in the Town by reason of abandonment by the owner and possession by the Town.
 - 2. When dealing with property that is lost, found by a person not the owner (hereinafter referred to as the "finder") and then turned over to the Town, the finder shall be deemed to have made satisfactory claim and proof of ownership to be entitled to possession of the Personal Property at the end of 30 Days from the date of the notice in Subsection 3-4-5(B). However, the finder's claim and proof of ownership under this Subsection shall be inferior to and subject to a satisfactory claim and proof of ownership by any owner of the Personal Property.

3. Upon delivery of the property to the finder as provided in this Section, the Town shall have no further interest in, or obligations with respect to, the property. The Town shall, however, provide the name and address of the finder and the location of the property, if known, to any person making a satisfactory claim and proof of ownership subsequent to the delivery of the property to the finder.
- D. Any abandoned Personal Property may, at the election of the Town, be (i) donated to a non-profit charitable entity or other governmental entity or (ii) sold at public auction (which may include an on-line auction) to the highest bidder after ten days' notice given in the same manner as provided in Subsection 3-4-5(B) above, which notice shall contain the following information:
1. Contact information for the Town Employee responsible for the property.
 2. A description of the property to be sold.
 3. The date, time, place of the sale and the person to conduct the same.
 4. A statement that the described Personal Property is deemed to be abandoned and that the same will be sold at public sale to the highest cash bidder.
- E. The sale provided for herein shall be at public auction (which may include an on-line auction) to the highest bidder for cash, but in no event shall any item be sold for less than the cost of advertising and selling. The Town reserves the right to reject any and all bids.
- F. The Town Manager or authorized designee conducting the sale shall maintain a complete and accurate record of the sale which shall include the description of the Personal Property sold, the name and address of the purchasers, the sale price of each item sold and the costs of the sale.
- G. The Town Manager or authorized designee conducting the sale shall execute and deliver or cause to be delivered a certificate of sale to the purchaser of each item of Personal Property, which certificate shall describe the item in the same manner as the notice of sale and shall recite the purchase price paid, the name and address of the purchaser and the date of the purchase. Such certificate shall pass the title to the item to the purchaser.
- H. All moneys received from sales of Personal Property as provided for in this Article shall be immediately paid over to the Town finance division and retained in a separate account for at least six months. Upon the expiration of such time, unless sooner claimed as herein provided, such moneys shall be paid into the general fund of the Town.
- I. Should any person within six months from the date of the public sale of any item of Personal Property make a valid claim thereto and establish ownership, the sum of money for which the item sold shall be paid over to such person, less the costs of advertising and selling. In no event shall any claim be considered unless it shall be presented to the Town Manager in writing under oath and before the expiration of six months from the date of the sale of the item claimed. Once such amounts are paid by the Town, the Town shall have no further obligation relating to the property.
- J. Items for which no bids are received may be deemed to be of no intrinsic or monetary value and may be disposed of in any manner deemed appropriate by the Town Manager.
- K. Items useful or necessary to the Town may be retained by the Town for its use.

- L. Each person performing any action provided for in this article shall make affidavit thereof which shall be prima facie evidence of the facts alleged in the affidavit.
(13-04, Amended, 11/21/2013)

Section 3-4-6 Disposition of Real Property

- A. Limitations. No sale or other Disposition of Real Property belonging to the Town shall be final until approved by a majority vote of the Council and all documents pertaining thereto shall be executed by the Mayor or Town Manager and attested by the Town Clerk. If the value of the property exceeds the amount set forth in ARIZ. REV. STAT. § 9-403(A), as amended, the sale shall first be authorized at an election held pursuant to ARIZ. REV. STAT. § 9-403.
- B. Advertisement; Bids. No Real Property belonging to the Town shall be sold or otherwise disposed of except as provided in ARIZ. REV. STAT. § 9-402 *et seq.*, as amended. The Town shall have the right to reject any and all bids, to withdraw the property from sale prior to sale and to readvertise for sale.
- C. Appraisal Prior to Sale. Prior to the sale of any Real Property, the Town shall obtain one or more appraisals of value from one or more disinterested parties. Such appraisal(s) shall form the basis for valuation of the property to be sold.
- D. Sale; Lease; Exchange. The Town may exchange, sell or lease Real Property to the federal government or another political subdivision pursuant to the procedures specified in ARIZ. REV. STAT. § 9-405 and § 9-407, as amended.

(13-04, Added, 11/21/2013)

Article 3-5

CIVIL PREPAREDNESS AND DISASTER

Sections:

3-5-1	Purposes
3-5-2	Definitions
3-5-3	Civil Preparedness Organization
3-5-4	Powers and Duties
3-5-5	Mutual Aid
3-5-6	Immunity of Town and Representatives Thereof
3-5-7	Violations

Section 3-5-1 Purposes

The purposes of this Article are to:

- A. Reduce vulnerability of people and the community to damage, injury and loss of life and property resulting from natural or man-made catastrophes, riots or hostile military or paramilitary action.
- B. Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by Disaster.
- C. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by Disasters.
- D. Clarify and strengthen the roles of the Mayor, Council, Town Manager and Town agencies in prevention of, preparation for and response to and recovery from Disasters.
- E. Authorize and provide for cooperation in Disaster prevention, preparedness, response and recovery.
- F. Authorize and provide for coordination of activities relating to Disaster prevention, preparedness, response and recovery by agencies and officers of this Town, agencies of the private sector and similar activities in which the federal government, the state and its political subdivisions may participate.
- G. Provide a Disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response.

(13-04, Amended, 11/21/2013)

Section 3-5-2 Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Civil Preparedness” means the organization, administration, trained manpower, facilities, equipment, material, supplies, programs, Emergency plans, ability to execute Emergency plans

and all other measures necessary and incidental thereto relating to Disaster prevention preparedness response and recovery by all governmental and private sector agencies to protect or save health, life or property.

- B. “Director” means the Town Manager or authorized designee.
- C. “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property or extreme peril to the safety of persons or property, resulting from any natural or manmade causes, including but not limited to fire, flood, earthquake, wind, storm, blight, drought, famine, infestation, air contamination, epidemic, explosion, riot or other acts of civil disobedience which endanger life or property, or hostile military or paramilitary action.
- D. “Emergency” means the existence of a Disaster within the Town limits requiring immediate action by the Emergency Forces of the Town.
- E. “Emergency Forces” means all Town governmental and private sector agencies, volunteers, facilities, equipment, trained manpower and other resources required to perform Civil Preparedness functions.
- F. “Local Emergency” means the existence of a Disaster within the Town limits, and the situation is or is likely to be beyond the capability and resources of the Town as determined by the Mayor and which requires the combined efforts of other political subdivisions.
- G. “Regulations” means the orders, rules and Emergency procedures deemed essential for Civil Preparedness.
- H. “State of Emergency” means the duly proclaimed existence of a Disaster within the state except a Disaster resulting in a State of War Emergency which is or is likely to be beyond the capabilities and resources of any single county, city or town and requires the combined efforts of the state and the political subdivision.
- I. “State of War Emergency” means the situation which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent. “Local Emergency” means the existence of a Disaster within the Town limits, and the situation is or is likely to be beyond the capability and resources of the Town as determined by the Mayor and which requires the combined efforts of other political subdivisions.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998)

Section 3-5-3 Civil Preparedness Organization

The Town Manager is hereby authorized and directed to create a Civil Preparedness organization and shall serve as the Director of the organization until he appoints a qualified professional to act in this capacity.

(13-04, Amended, 11/21/2013; 98-27, Amended, 09/03/1998; 98-27, Renumbered, 09/03/1998)

Section 3-5-4 Powers and Duties

A. The Council:

1. Shall have the power to make, amend and rescind Regulations, not inconsistent with Regulations promulgated by the Governor, necessary for Civil Preparedness, which Regulations shall have the full effect of this Article when a copy is filed in the office of the Town Clerk. Existing ordinances and regulations, or ordinances and regulations issued under authority of ARIZ. REV. STAT., Title 26, Chapter 2, in conflict therewith, are suspended during the time and to the extent that they are in conflict.
2. May appropriate and expend funds, make contracts, obtain and distribute equipment, materials and supplies for Civil Preparedness purposes.
3. In the absence of specific authority in state emergency plans and procedures, the Council shall take emergency measures as deemed necessary to carry out the provisions of ARIZ. REV. STAT., Title 26, Chapter 2.
4. In a State of War Emergency the Council may waive procedures and formalities required by law pertaining to the performance of public work, entering into contracts, incurring obligations, employing permanent and temporary workers, utilizing volunteer workers, renting equipment, purchasing and distributing supplies, materials and facilities and appropriating and expending public funds when the Council determines and declares that strict compliance with such procedures and formalities may prevent, hinder or delay mitigation of the effects of the State of War Emergency. The Town shall be exempt during such Emergency from budget limitations prescribed by Article IX, Section 20 of the State Constitution.

B. The Mayor:

1. In addition to the powers granted by other provisions of the law or Town ordinance, the Mayor may, by proclamation, declare an Emergency or a Local Emergency to exist. The proclamation may be rescinded by a majority of the Council after twenty-four hours.
2. During an Emergency or Local Emergency, the Mayor shall govern by proclamation and shall have the authority to impose all necessary Regulations to preserve the peace and order of the Town including, but not limited to:
 - a. Imposition of curfews in all or in a portion of the Town.
 - b. Ordering the closing of any business.
 - c. Denying public access to any public building, street or other public place.
 - d. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the Town for assistance.

C. The Director:

1. The Director is responsible in non-emergency periods to act on behalf of the Mayor and

Council to develop a readiness plan for the Town's Civil Preparedness and for coordinated operations in Disaster situations.

2. During emergencies, the Director shall act as the principal advisor or aide to the Mayor on Emergency operations. His major responsibility is to assure coordination among Emergency Forces and with higher and adjacent governments, by assuring that the Emergency operation center functions effectively. He shall assist the Mayor in the execution of operations, plans and procedures required by the Emergency.
3. The Director shall prepare a comprehensive Disaster basic plan which shall be adopted and maintained by resolution of the Council upon the recommendations of the Director. In the preparation of this plan as it pertains to Town organization, it is the intent that the services, equipment, facilities and personnel of all existing departments and agencies be used to the fullest extent.
4. The Disaster plan shall be considered supplementary to this Article and have the effect of law whenever emergencies, as defined in this Article, have been proclaimed.

(13-04, Amended, 11/21/2013; 98-27, Renumbered, 09/03/1998)

Section 3-5-5 Mutual Aid

In periods of Local Emergency, as declared pursuant to this Article, the Town is hereby granted full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans or agreements therefore. The Town may request from state agencies mutual aid including personnel, equipment and other available resources to assist the Town during the Local Emergency in accordance with emergency plans or at the direction of the Governor.

(13-04, Added, 11/21/2013)

Section 3-5-6 Immunity of Town and Representatives Thereof

- A. The Town shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform a discretionary function or duty on the part of the Town or any employee of the Town, except willful misconduct, gross negligence or bad faith of any such employee, in carrying out the provisions of ARIZ. REV. STAT., Title 26, Chapter 2.
- B. The immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workmen's compensation and other benefits which apply to the activity of officers, agents or employees of the Town when performing their respective functions within the limits of the Town shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Article, excepting willful misconduct, gross negligence or bad faith.
- C. Volunteers duly enrolled or registered for services in a Local Emergency, a State of Emergency or a State of War Emergency in carrying out, complying with or attempting to comply with, any Regulations issued pursuant to ARIZ. REV. STAT., Title 26, Chapter 2 or any local ordinance, or performing any of their authorized functions or duties, or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions and enjoy immunities as officers and employees of the state and its political subdivisions performing similar work.

(13-04, Added, 11/21/2013)

Section 3-5-7 Violations

It is unlawful for any person to violate any provision of this Article or to refuse or willfully neglect to obey any lawful regulation or order issued as provided in this Article. This provision, however, does not apply to the refusal of any private organization or members thereof to participate in an Emergency, Local Emergency or State of Emergency as defined by this Article.

(13-04, Added, 11/21/2013)

Chapter 4

PUBLIC SAFETY

Articles:

4-1 FIRE PROTECTION SERVICES

Article 4-1

FIRE PROTECTION SERVICES

Sections:

4-1-1 Fire Protection Services

4-1-2 Fire Protection Services Director

Section 4-1-1 Fire Protection Services

From and after the effective date of the adoption of Ordinance 01-18, the Town of Fountain Hills shall provide fire protection services to all of its residents within its incorporated boundaries, as they exist now or as they may be amended from time to time by operation of law in the future.

(06-14, Renumbered, 05/18/2006, Previously Article 4-4, Sections 4-4-1 & 4-4-2; 01-18, Added, 10/31/2001)

Section 4-1-2 Fire Protection Services Director

The Town Manager and/or his designee shall occupy the position of Fire Protection Services Manager and shall be responsible for all contractual matters and personnel matters with regard to the provision of fire protection services to the citizens of Fountain Hills.

(06-14, Renumbered, 05/18/2006; 01-18, Added, 10/31/2001)

Chapter 5

MUNICIPAL COURT

Articles:

5-1	MUNICIPAL COURT ESTABLISHED; JURISDICTION
5-2	OFFICERS, POWERS AND DUTIES
5-3	PROCEEDINGS OF COURT
5-4	TOWN PROSECUTOR; COMPENSATION AND DUTIES
5-5	COURT EMPLOYEES
5-6	PUBLIC DEFENDER
5-7	HOME DETENTION AND ELECTRONIC MONITORING
5-8	ADMINISTRATIVE COSTS

Article 5-1

MUNICIPAL COURT ESTABLISHED; JURISDICTION

There is hereby established in the town a court which shall be called the "Town Municipal Court" and which shall have jurisdiction of all cases arising under town ordinances and this code, and jurisdiction concurrently with justices of the peace of precincts in which the town is located of violation of laws of the state committed within the limits of the town, to the extent provided by state statute.

Article 5-2

OFFICERS, POWERS AND DUTIES

Sections:

- 5-2-1 Presiding Judge**
- 5-2-2 Associate Pro Tem Judge**
- 5-2-3 Substitute Judge**
- 5-2-4 Powers and Duties of the Presiding Judge**
- 5-2-5 Hearing Officers**
- 5-2-6 Relationship of Town Municipal Court with Appointing and Funding Authority**
- 5-2-7 Court Revenue**

Section 5-2-1 Presiding Judge

The presiding officer of the town municipal court shall be the presiding judge, who shall be appointed by the council for an initial term of two years with subsequent terms of four years with the beginning and end of the term to be specified at the time of appointment. During such term, the judge may be removed only for cause. The presiding judge shall control the calendar, supervise the activities of the court administrator and make all sitting assignments for the pro tem judges. The presiding judge shall serve for such salary or other compensation as the council may determine. The presiding judge shall be an attorney licensed to practice in the State of Arizona, with at least five (5) years experience in private practice or on the bench.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-2-2 Associate Pro Tem Judge

The office of associate pro tem judge is hereby created. The associate pro tem judges shall be appointed by the presiding judge to serve at the pleasure of the presiding judge and to perform the duties of the presiding judge in the absence of the presiding judge. The associate pro tem judges may serve for such salary or other compensation as the council may determine.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-2-3 Substitute Judge

The office of substitute judge is hereby created. The individual serving as justice of the peace in the precinct in which the town hall is located may serve as substitute judge in all cases where the presiding judge and all associate judges are unable or unwilling to act and where requested to so serve by the presiding judge.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-2-4 Powers and Duties of the Presiding Judge

The powers and duties of the presiding judge shall include:

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

- B. The keeping of a docket in which shall be entered each action and the proceedings of the court therein.
- C. The responsibility for setting 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 town, in accordance with a schedule established by the town manager.
- E. Submitting a monthly report to the council summarizing court activities for that month.
- F. Preparation of a schedule of traffic violations, not involving the death of a person, listing specific bail for each violation.
- G. Serve as juvenile hearing officer if appointed by the presiding judge of the juvenile court for Maricopa County.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-2-5 Hearing Officers

The council may appoint one or more hearing officers to preside over civil traffic violation cases when, in their opinion, the appointment of such hearing officers is necessary to assure prompt disposition of civil traffic violation cases. Hearing officers may hear and dispose of civil traffic violation cases which are appealable to the superior court. Hearing officers shall be supervised by the presiding officer of the town municipal court.

Section 5-2-6 Relationship of Town Municipal Court with Appointing and Funding Authority

Because of the relationship between the town and the town municipal court, town judges must exercise care to insure that the adjudication process remains free from the influence of any person or institution having responsibility for judicial appointments or funding. While any judge may listen to the counsel of others, decisions regarding the resolution of a particular case must be made by the judge in the exercise of a free and unfettered judgment. Decisions regarding the overall function of the court are the sole responsibility of the presiding judge. The authority of the presiding judge for making decisions regarding the overall function of the court applies to decisions concerning handling of court mail and records, hiring, supervision, discipline and dismissal of court personnel. Decisions regarding hiring, supervision and dismissal of court personnel must be consistent with municipal personnel policy. Personnel rules adopted by the town for employment, grievance procedures, termination, sick leave, overtime, vacation time and other items are applicable to employees of the town municipal court. In employing additional personnel, the existing town personnel procedures shall be followed. The presiding judge shall have exclusive supervisory authority over all court personnel. However, non-judicial functions, such as custodial and maintenance services assigned to the town municipal court may be performed by employees or contractors working under the supervision and authority designated by the town council.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-2-7 Court Revenue

The presiding judge should not permit anyone to control or influence the discretionary amount of any fine, penalty or sanction imposed. Under the direction of the presiding judge, the court shall collect all fines, sanctions, restitution and bond payments imposed by the court. Because all monies coming into the possession of the town municipal court are public monies, these funds shall be handled and accounted for in accordance with state law and procedures adopted by the town council.
(Ordinance 02-03, Amended, 03/21/2002)

Article 5-3

PROCEEDINGS OF COURT

Sections:

- 5-3-1 Proceedings**
- 5-3-2 Admission to Bail**
- 5-3-3 Jury Trials**

Section 5-3-1 Proceedings

- A. The proceedings of the town municipal court shall be conducted in accordance with the state constitution, the applicable state statutes and rules of the state supreme court pertaining to justice of the peace or town municipal courts. The proceedings shall also be conducted in accordance with the rules of procedure in civil traffic cases and the rules of criminal procedure, including the provisions thereof regarding bail, issuance of subpoenas, summons and warrants, and punishment for disobedience thereof, so far as applicable and when not otherwise prescribed.
- B. The town municipal court proceedings for violations of this code and town ordinances shall be commenced by complaint under oath and in the name of the state setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of and to answer the complaint.
- C. If the judge is satisfied that there exists probable cause to believe that the offense complained of has been committed by the person charged, he shall issue a summons or a warrant of arrest. Before issuing a summons or warrant of arrest on a compliant, the judge may subpoena and examine witnesses as to the truth of the complaint.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-3-2 Admission to Bail

Defendants, after arrest and before conviction, shall be admitted to bail, if bailable, and the rules of criminal procedure shall govern the release of all defendants, wherever applicable.

Section 5-3-3 Jury Trials

- A. The right of trial by jury shall be granted in all cases of such a nature as are triable before a jury under the constitution and laws of the state, but not for violation of ordinances of such a nature as by common law were not triable by a jury.
- B. Each juror for every day's attendance in the town municipal court shall be paid a sum fixed by the council.
- C. The formation, summoning, drawing and disposition of names and impaneling of juries in the town municipal court shall be done in the same manner as in courts of record.
- D. Selection of potential jurors shall be made from the list furnished by the county jury commissioner's office.

(Ordinance 02-03, Amended, 03/21/2002)

Article 5-4

TOWN PROSECUTOR; COMPENSATION AND DUTIES

The council shall appoint a chief prosecutor and one or more associate prosecutors to serve at the pleasure of the council, and the compensation of each prosecutor shall be as determined by the council. The prosecutor's duties will be to represent the state or the town in contested matters where the defendant is represented by counsel or in cases where the prosecutor's participation is requested by the council or one of the town officers, and to assist the presiding magistrate and the court clerk in the proper functioning of the town municipal court, as requested by the presiding magistrate with the approval of council.

Article 5-5

COURT EMPLOYEES

Sections:

5-5-1 Appointment and Compensation

5-5-2 Duties of Court Administrator

5-5-3 Court Services Specialists

Section 5-5-1 Appointment and Compensation

The town municipal court shall have a court administrator appointed by the presiding judge. The court administrator shall be an employee of the town and shall serve at the pleasure of the presiding judge. Compensation of the court administrator shall be established by the council and be comparable with other employees of a similar class.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-5-2 Duties of Court Administrator

The duties of the court administrator are the following, subject to the overall supervision of the presiding judge with regard to their performance:

- A. Accept and file all summons, complaints, pleadings, motions, records, judgments and other documents presented to, or issued by, the town municipal court in the exercise of its jurisdiction.
- B. Prepare and maintain the court's dockets, calendar and other records of its proceedings.
- C. Issue any town court process.
- D. Receive and collect all funds in payment of fines, bail and costs, and to deposit, disburse and account for the same as required by state statute or court rules.
- E. Prepare of all statistical and other reports required to be maintained or filed by the town municipal court.
- F. Perform such other services as may be directed by the judge in the exercise of the town municipal court's jurisdiction.
- G. Furnish all secretarial services required in the exercise of the jurisdiction of the town municipal court.

(Ordinance 02-03, Amended, 03/21/2002)

Section 5-5-3 Court Services Specialists

The presiding judge may appoint one or more court services specialists, who, subject to the supervision of the presiding judge, may perform the duties of the court administrator when the court administrator is unavailable to do so.

(Ordinance 02-03, Amended, 03/21/2002)

Article 5-6

PUBLIC DEFENDER

The public defender shall be appointed by the presiding magistrate and be compensated as determined by the magistrate.

Article 5-7

HOME DETENTION AND ELECTRONIC MONITORING

Sections:

5-7-1 Home Detention and Electronic Monitoring

Section 5-7-1 Home Detention and Electronic Monitoring

- A. To the extent authorized by applicable law, the presiding judge (the "Judge") of the Town Municipal Court (the "Court") may, in the exercise of the Judge's discretion, order home detention, electronic monitoring and alcohol/drug testing as a term of an adult sentence or juvenile disposition ordered by the Court, as provided herein.
1. A person (adult or juvenile) is not eligible for home detention if any of the following apply:
 - a. The person constitutes a risk to himself or other member of the community.
 - b. The person has a past history of violent behavior.
 - c. The conviction for which the person is being sentenced is a domestic violence offense pursuant to Ariz. Rev. Stat. § 13-3601, as amended.
 - d. The conviction for which the person is being sentenced is an act of prostitution or solicitation pursuant to Ariz. Rev. Stat. § 13-3214, as amended.
 - e. The person is not eligible pursuant to Ariz. Rev. Stat. § 9-499.07, as amended.
 2. If a person is sentenced to jail confinement by the Court (the "Responsible Party") in any driving under the influence ("DUI") charge, the Court may substitute home detention for a portion of the jail term as provided in this Section. Any Responsible Party placed in a home detention program as a term of a DUI sentence must serve an initial 24 consecutive hours in jail, except as provided in subsection 5-7-1(A)(3) below. The Responsible Party shall bear the costs of incarceration and be responsible for payment of thereof.
 3. If a Responsible Party is sentenced pursuant to Ariz. Rev. Stat. § 28-1381(K), as amended, or Ariz. Rev. Stat. § 28-1382(D) or (E), as amended, the Responsible Party must first serve a minimum of 15 consecutive days in jail before being eligible to be placed in a home detention program. The Responsible Party shall bear the costs of incarceration and be responsible for payment of thereof.
- B. A Responsible Party placed in a home detention program shall be subject to electronic monitoring in the Responsible Party's home and shall be required to remain at home during the hours specified by the Court. A Responsible Party sentenced pursuant Ariz. Rev. Stat. §§ 28-1381 or 28-1382, shall be tested at least once daily for the use of alcohol or drugs in a manner approved by the Court.
- C. If the Responsible Party attends educational classes in Maricopa County or is employed within Maricopa County, the Court may permit the Responsible Party to attend classes or leave home for

employment during specified hours. The Court may permit the Responsible Party to attend religious services or funerals, or to seek medical care or other Court-approved counseling.

- D. The Court may require a Responsible Party placed in a home detention program to participate in community service work or impose other reasonable requirements or restrictions the Court deems necessary.
- E. A Responsible Party placed in a home detention program shall bear the expense and be responsible for payment of the full cost of the home detention, including electronic monitoring and alcohol or drug testing costs, to the program provider/administrator. The Court may assess a lesser amount based on the ability of the person to pay. Non-payment of any program costs may result in termination of home detention.
- F. The Court shall terminate a Responsible Party's participation in a home detention program and require the Responsible Party to complete the remaining term of any sentence by jail confinement if the Court finds the Responsible Party (i) has not successfully completed Court ordered alcohol or drug screening and treatment pursuant to Ariz. Rev. Stat. §§ 28-1381 or 28-1382, or pursuant to any other Court-ordered program, or (ii) has left the home during home detention without permission of the Judge or supervising authority. The Court may terminate a Responsible Party's participation in the home detention program and require jail confinement for any other violation of the terms of the home detention order.

(10-03, Added, 09/02/2010)

Article 5-8

ADMINISTRATIVE COSTS

The Town Council may establish a schedule of administrative charges to be assessed upon persons convicted of certain violations of law, as set forth in this Article, within the jurisdiction of the Town's municipal court. The schedule of charges shall be adopted as part of the Town's annual budget or by separate resolution.

Sections:

5-8-1 Assessment of administrative charge on persons convicted of violations of Ariz. Rev. Stat. §28-1381 et seq.

Section 5-8-1 Assessment of administrative charge on persons convicted of violations of Ariz. Rev. Stat. §28-1381 et seq.

- A. A person convicted in the Town's municipal court of a violation of Ariz. Rev. Stat. § 28-1381 *et seq.*, either after trial or pursuant to plea agreement, shall be assessed an administrative charge to cover all or part of the administrative costs and expenses directly incurred by the Town's law enforcement entity in the investigation of violations of Ariz. Rev. Stat. § 28-1381 *et seq.* The administrative charge constitutes a debt of the person, and may be collected by the Town.
- B. The Town's municipal court shall assess and collect the administrative charge on behalf of the Town. The court shall set forth the requirement and amount of the administrative charge as a separate item in all orders and judgments, and not as part of any sentence or probation conditions imposed by the court in the criminal case.
- C. No person whom the Town's municipal court finds to be indigent shall be required to pay the monetary charge authorized in this section. If the court finds that a person is able to pay only a portion of the administrative charge as calculated pursuant to subsection 5-8-1(D) below, the court may waive that portion that the court finds the person is unable to pay.
- D. The Town's chief law enforcement officer shall, on a periodic basis, determine the amount of costs and expenses, including but not limited to officer salaries, directly incurred by the Town's law enforcement agency in the investigation of violations of Ariz. Rev. Stat. § 28-1381 *et seq.*, as amended, and set the administrative charge to be assessed against each convicted person at an amount reasonably calculated to recover all or part of those costs and expenses, but in no event to exceed the average amount of such costs and expenses per case. The calculated amount shall not include costs and expenses for officer testimony given during discovery, at a hearing or at trial. The Town's chief law enforcement officer shall communicate the result of the administrative charge calculation to the Town's municipal court.
- E. The administrative charge collected by the Town's municipal court shall be deposited in the Town's general fund.
- F. In addition to any other rights and remedies available to the Town, the Town Attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of the administrative charge authorized under this section.
- G. The liability imposed under this section is in addition to and not in limitation of any other liability

that may be imposed, except that this section shall not apply in any case where the convicted person caused an accident that resulted in an appropriate emergency response, thereby making Ariz. Rev. Stat. § 28-1386 *et seq.*, as amended, applicable. It is the intent of the Mayor and Council that this section supplement the provisions of Ariz. Rev. Stat. § 28-1386 *et seq.*, as amended, in cases where that statute is not applicable, and that Ariz. Rev. Stat. § 28-1386 *et seq.*, as amended, control in the event of any actual conflict between it and this section.

- H. The administrative charge provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or probation conditions imposed by the Town's municipal court in the criminal case.

(11-09, Amended, 06/16/2011)

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Chapter 6

ANIMALS

Articles:

- 6-1 RULES AND REGULATIONS**
- 6-2 RABIES/ANIMAL CONTROL LEASH LAW**

Article 6-1

RULES AND REGULATIONS

Sections:

- 6-1-1 Dangerous Animals**
- 6-1-2 Killing Dangerous Animals**
- 6-1-3 Noises**
- 6-1-4 Restrictions on Keeping Animals**
- 6-1-5 Swine**
- 6-1-6 Live Animals as Prizes; Inducement**
- Section 6-1-1 Dangerous Animals**

It is unlawful to permit any dangerous, vicious animal of any kind to run at large within the town, and such animals shall be immediately impounded by the county enforcement agent. 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 Town law enforcement agent or such person that he may appoint.

(13-07, Amended, 06/06/2013)

Section 6-1-2 Killing Dangerous Animals

The members of the Town law enforcement agency or the county enforcement agent are authorized to kill any dangerous animal of any kind that cannot be impounded when it is necessary for the protection of any person or property.

(13-07, Amended, 06/06/2013)

Section 6-1-3 Noises

- A. It is unlawful to harbor or keep any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or the making of other noises disturbs the peace of a neighborhood or any two or more persons not residing in the same household, one of which may be a member of the Town law enforcement agency or animal control officer.
- B. First offense convictions, under this section, shall be sentenced as a petty offense. Second offense convictions, under this section, shall be sentenced as a class 2 misdemeanor. Third and all subsequent convictions under this section shall be sentenced as a class 1 misdemeanor.

(13-07, Amended, 06/06/2013)

Section 6-1-4 Restrictions on Keeping Animals

- A. Unless permitted by zoning, it is unlawful to keep or cause to be kept any horses, mules, cattle, burros, goats, sheep, or other livestock, pigeons or poultry within the corporate limits of the town.
- B. In addition to the provisions of subsection A, it is unlawful to keep, harbor or maintain more than four household pets in any residence within the town.

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- C. For the purposes of this section, "household pets" mean any animal kept for pleasure rather than utility; an animal of a species that has been bred and raised to live in or about the habitation of humans and is dependent on people for food and shelter.

Section 6-1-5 Swine

It is unlawful to keep any live swine or pigs in the town.

Section 6-1-6 Live Animals as Prizes; Inducement

- A. It is unlawful for any person to give away any live animals, reptiles, fish, fowl and insects as a prize for, or as an inducement to enter, any contest, game or other competition or as an inducement to enter a place of amusement.

- B. This section does not apply to pet stores.
(13-07, Added, 06/06/2013)

Article 6-2

RABIES/ANIMAL CONTROL LEASH LAW

Sections:

6-2-1	Definitions
6-2-2	Powers and Duties of the Enforcement Agent
6-2-3	License Fees for Dogs; Issuance of Dog Tags; Records; Penalties; Classification
6-2-4	Anti-Rabies Vaccination; Vaccination and License Stations
6-2-5	Dogs Not Permitted at Large; Wearing Licenses
6-2-6	Impounding and Disposing of Dogs and Cats; Pound Fees
6-2-7	Handling of Biting Animals; Responsibility for Reporting Animal Bites
6-2-8	Unlawful Interference with Enforcement Agent; Unlawful Keeping of Dogs
6-2-9	Violation; Classification; Dogs; Liability

Section 6-2-1 Definitions

In this chapter unless the context otherwise requires:

- A. "Animal" means any animal of a species that is susceptible to rabies, except man.
- B. "At large" means on or off premises of owner and not under control of owner or other person acting for the owner. A dog shall not be deemed at large for the purposes of this section:
 - 1. If it is restrained by a leash, chain, rope or cord of sufficient strength to control the action of the dog; or
 - 2. If the dog is in a suitable enclosure that actually confines the dog; or
 - 3. While the dog is being trained or used for hunting purposes; or
 - 4. While the dog is being exhibited at a town approved show or other town sponsored event; or
 - 5. While on the dog owner' s property, the dog is under the direct and immediate control of the owner.
- C. "County pound" means any establishment authorized by the Maricopa County Board of Supervisors for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the enforcement agent.
- D. "Department" means the Arizona Department of Health Services.
- E. "Dog" means a member of the *canis familiaris* family.
- F. "Enforcement agent" means the town manager or designee who is responsible for the enforcement of this article and the regulations promulgated thereunder.
- G. "Impound" means the act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in a county pound in accordance with the provisions of this article.

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- H. "Kennel" means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five or more dogs under controlled conditions.
- I. "Livestock" means neat animals, horses, sheep, goats, swine, mules and asses.
- J. "Owner" means any person keeping an animal other than livestock for more than six consecutive days.
- K. "Rabies quarantine area" means any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area.
- L. "Rabies vaccination certificate" means a method of recording and duplicating rabies information that is in compliance with the enforcement agent's licensing system or enforcement agent's prescribed forms.
- M. "Stray dog" means any dog three months of age or older running at large that is not wearing a valid license tag.
- N. "Vaccination" means the administration of an anti-rabies vaccine to animals by a veterinarian.
- O. "Veterinarian", unless otherwise indicated, means any veterinarian licensed to practice in this state or any veterinarian employed in this state by a governmental agency.
- P. "Veterinary hospital" means any establishment operated by a veterinarian licensed to practice in this state that provides clinical facilities and houses animals or birds for dental, medical or surgical treatment. A veterinary hospital may have adjacent to it or in conjunction with it, or as an integral part of it, pens, stalls, cages or kennels for quarantine, observation or boarding.
- Q. "Vicious animal" means any animal of the order carnivora that has a propensity to attack, to cause injury to or to otherwise endanger the safety of human beings without provocation or that has been so declared after a hearing before a justice of the peace or a city or town magistrate.
(13-07, Amended, 06/06/2013; 06-08, Amended, 02/02/2006; 03-21, Amended, 12/18/2003)

Section 6-2-2 Powers and Duties of the Enforcement Agent

- A. The enforcement agent shall:
 - 1. Enforce the provisions of this article and any regulations promulgated by the council.
 - 2. Issue citations for the violation of the provisions of this article. The procedure for the issuance of notices to appear shall be as provided for peace officers in A.R.S. § 13-3903, except that the enforcement agent shall not make an arrest before issuing the notice.
- B. In addition to all powers granted to the state and the county, the local enforcement agent may declare a rabies quarantine area within the town's jurisdiction. When a quarantine area has been declared, the enforcement agent shall meet with the state veterinarian and representatives from the Arizona Department of Health Services and the game and fish department to implement an emergency program for the control of rabies within that area. Any regulations restricting or involving the movements of livestock within that area shall be subject to approval by the state

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veterinarian.

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

Section 6-2-3 License Fees for Dogs; Issuance of Dog Tags; Records; Penalties; Classification

- A. The council shall set an annual license fee, either as part of the Town's annual budget or by separate resolution, which shall be paid for each dog three months of age or over that is kept, harbored or maintained within the boundaries of the town for at least thirty consecutive days of each calendar year. The council may, in its sole discretion, adopt the Maricopa County Animal Care and Control Fee Schedule, in whole or in part, as such schedule may be amended from time to time, to comply with the requirements of this section. Thereafter, the most recent version of the adopted Maricopa County Animal Care and Control Fee Schedule shall be the Town's annual license fee schedule, unless otherwise amended by the council. The licensing period shall not exceed the period of time for revaccination as designated by the state veterinarian. A penalty amount approved by the Council by resolution or as a part of the Town's annual budget shall be added to the license fee in the event that application is made subsequent to the date on which the dog is required to be licensed under the provisions of this article. 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 town less than thirty consecutive days.
- B. Durable dog tags shall be provided by the town. Each dog licensed under the terms of this article shall receive at the time of licensing, such a tag on which shall be inscribed the name of the town, the number of the license and the date on which it expires. The tag shall be attached to a collar or harness which shall be worn by the dog at all times while running at large, except as otherwise provided in this article. Whenever a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a fee established by the council.
- C. The council may set license fees that are lower for (i) persons over the age of 65, upon proper proof of age and (ii) dogs permanently incapable of procreation. An applicant for a license for a dog claimed to be incapable of procreation shall furnish adequate proof satisfactory to the enforcement agent that such dog has been surgically altered to be permanently incapable of procreation.
- D. Any person who fails within fifteen days after written notification from the enforcement agent to obtain a license for a dog required to be licensed, counterfeits or attempts to counterfeit an official dog tag, or removes such tag from any dog for the purpose of willful and malicious mischief or places a dog tag upon a dog unless the tag was issued for that particular dog is guilty of a class two misdemeanor.

(09-08, Amended, 07/02/2009; 06-08, Amended, 02/02/2006; 03-21, Amended, 12/18/2003)

Section 6-2-4 Anti-Rabies Vaccination; Vaccination and License Stations

- 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 used and date revaccination is due. A duplicate of each rabies vaccination certificate issued shall be transmitted to the

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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.

- B. A dog vaccinated in any other state prior to entry into Arizona may be licensed in the town 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 state or a veterinarian employed by a governmental agency in that state, 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 used. The vaccination must be in conformity with the provisions of this article.
- C. The enforcement agent shall make provisions for vaccination clinics as deemed necessary. The vaccination shall be performed by a veterinarian.

Section 6-2-5 Dogs Not Permitted at Large; Wearing Licenses

- A. No person shall intentionally, knowingly, recklessly or negligently permit, allow or cause a female dog during her breeding or mating season or a vicious dog to be at large. For the purposes of this subsection only, a female dog during her breeding or mating season or a vicious dog shall be deemed at large if it is not within a suitable enclosure that actually confines the dog, or when such dog is not within a suitable enclosure, if it is not restrained by a leash, chain, rope or cord of sufficient strength to control the action of the dog .
- B. No person shall intentionally, knowingly, recklessly or negligently permit, allow or cause a dog in a rabies quarantine area to be at large. While on any owner's property, each dog shall be confined within an enclosure on such property, secured so that the dog is confined entirely to the owner's property, or otherwise under the direct and immediate control of the owner. When not on the owner's property, such dog shall be on a leash not to exceed six feet in length and directly under the owner's control.
- C. No person shall intentionally, knowingly, recklessly or negligently permit, allow or cause a dog to be at large within the town boundaries.
- D. The owner of any dog over the age of three months shall not permit, allow or cause such dog to be outside of a suitable enclosure that actually confines the dog without a collar or harness to which is attached a valid license tag issued pursuant to this article. Dogs, while being used or trained for hunting or dogs while being exhibited or trained at a town approved event, 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, licensed and controlled.
- E. Any dog at large may be apprehended and impounded by the enforcement agent.
 - 1. Said agent shall have the right to enter upon private property when it is necessary to do so in order to apprehend any dog that is at large. Such entrance upon private property shall be in reasonable pursuit of such dog and shall not include entry into a domicile or enclosure which confines the dog unless it be at the invitation of a person residing thereon.
 - 2. Said agent may issue a citation to the dog owner, person acting for the dog owner, custodian or other person whom said agent may reasonably believe permitted, allowed or caused the

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dog to be at large.

3. In the judgment of the enforcement agent, if any dog at large or other animal that is dangerous or fierce and a threat to human safety cannot be safely impounded, it may be slain.
- F. Notwithstanding any other provision of this article, any dog owner, person acting for the dog owner, custodian or other person who permits, allows or causes a dog to be at large in violation of:
1. Subsection A or B of this section is guilty of a class one misdemeanor.
 2. Subsection C or D of this section is guilty of a class three misdemeanor.

(03-21, Amended, 12/18/2003)

Section 6-2-6 Impounding and Disposing of Dogs and Cats; Pound Fees

- A. That the town has entered into an intergovernmental agreement with the Maricopa County Board of Supervisors to provide for impounding and disposing of dogs and cats at county pounds.
- B. That all fees, charges, rules, regulations and procedures shall be as authorized by law and implemented by the rules and regulations of Maricopa County.

Section 6-2-7 Handling of Biting Animals; Responsibility for Reporting Animal Bites

- A. An unlicensed or unvaccinated dog or cat that bites any person shall be confined and quarantined in a county pound or, upon request of and at the expense of the owner, at a veterinary hospital for a period of not less than seven days. A dog properly licensed and vaccinated pursuant to this article that bites any person may be confined and quarantined at the home of the owner or wherever the dog is harbored and maintained with the consent of and in a manner prescribed by the enforcement agent.
- B. Any animal other than a dog or cat that bites any person shall be confined and quarantined in a county pound or, upon request of and at the expense of the owner, at a veterinary hospital for a period of not less than fourteen days, provided that livestock shall be confined and quarantined for the fourteen day period in a manner regulated by the Arizona livestock board. If the animal is a caged rodent, it may be confined and quarantined at the home of the owner or where it is harbored or maintained, for the required period of time, with the consent of and in a manner prescribed by the enforcement agent.
- C. Any wild animal which bites any person may be killed and submitted to the enforcement agent for transmission to an appropriate diagnostic laboratory.
- D. Whenever an animal bites any person, the incident shall be reported to the enforcement agent immediately by any person having direct knowledge.
- E. The enforcement agent may destroy any animal confined and quarantined pursuant to this article prior to the termination of the minimum confinement period for laboratory examination for rabies if:

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1. Such animal shows clear clinical signs of rabies.
 2. The owner of such animal consents to its destruction.
- F. Any animal subject to licensing under this article found without a tag identifying its owner shall be deemed unowned.
- G. The enforcement agent shall destroy a vicious animal upon an order of a justice of the peace or a town magistrate. A justice of the peace or town magistrate may issue such an order after notice to the owner, if any, and a hearing.

Section 6-2-8 Unlawful Interference with Enforcement Agent; Unlawful Keeping of Dogs

- A. It is unlawful for any person to interfere with the enforcement agent in the performance of his duties.
- B. It is unlawful for a person to keep, harbor or maintain a dog within the town except as provided by the terms of this article.

Section 6-2-9 Violation; Classification; Dogs; Liability

- A. Any person who fails to comply with the requirements of this article, or violates any of its provisions, is guilty of a class two misdemeanor.
- B. Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person responsible for the dog when such damages were inflicted.

Chapter 7

BUILDINGS AND BUILDING REGULATIONS

Articles:

7-1	TECHNICAL CODES
7-2	FEES
7-3	POLLUTION REDUCTION
7-4	BUILDING OFFICIAL
7-5	UTILITY POLES AND WIRES
7-6	NOISE REGULATIONS DURING CONSTRUCTION
7-7	RESERVED
7-8	RESERVED
7-9	RESERVED
7-10	DEVELOPMENT FEES
7-11	ENFORCEMENT OF STATE RESIDENTIAL RENTAL PROPERTY REGISTRATION
7-12	ILLEGAL CONSTRUCTION SITE ACTIVITY

Article 7-1

TECHNICAL CODES

Sections:

7-1-1 Adoption by Reference; Violations

7-1-2 Repealed

Section 7-1-1 Adoption by Reference; Violations

- A. The following listed publications, three copies of which are on file in the office of the town clerk and which are available for public inspection during normal business hours, are hereby adopted by reference, together with all appendices and supplements thereto, as if set out at length in this code:
1. The International Building Code, 2012 Edition and all supplements, as published by the International Code Council.
 2. The International Mechanical Code, 2012 Edition and all supplements, as published by the International Code Council.
 3. The National Electrical Code, 2011 Edition and all supplements, as published by the National Fire Protection Association.
 4. The International Swimming Pool and Spa Code, 2012 Edition and all supplements, as published by the International Code Council.
 5. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition and all supplements, as published by the International Conference of Building Officials.
 6. The International Plumbing Code, 2012 Edition and all supplements, as published by the International Code Council.
 7. The most recent edition of the Maricopa Association of Governments Standard Specifications and Uniform Details for Public Works Construction.
 8. The International Energy Conservation Code, 2006 Edition and all supplements, as published by the International Code Council; provided that Section 504.7.3 (Pool Covers) is specifically excluded from adoption.
 9. The International Fire Code, 2012 Edition and all supplements, as published by the International Code Council.
 10. The International Residential Code, 2012 Edition including all supplements, as published by the International Code Council.
 11. The International Fuel Gas Code, 2012 Edition and all supplements, as published by the International Code Council.
 12. The Fountain Hills Amendments to the 2012 International Building Code, the 2012

International Residential Code, the 2012 International Energy Conservation Code and the 2012 International Fire Code.

- B. Prior-Adopted Fire Code Preserved. The Council find and determines that the adoption of the 2012 International Fire Code, or any subsequent fire-safety code, shall not effect the validity of the Town's existing fire sprinkler requirements. To ensure preservation of the Town's fire sprinkler requirements, if there is a reference in the above-described codes to a residential fire sprinkler requirement, the applicable code shall be the 2006 International Fire Code, amended as follows, which code and amendment were adopted by the Council on April 17, 2008:

903.2 Where required. An automatic sprinkler system shall be installed throughout all levels of all new Groups A, B, E, F, H, I, M, R, S and U occupancies of more than zero square feet in accordance with section 903, the Fire Department Interpretation and Applications Manual, and as set forth below:

1. In every story or basement of all buildings. Fire-resistive substitutions in accordance with provisions in the International Building Code, Chapter 6, footnote d, are allowed for this subsection for Group R occupancies and for other occupancies, provided that the automatic sprinkler is not otherwise required throughout the building by any other provision or section of the applicable building code.
2. At the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Sprinkler heads shall be accessible for servicing.
3. In rooms where nitrate film is stored or handled. See also Section 306.
4. In protected combustible fiber storage vaults.
5. In any building that has a change in occupancy as defined in the applicable building code.

Exceptions: The following accessory structures shall be exempt from fire sprinkler requirements:

1. Gazebos and ramadas for residential and public use.
2. Independent rest room buildings associated with golf courses, parks and similar uses.
3. Guardhouses for residential and commercial developments.
4. Detached, non-combustible carports for residential and commercial developments with covered parking less than 15,000 square feet (1394 m²).
5. Barns and agricultural buildings for private, residential, non-commercial use, not exceeding 1,500 square feet (139.35 m²) with no habitable areas.
6. Detached storage sheds for private, residential, non-commercial use, not exceeding 1,500 square feet (139.35 m²).
7. Detached one, two and three car garages (without habitable spaces) in existing

R-3 developed parcels which contain existing non-sprinklered subdivision requirements (i.e. 700 foot (213.36 m) hydrant spacing.

8. For fuel dispensing canopies not exceeding 1,500 square feet (139.35 m²).
9. Open shade horse stalls of non-combustible construction for private, residential, non-commercial use, not exceeding 5,000 square feet (464.52 m²) and not containing combustible products, vehicles or agricultural equipment.
10. Detached one-story accessory building used as a tool and/or storage shed containing non-hazardous materials and not exceeding 200 square feet (11.15 m²).
11. Special use non-combustible structures as approved by the Chief.

903.2.1 Group A. An automatic sprinkler system shall be installed throughout all Group A occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.2 Group E. An automatic sprinkler system shall be installed throughout all Group E occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.3 Group F. An automatic sprinkler system shall be installed throughout all Group F occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.4 Group H. An automatic sprinkler system shall be installed throughout all Group H occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.5 Group I. An automatic sprinkler system shall be installed throughout all Group I occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

Exception: In jails, prisons and reformatories, the piping system may be dry, provided a manually operated valve is installed at a continuously monitored location. Opening of the valve will cause the piping system to be charged. Sprinkler heads in such systems shall be equipped with fusible elements or the system shall be designed as required for deluge systems in the applicable building code.

903.2.6 Group M. An automatic sprinkler system shall be installed throughout all Group M occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.7 Group R. An automatic sprinkler system shall be installed throughout all Group R occupancies in accordance with NFPA 13, 13-R, or 13D Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.8 Group S-1 occupancies. An automatic sprinkler system shall be installed

throughout all Group S-1 occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.8.1 Repair garages. An automatic sprinkler system shall be installed throughout all repair garages in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.9 Group S-2 occupancies. An automatic sprinkler system shall be installed throughout all Group S-2 occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.9.1 Commercial parking garages. An automatic sprinkler system shall be installed throughout all commercial parking garages in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.10 All Group R-3 and U occupancies. An automatic sprinkler system shall be installed throughout all Group R-3 and U occupancies in accordance with NFPA 13 or 13-D Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.14 Group B occupancies. An automatic sprinkler system shall be installed throughout all Group B occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.3 Installation requirements. Automatic sprinkler systems shall be designed and installed in accordance with NFPA 13, 13-R, 13-D as modified by the Fire Department Interpretation and Applications Manual.

903.3.5.3 Use of non-potable water for fire protection.

1. All commercial structures for which a building permit is issued adjacent to golf courses using non-potable or reclaimed water for irrigation with sufficient storage capacity onsite may be sprinklered using this supply.
2. Irrigation systems shall be designed to meet the Fire Department's standards of gallons per minute flow and pressure necessary to supply adequate fire flow.
3. A standby power supply for pumping station supplying fire flow shall be provided.
4. Fire hydrants on domestic supply shall be placed in close proximity to the Fire Department connection for structural sprinkler systems to provide a secondary water supply.
5. Fire hydrants placed on approved non-potable, reclaimed water supply systems, shall have caps and bonnet painted with a prime coat plus two coats of black paint. A placard shall be affixed to the hydrant in English and Spanish DO NOT DRINK WATER. Non-potable water supplies shall use

approved material for construction of all mains and supply lines and shall have the written approval of the town manager or his designee.

6. All water inlets for non-potable systems shall be required to have a sufficient straining and filtering capacity to eliminate all foreign objects from blocking sprinkler orifice. Chlorination of inlet lines shall be required.

903.3.6 Hose threads. Fire hose threads used in connection with automatic sprinkler systems shall be National Standard Threads.

903.3.7 Fire Department connections. Fire Department connections shall be located within 4 feet (1219.2 mm) to 8 feet (2438.4 mm) of the curb line of an access road or public street, or as otherwise specified or as approved by the Chief. The Fire Department connection line shall be a wet line with the check valve at the hose connection above grade. The access to the fire department connection shall be at curb grade. See Fire Department Interpretation and Applications Manual.

903.3.7.1 Wall mounted. Systems may have wall mounted fire department connections only on light and ordinary hazard Group I systems when there are no structural openings or combustible overhangs within 15 feet (4572 mm) horizontally or vertically from inlet connection. See Fire Department Interpretation and Applications Manual.

903.3.7.2 Additions, alterations and repairs. When the gross area of additions, alterations, remodeling, reconstruction and repairs within a twelve month period exceed 50% of the gross area of the existing building or structure, such building or structure shall have an automatic fire sprinkler system installed throughout the entire structure or building in accordance with this section.

903.3.7.3 Partial systems prohibited. In all new additions to existing non-sprinklered buildings and structures, an automatic sprinkler system shall be installed in accordance with this section. There shall be no partially sprinklered compartments. Sprinklered and unsprinklered areas of a structure shall be separated in accordance with all applicable codes and standards.

903.4 Sprinkler system monitoring and alarms. All valves controlling the water supply for automatic sprinkler systems, pumps, tanks, water levels and temperature, critical air pressure and water-flow switches on all sprinkler systems shall be electrically supervised. See Fire Department Interpretation and Applications Manual.

Exceptions:

1. Automatic sprinkler systems protecting one- and two-family dwellings.
2. Limited area systems serving fewer than 20 sprinklers for E, H, and I occupancies and more than 100 sprinklers in all other occupancies.
3. Automatic sprinkler systems installed in accordance with NFPA 13R where a common supply main is used to supply both domestic and automatic sprinkler systems and a separate shutoff valve for the automatic sprinkler system is not provided.

4. Jockey pump control valves that are sealed or locked in the open position.
5. Paint spray booths or dip tanks that are sealed or locked in the open position.
6. Valves controlling the fuel supply to fire pump engines that are sealed or locked in the open position.
7. Trim valves to pressure switches in dry, pre-action and deluge sprinkler systems that are sealed or locked in the open position.

903.4.2 Alarms. Approved audible devices shall be connected to every automatic sprinkler system. Such sprinkler water-flow alarm device shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided on the exterior of the building in an approved location. An interior alarm to alert the occupants shall be provided in the interior of the building in a normally occupied location when off-site monitoring is required. Where a fire alarm system is installed, activation of the automatic sprinkler system shall actuate the building fire alarm system.

C. It is unlawful for any person to violate any of the provisions of the publications adopted in subsection A of this section.

D. Penalties for Violating the Technical Codes

1. General

Any person found guilty of violating any provision of the publications adopted in subsection A of this section shall be subject to a civil sanction for the first such violation, punishable by a fine not to exceed \$2,500.00 base fine and, for a subsequent violation thereof, shall be guilty of a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 base fine 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.

2. Civil Sanction

Any person that commits a civil violation shall be subject to a civil (non-criminal) action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed, \$2,500.00 base fine for each violation.

3. Criminal Violation

A person that commits a criminal violation shall be subject to a criminal action in any court of competent jurisdiction and, if found guilty thereof, shall be guilty of a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 base fine or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.

4. Violations Not Exclusive

Violations of this section are in addition to any other violation enumerated within the Town's ordinances and codes and in no way limit the penalties, actions or abatement procedures,

which may be taken by the Town for any violation of this section, which is also a violation of any other ordinance or code provision of the Town or statutes of the state.
(13-06, Amended, 10/17/2013; 08-14, Amended, 10/16/2008, text addition; 08-07, Amended, 04/17/2008; 03-12, Amended, 08/07/2003)

Section 7-1-2 Repealed

Repealed

(08-14, Repealed, 10/16/2008; Ordinance 01-08, Amended, 03/01/2001, Adopted by Council 3/1/01)

Article 7-2

FEES

Sections:

7-2-1 Fees

7-2-2 Compliance with Town Tax Code Provisions

Section 7-2-1 Fees

- A. Permit Fees. The permit fee for all new structures, excavations, or other construction activity, including all renovation, remodeling and repairs, shall be in such amount as approved by the Council by resolution or as part of the Town's annual budget. All permit fees must be paid, in full, prior to issuance of a building permit.
- B. Plan Review Fees. When a plan or other data for all new structures, excavations, or other construction activity, including all renovation, remodeling and repairs, is required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. Said plan review fee shall be in such amount as approved by the Council by resolution or as part of the Town's annual budget. All plan review fees must be paid, in full, prior to review of any plans or data.
- C. Planning, Building and Engineering Fees. The fees for services provided by the planning division, the building division and the engineering division shall be established by the Town Council as part of the annual budget process or as otherwise adopted by Town Council resolution. All planning, building and engineering fees must be paid, in full, prior to issuance of a building permit.
- D. Third Party Plan Review and Inspection Fees. If new structures, excavations, or other construction activity, including all renovation, remodeling and repairs, are subject to third party review or inspections, the fees for such plan review and inspection shall be paid to the Town. At the time of submitting the plans for review to the Town if directed by the Town, such fees shall be paid directly to the third party plan reviewer at the time of submitting the plans for review to the third party plan reviewer. Inspection fees shall be paid to the Town prior to issuance of a building permit.
- E. Development Impact Fees. Development impact fees shall be paid at time set forth in Section 7-10 of the Fountain Hills Town Code, as amended.
- F. Payment of Outstanding Fees or Taxes. Any outstanding fees or taxes owed by the applicant to the Town for any purpose must be paid to the Town prior to issuance of a building permit; if no building permit is necessary, or if a building permit has already been issued, any outstanding fees or taxes owed by the applicant to the Town for any purpose must be paid to the Town prior to issuance of a certificate of occupancy.

(17-01, Amended, 06/01/2017; 09-08, Amended, 07/02/2009; 08-14, Amended, 10/16/2008)

Section 7-2-2 Compliance with Town Tax Code Provisions

- A. Except as set forth below, no building permit shall be issued to any person, firm, corporation, partnership, joint venture, entity or any related parties, firms, corporations, partnerships, joint ventures or entities, however legally organized or constituted, who has been determined by the Town Manager or his designee to owe the Town Transaction Privilege Taxes pursuant to the provisions of the Town Tax Code.
- B. An applicant for a building permit who owes the Town Transaction Privilege Taxes may be issued a building permit only if the applicant has entered into a written agreement with the Town relating to payment of the tax obligation and is, at the time of the submittal of the building permit application, current in making all payments required under the terms of such agreement.
- C. A building permit issued to any person, firm, corporation, partnership, joint venture, entity or any related parties, firms, corporation, partnerships, joint ventures or entities, however legally organized or constituted that one subject to a written agreement relating to the payment of tax obligations as referenced above may be suspended or revoked by the Town Manager or his designee upon the failure of the person, firm, corporation, partnership, joint venture, entity or any related party to make any payment pursuant to the agreement.

(17-01, Added, 06/01/2017)

Article 7-3

POLLUTION REDUCTION

Sections:

7-3-1 Fireplace Restrictions

Section 7-3-1 Fireplace Restrictions

- A. For the purposes of this Section, the following words and terms shall have the meaning ascribed thereto:
1. "Fireplace" means a built-in place masonry hearth and fire chamber or a factory-built appliance designed to burn solid fuel or to accommodate a gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes.
 2. "Solid fuel" means and includes, but is not limited to, wood, coal or other nongaseous or nonliquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as "inappropriate fuel" to burn in residential woodburning devices.
 3. "Woodstove" means a solid-fuel burning heating appliance including a pellet stove, which is either freestand or designed to be inserted into a fireplace.
- B. On or after January 4, 1999, no person, firm or corporation shall construct or install a fireplace or a woodstove, and the Town shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove is one of the following:
1. A fireplace which has a permanently installed gas or electric log insert;
 2. A fireplace, woodstove or other solid-fuel burning appliance that has been certified by the United States Environmental Protection Agency as conforming to 40 CFR Part 60, Subpart AAA, or any amendments thereto;
 3. A fireplace, woodstove or other solid-fuel burning appliance that has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 CFR Part 60, Subpart AAA, or any amendments thereto;
 4. A fireplace, woodstove or other solid-fuel burning appliance that has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 CFR Part 60, Subpart AAA, or any amendments thereto; or

5. A fireplace that has a permanently installed woodstove insert that complies with paragraphs 2, 3 or 4 above.
- C. The following installations are not regulated and are not prohibited by this Section:
1. Furnaces, boilers, incinerators, kilns and other similar space heating or industrial process equipment;
 2. Cookstoves, barbecue grills and other similar appliances designed primarily for cooking; and
 3. Firepits, barbecue grills and other outdoor fireplaces.
- D. Fireplaces constructed or installed on or after January 4, 1999 that contain a gas or electric log insert or a woodstove insert shall not be altered to directly burn wood or any other solid fuel.
- E. On or after January 4, 1999, no person, firm or corporation shall alter a fireplace, woodstove or other solid fuel burning appliance in any manner that would void its certification or operational compliance with the provisions of this Section.
- F. In addition to the provisions and restrictions of this Section, construction, installation or alteration of all fireplaces, woodstoves and other gas, electric or solid-fuel burning appliances and equipment shall be done in compliance with the provisions of the Town Code and shall be subject to permits and inspections required by the Town.
- G. Fireplaces constructed or installed on or after January 4, 1999 shall not be altered without first obtaining a permit from the Town to ensure compliance with this Section.

(98-34, Added, 12/03/1998)

Article 7-4

BUILDING OFFICIAL

Sections:

7-4-1 Building Official

Section 7-4-1 Building Official

The building official and administrative authority, as such may be referenced in any section of this chapter for all matters pertaining to any building, plumbing, electrical or any other inspections, shall be vested in the office of the town manager or such other person the manager may appoint subject to council approval.

Article 7-5

UTILITY POLES AND WIRES

Sections:

- 7-5-1 Definitions**
- 7-5-2 Permit for Erection; Exceptions**
- 7-5-3 Procedure for Obtaining Permit; Denial and Appeal**
- 7-5-4 Standards for Issuance of Permits**

Section 7-5-1 Definitions

In this article unless the context requires otherwise:

- A. "Distribution feeder" means that portion of the distribution system feeding from a distribution substation to a specific load area having a capacity of over three thousand KVA.
- B. "Existing utility poles and wires" means such poles and wires and other facilities as are in place and in operation as of the effective date of this code and including repairs, replacements, relocations on the same alignment, additions, enlargements, betterments, changes or improvements hereinafter made to maintain or increase service capabilities of existing utility poles, wires, service drops and other facilities, but it does not include extensions made to existing distribution lines.
- C. "Transmission line" means an electric line used for the bulk transmission of electricity between generating or receiving points and major substations or delivery points, having a rating of over twelve thousand volts.
- D. "Utility poles and wires" means poles and structures, wires, cables, transformers and all other facilities used in or as a part of the distribution or transmission of telephone, telegraph, radio or television communications.

Section 7-5-2 Permit for Erection; Exceptions

After the effective date of this code, no new utility poles and wires shall be erected in the town above the surface of the ground unless a permit is first secured therefore from the town manager or his designee; except that the following construction may be installed without such a permit:

- A. Temporary service facilities, such as facilities to furnish emergency service during an outage, facilities to provide service to construction sites, or other service of a limited duration, such as to a fair, carnival, outdoor exhibit or other function where the facilities will be installed for a temporary period only.
- B. Pad-mounted transformers or pull boxes, service terminals, pedestal-type telephone terminals, telephone splice closures, or similar on-the-ground facilities normally used with and as a part of an underground electric distribution, telephone, telegraph or television system, or on-the-ground facilities attached to existing overhead facilities which are used for the purpose of connecting an underground system with the existing facilities.

- C. Transmission lines and distribution feeder lines, together with related switch yards, substations and related equipment. Service drops from existing overhead lines to new single family residential customers, except when underground service is required by the town's subdivision regulations.

Section 7-5-3 Procedure for Obtaining Permit; Denial and Appeal

Any person seeking a special permit for erection of any new utility poles and wires within the town boundaries and above the surface of the ground shall first make application therefore to the town manager or his designee which application shall be approved or denied. In the event the permit is denied, the applicant may appeal the decision of the town manager or his designee by presenting his objections in writing to the council with a copy to the town manager or his designee within ten days of the town manager's or his designee's denial. The town manager or his designee may grant the permit within five days or shall submit the appeal together with a written report of his recommendations to the council within twenty days of the date of receipt of the appeal. The council may hear arguments and shall decide the matter.

Section 7-5-4 Standards for Issuance of Permits

A special permit for erection of new utility poles and wires may be granted only in the event the applicant makes an affirmative showing that the public's general health, safety and welfare and that of adjacent property owners will not be impaired, endangered or jeopardized by the proposed erection. In deciding such matter, the following factors shall be considered:

- A. The location and height of such poles and wires and their relation to present or potential future roads.
- B. The crossing of such lines over much traveled highways or streets; the proximity of such lines to schools, churches or other places where people congregate.
- C. The probability of extensive flying in the area where such poles and wires are proposed to be located and the proximity to existing or proposed airfields.
- D. Fire or other accident hazards from the presence of such poles and wires and the effect, if any, of same upon the effectiveness of fire fighting equipment.
- E. The aesthetics involved.
- F. The future conditions that may be reasonably anticipated in the area in view of a normal course of development.
- G. The practicality and feasibility of underground installations of such facilities with due regard for the comparative costs between underground and overground installations; but a mere showing that an underground installation shall cost more than an overground installation shall not in itself necessarily require issuance of a permit.

Article 7-6

NOISE REGULATIONS DURING CONSTRUCTION

Sections:

7-6-1 Regulations

7-6-2 Penalties

Section 7-6-1 Regulations

- A. During the times hereinafter set forth, no construction activities of any kind, including but not limited to the making of an excavation, clearing of surface land and loading or unloading material, equipment or supplies, or the operation of mechanically powered tools anywhere in the town limits, shall be permitted, when such activities result in the generation of mechanically or electrically created noise that can be heard by a person with normal hearing within a residential building, the windows of which are closed, if such building is located within five hundred feet of the construction site.
- B. The foregoing limitations shall apply to the following times:
1. Prior to 5:30 a.m. and after 6:30 p.m. Monday through Friday from May 15 through September 15.
 2. Prior to 6:00 a.m. and after 6:30 p.m. Monday through Friday during the remainder of the year.
 3. Prior to 7:00 a.m. and after 5:00 p.m. on Saturdays throughout the year.
 4. At all times during Sundays and Legal Holidays.
- C. The following activities shall be excluded from such prohibition:
1. Noise resulting from perishable activities, defined as all concrete flat work, termite pre-treatment application and the delivery of perishable landscaping materials shall be allowed as necessary.
 2. Noise generated by work being performed by a resident of a building or structure may continue until 10:00 p.m. but may not begin earlier than the times set forth in subsection B of this section.
 3. Noise resulting from emergencies, including but not limited to, repair of roofs, windows, doors, electrical, plumbing and mechanical (HVAC) shall be permitted whenever necessary. An emergency shall be defined as any situation where work must be performed in order to prevent serious injury to persons or property.

Section 7-6-2 Penalties

Violation of any provision of Section 7-6-1 is a civil offense. The municipal court of the town shall

conduct a hearing and shall assess a sanction of one hundred dollars for a first violation; two hundred dollars for a second violation and five hundred dollars for all subsequent violations. Each day a violation occurs shall constitute a separate event.

Article 7-7

RESERVED

Sections:

7-7-1 Reserved

7-7-2 Reserved

7-7-3 Reserved

7-7-4 Reserved

7-7-5 Reserved

Section 7-7-1 Reserved

Reserved

(08-14, Repealed, 10/16/2008)

Section 7-7-2 Reserved

Reserved

(08-14, Repealed, 10/16/2008)

Section 7-7-3 Reserved

Reserved

(08-14, Repealed, 10/16/2008)

Section 7-7-4 Reserved

Reserved

(08-14, Repealed, 10/16/2008)

Section 7-7-5 Reserved

Reserved

(08-14, Repealed, 10/16/2008)

Article 7-8

RESERVED

Sections:

7-8-1 Reserved

Section 7-8-1 Reserved

(17-01, Amended, 06/01/2017; 06-09, Amended, 05/04/2006)

Article 7-9

RESERVED

Sections:

7-9-1 Reserved

7-9-2 Reserved

7-9-3 Reserved

7-9-4 Reserved

7-9-5 Reserved

Section 7-9-1 Reserved

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Section 7-9-2 Reserved

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Section 7-9-3 Reserved

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Section 7-9-4 Reserved

Reserved

(08-14, Repealed, 10/16/2008)

Section 7-9-5 Reserved

Reserved

(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Article 7-10

DEVELOPMENT FEES

Sections:

- 7-10-1 Legislative Intent and Purpose**
- 7-10-2 Definitions**
- 7-10-3 Applicability**
- 7-10-4 Authority for Development Impact Fees**
- 7-10-5 Administration of Development Impact Fees**
- 7-10-6 Land Use Assumptions**
- 7-10-7 Infrastructure Improvements Plan**
- 7-10-8 Adoption and Modification Procedures**
- 7-10-9 Timing for the Renewal and Updating of the Infrastructure Improvements Plan and the Land Use Assumptions**
- 7-10-10 Collection of Development Impact Fees**
- 7-10-11 Development Impact Fee Credits and Credit Agreements**
- 7-10-12 Development Agreements**
- 7-10-13 Appeals**
- 7-10-14 Refunds of Development Impact Fees**
- 7-10-15 Oversight of Development Impact Fee Program**

Section 7-10-1 Legislative Intent and Purpose

This Article is adopted for the purpose of promoting the health, safety and general welfare of the residents of the Town by:

- A. Requiring new development to pay its proportionate share of the costs incurred by the Town that are associated with providing Necessary Public Services to new development.
- B. Setting forth standards and procedures for creating and assessing development impact fees consistent with the requirements of Arizona Revised Statute ("A.R.S.") §9-463.05, as amended, including requirements pursuant to A.R.S. §9-463.05, Subsection K that, on or before August 1, 2014, the Town replace its development impact fees that were adopted prior to January 1, 2012, with development impact fees adopted pursuant to the requirements of A.R.S. §9-463.05 as amended by the state legislature in SB 1525, Fiftieth Legislature, First Regular Session.
- C. Providing for the temporary continuation of certain development impact fees adopted prior to January 1, 2012, until otherwise replaced pursuant to this Article, or longer where such development impact fees were Pledged to support Financing or Debt for a Grandfathered Facility as permitted by A.R.S. §9-463.05, Subsections K, R, and S.
- D. Setting forth procedures for administering the development impact fee program, including Offsets, Credits, and refunds of development impact fees. All development impact fee assessments, Offsets, Credits, or refunds must be administered in accordance with the provisions of this Article.

This Article shall not affect the Town's zoning authority or its authority to adopt or amend its General Plan, provided that planning and zoning activities by the Town may require amendments to development impact fees as provided in Section 7-10-6 of this Article.

(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-2 Definitions

When used in this Article, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural.

Applicant: A person who applies to the Town for a Building Permit.

Appurtenance: Any fixed machinery or Equipment, structure or other fixture, including integrated hardware, software or other components, associated with a Capital Facility that are necessary or convenient to the operation, use, or maintenance of a Capital Facility, but excluding replacement of the same after initial installation.

Aquatic Center: A facility primarily designed to host non-recreational competitive functions generally occurring within water, including, but not limited to, water polo games, swimming meets, and diving events. Such facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities, including but not limited to, locker rooms, offices, snack bars, bleacher seating, and shade structures.

Building Permit: Any permit issued by the Town that authorizes vertical construction, increases square footage, authorizes changes to land use, or provides for the addition of a residential or non-residential point of demand to a Water or Wastewater system.

Capital Facility: An asset having a Useful Life of three or more years that is a component of one or more Categories of Necessary Public Service provided by the Town. A Capital Facility may include any associated purchase of real property, architectural and engineering services leading to the design and construction of buildings and facilities, improvements to existing facilities, improvements to or expansions of existing facilities, and associated financing and professional services. Wherever used herein, "infrastructure" shall have the same meaning as "Capital Facilities."

Category of Necessary Public Service: A class of Necessary Public Services for which the Town is authorized to assess development impact fees, as further defined in Subsection 7-10-7(a)(1) of this Article.

Category of Development: A specific class of residential, commercial, or industrial development against which a development impact fee is calculated and assessed. The Town assesses development impact fees against commercial, residential, and industrial categories.

Commercial Land Use: A use allowed within the zones designated in Chapters 12, 16, 17, 18, and 21 of the Town's Zoning Ordinance and those portions of Planned Area Districts as determined by the Town's Zoning Administrator.

Credit: A reduction in an assessed development impact fee resulting from Developer contributions to, payments for, construction of, or dedications for Capital Facilities included in an Infrastructure Improvements Plan pursuant to Section 7-10-11 of this Article (or as otherwise permitted by this Article).

Credit Agreement: A written agreement between the Town and the Developer(s) of a Subject Development that allocates Credits to the Subject Development pursuant to Section 7-10-11 of this Article. A Credit Agreement may be included as part of a Development Agreement pursuant to Section 7-10-12 of this Article.

Credit Allocation: A term used to describe when Credits are distributed, but are not yet issued, to a particular development or parcel of land after execution of a Credit Agreement.

Credit Issuance: A term used to describe when the amount of an assessed development impact fee attributable to a particular development or parcel of land is reduced by applying a Credit Allocation.

Developer: An individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation or other political subdivision of the state, state agency or other person or entity undertaking land development activity, and their respective successors and assigns.

Development Agreement: An agreement prepared in accordance with the requirements of Section 7-10-12 of this Article, A.R.S. §9-500.05, and any applicable requirements of the Town Code.

Direct Benefit: A benefit to a Service Unit resulting from a Capital Facility that: (a) addresses the need for a Necessary Public Service created in whole or in part by the Service Unit; and (b) meets either of the following criteria: (i) the Capital Facility is located in the immediate area of the Service Unit and is needed in the immediate area of the Service Unit to maintain the Level of Serve, or (ii) the Capital Facility substitutes for, or eliminates the need for a Capital Facility that would have otherwise have been needed in the immediate area of the Service Unit to maintain the Town's Level of Service.

Dwelling Unit: A house, building or portion of a building, apartment, mobile home or trailer, group of rooms, or single room occupied as separate living quarters for residential purpose or, if vacant, intended for occupancy as separate living quarters for residential purpose.

Equipment: Machinery, tools, materials, and other supplies, not including Vehicles, that are needed by a Capital Facility to provide the Level of Service specified by the Infrastructure Improvement Plan, but excluding replacement of the same after initial development of the Capital Facility.

Excluded Library Facility: Library facilities for which development impact fees may not be charged pursuant to A.R.S. §9-463.05, including that portion of any Library facility that exceeds 10,000 square feet, and Equipment, Vehicles or Appurtenances associated with Library operations.

Excluded Park Facility: Parks and Recreational Facilities for which development impact fees may not be charged pursuant to A.R.S. §9-463.05, including amusement parts, aquariums, Aquatic Centers, auditoriums, arenas arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, Water reclamation or riparian areas, wetlands, or zoo facilities.

Fee Report: A written report developed pursuant to Section 7-10-8 of this Article that identifies the methodology for calculating the amount of each development impact fee, explains the relationship between the development impact fee to be assessed and the Infrastructure Improvements Plan, and which meets other requirements set forth in A.R.S. §9-463.05.

Financing or Debt: Any debt, bond, note, loan, interfund loan, fund transfer, other debt service obligation used to finance the development or expansion of a Capital Facility.

Fire and Police Facilities: A Category of Necessary Public Services that includes fire and police stations, Equipment, Vehicles and all Appurtenances for fire and police stations. "Fire and Police Facilities" does not include Vehicles or Equipment used to provide administrative services, helicopters, airplanes or any facility that is used for training firefighters or officers from more than one station or

substation.

General Plan: Refers to the overall land-use plan for the Town establishing areas of the Town for different purposes, zones and activities adopted pursuant to Town Resolution 2009-43 on January 7, 2010, and ratified by the Fountain Hills voters on May 18, 2010, as amended, which includes the Town Center Area Specific Plan adopted pursuant to Town Resolution 2009-40.

Grandfathered Facilities: Capital Facilities provided through Financing or Debt incurred before June 1, 2011 for which a development impact fee has been Pledged towards repayment as described in Section 7-10-4(C) of this Article.

Gross Impact Fee: The total development impact fee to be assessed against a Subject Development, prior to subtraction of any Credits.

Industrial Land Use: A use allowed with the zones designated in Chapters 13 and 14 of the Town's Zoning Ordinance and those portions of Planned Area Development Zoning District as determined by the Town's Zoning Administrator.

Infrastructure Improvement Plan: A document or series of documents that meet the requirements set forth in A.R.S. §9-463.05, including those adopted pursuant to Section 7-10-8 of this Article to cover any Category or combination of Categories of Necessary Public Services.

Land Use Assumptions: Projections of changes in land uses, densities, intensities and population for a Service Area over a period of at least ten years, as specified in Section 7-10-6 of this Article.

Level of Service: A quantitative and/or qualitative measure of a Necessary Public Service that is to be provided by the Town to development in a particular Service Area, defined in terms of the relationship between service capacity and service demand, accessibility, response times, comfort or convenience of use, or other similar measures or combinations of measures, Level of Service may be measured differently for different Categories of Necessary Public Services, as identified in the applicable Infrastructure Improvements Plan.

Library Facilities: A Category of Necessary Public Services in which literary, musical, artistic, or reference materials are kept (materials may be kept in any form of media such as electronic, magnetic, or paper) for use by the public in a facility providing a Direct Benefit to development. Libraries do not include Excluded Library Facilities, although a Library may contain, provide access to, or otherwise support an Excluded Library Facility.

Necessary Public Services: "Necessary Public Services" shall have the meaning prescribed in A.R.S. §9-463.05(T)(7).

Offset: An amount that is subtracted from the overall costs of providing Necessary Public Services to account for those capital components of infrastructure or associated debt that have been or will be paid for by a development through taxes, fees (except for development impact fees), and other revenue sources, as determined by the Town pursuant to Section 7-10-17 of this Article.

Parks and Recreational Facilities: A Category of Necessary Public Services including but not limited to parks, swimming pools and related facilities and Equipment located on real property not larger than 30 acres in areas, as well as park facilities larger than 30 acres where such facilities provide a Direct Benefit. Parks and Recreational Facilities do not include Excluded Park Facilities, although Parks and Recreational Facilities may contain, provide access to, or otherwise support an Excluded Park Facility.

Pledged: Where used with reference to a development impact fee, a development impact fee shall be considered "Pledged" where it was identified by the Town as a source of payment or repayment for Financing or Debt that was identified as the source of financing for a Necessary Public Service for which a development impact fee was assessed pursuant to the then-applicable provisions of A.R.S. §9-463.05.

Qualified Professional: Any one of the following: (a) a professional engineer, surveyor, financial analyst or planner, or other licensed professional providing services within the scope of that person's education or experience related to Town planning, zoning, or impact development fees and holding a license issued by an agency or political subdivision of the State of Arizona; (b) a financial analyst, planner or other non-licensed professional who is providing services within the scope of the person's education or experience related to Town planning, zoning, or impact development fees; or (c) any other person operating under the supervision of one or more of the above.

Residential Land Use: A use allowed within the zones designated in Chapters 10 and 11 of the Town's Zoning Ordinance or those portions of uses allowed in Chapters 18 and 23 as determined by the Town's Zoning Administrator.

Service Area: Any specified area within the boundaries of the Town within which: (a) the Town will provide a Category of Necessary Public Services to development at a planned Level of Service; and (b) within which (i) a Substantial Nexus exists between the Capital Facilities to be provided and the development to be served, or (ii) in the case of Library Facilities or a Park Facility larger than 30 acres, a Direct Benefit exists between the Library Facilities or Park Facilities and the development to be served, each as prescribed in the Infrastructure Improvements Plan. Some or all of the Capital Facilities providing service to a Service Area may be physically located outside of that Service Area provided that the required Substantial Nexus or Direct Benefit is demonstrated to exist.

Service Unit: A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of Necessary Public Services or facility expansion.

Street Facilities: A Category of Necessary Public Services including arterial or collector streets or roads, traffic signals, rights-of-way, and improvements thereon, and other necessary included facilities such as bridges, culverts, irrigation tiling, storm drains, and regional transportation facilities.

Storm Water, Drainage and Flood Control Facilities: A Category of Necessary Public Services including but not limited to storm sewers constructed in sizes needed to provide for stormwater management for areas beyond major street projects and stormwater detention/retention basins, tanks, pump stations and channels necessary to provide for proper stormwater management, including any Appurtenances for those facilities.

Subject Development: A land area linked by a unified plan of development, which must be contiguous unless the land area is part of a Development Agreement executed in accordance with Section 7-10-12 of this Article.

Substantial Nexus: A substantial nexus exists where the demand for Necessary Public Services that will be generated by a Service Unit can be reasonably quantified in terms of the burden it will impose on the available capacity of existing Capital Facilities, the need it will create for new or expanded Capital Facilities, and/or the benefit to the development from those Capital Facilities.

Swimming Pool: A public facility primarily designed and/or utilized for recreational

non-competitive functions generally occurring within water, including, but not limited to, swimming classes, open public swimming sessions, and recreational league swimming/diving events. The facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities.

Town: The Town of Fountain Hills, Arizona.

Useful Life: The period of time during which an asset can reasonably be expected to be used under normal conditions, whether or not the asset will continue to be owned and operated by the Town over the entirety of such period.

Vehicle: Any device, structure, or conveyance utilized for transportation in the course of providing a particular Category of Necessary Public Services at a specified Level of Service, excluding helicopters and other aircraft.

Wastewater Facilities: A Category of Necessary Public Services including, but not limited to, sewers, lift stations, reclamation plants, wastewater treatment plants, and all other facilities for the collection, interception, transportation, treatment and disposal of wastewater, and any Appurtenances for those facilities.

Water Facilities: A Category of Necessary Public Services including, but not limited to, those facilities necessary to provide for water services to development, including the acquisition, supply, transportation, treatment, purification and distribution of water, and any Appurtenances to those facilities. (14-06, Amended, 06/19/2014; 06-02, Amended, 01/05/2006; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-3 Applicability

- A. Except as otherwise provided herein, from and after August 1, 2014, this Article shall apply to all new development within any Service Area.
- B. The provisions of this Article shall apply to all of the territory within the corporate limits of the Town and/or within any Town Service Area that extends beyond the corporate limits.
- C. The Town Manager or his/her designee is authorized to make determination regarding the application, administration and enforcement of the provisions of this Article.

(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-4 Authority for Development Impact Fees

- A. *Fee Report and Implementation.* The Town may assess and collect a development impact fee for costs of Necessary Public Services, including all professional services required for the preparation or revision of an Infrastructure Improvements Plan, Fee Report, development impact fee, and required reports or audits conducted pursuant to this Article. Development impact fees shall be subject to the following requirements:
 - 1. The Town shall develop and adopt a Fee Report that analyzes and defines the development impact fees to be charged in each Service Area for each Capital Facility Category, based on the Infrastructure Improvements Plan, pursuant to Subsection 7-10-7(A) below.

2. Development impact fees shall be assessed against all new commercial, residential, and industrial developments, provided that the Town may assess different amounts of development impact fees against specific Categories of Development based on the actual burdens and costs that are associated with providing Necessary Public Services to that Category of Development.
 3. No development impact fees shall be charged, or Credits issued, for any Capital Facility that does not fall within one of the Categories of Necessary Public Services for which development impact fees may be assessed as identified in Subsection 7-10-7(A)(1) below.
 4. Costs for Necessary Public Services made necessary by new development shall be based on the same Level of Service provided to existing development in the same Service Area. Development impact fees may not be used to provide a higher Level of Service to existing development or to meet stricter safety, efficiency, environmental, or other regulatory standards to the extent that these are applied to existing Capital Facilities that are serving existing development.
 5. Development impact fees may not be used to pay the Town's administrative, maintenance, or other operating costs.
 6. Projected interest charges and financing costs can only be included in development impact fees to the extent they represent principal and/or interest on the portion of any Financing or Debt used to finance the construction or expansion of a Capital Facility identified in the Infrastructure Improvements Plan.
 7. All development impact fees charged by the Town must be included in a "Fee Schedule" prepared pursuant to this Article and included in the Fee Report, which Fee Schedule may be adopted by the Town Council by resolution or as part of the Town's annual budget.
 8. All development impact fees shall meet the requirements of A.R.S. § 9-463.05.
- B. *Costs per Service Unit.* The Fee Report shall summarize the costs of Capital Facilities necessary to serve new development on a per Service Unit basis as defined and calculated in the Infrastructure Improvements Plan, including all required Offsets, and shall recommend a development impact fee structure for adoption by the Town.
- C. *Carry-over of Previously-Established Development Impact Fees and Grandfathered Facilities.* Notwithstanding the requirements of this Article, certain development impact fees adopted by the Town prior to the effective date of this Article shall continue in effect as follows:
1. Until August 1, 2014, or the date a new development impact fee is effective for the applicable Category of Necessary Public Services in a Service Area pursuant to this Article, whichever occurs first, development impact fees established prior to January 1, 2012, shall continue in full force and effect to the extent that the development impact fee is used to provide a Category of Necessary Public Services that is authorized by Section 7-10-7 below. Development impact fees collected prior to January 1, 2012, shall be expended on Capital Facilities within the same Category of Necessary Public Services for which they were collected.
 2. The Town may continue to collect and use any development impact fee established before January 1, 2012, even if the development impact fee would not otherwise be permitted to be collected and spent pursuant to A.R.S. § 9-463.05, as amended by the state legislature in SB

1525, Fiftieth Legislature, First Regular Session, if either of the following apply:

- a. Both of the following conditions are met:
 - i. Prior to June 1, 2011, the development impact fee was Pledged towards the repayment of Financing or Debt incurred by the Town to provide a Capital Facility.
 - ii. The applicable Capital Facility was included in the Town's Infrastructure Improvements Plan, or other Town planning document prepared pursuant to applicable law, prior to June 1, 2011.
 - b. Before August 1, 2014, the Town uses the development impact fee to finance a Capital Facility in accordance with A.R.S. § 9-463.05(S).
3. Defined terms in any previously established fee schedule shall be interpreted according to the ordinance in effect at the time of their adoption.

(14-06, Amended, 06/19/2014; 11-11, Amended, 12/15/2011, Deleted C. (Offsets) and reserved for future use.; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-5 Administration of Development Impact Fees

- A. *Separate Funds.* Development impact fees collected pursuant to this Article shall be placed in separate funds (for each Capital Facility category within each Service Area) within the City's interest-bearing account.
- B. *Limitations on Use of Fees.* Development impact fees and any interest thereon collected pursuant to this Article shall be spent to provide Capital Facilities associated with the same Category of Necessary Public Services in the same Service Area for which they were collected, including costs of Financing or Debt used by the Town to finance such Capital Facilities, and other costs authorized by this Article, that are included in the Infrastructure Improvements Plan.
- C. *Time Limit.* Development impact fees collected after July 31, 2014, shall be used within ten years of the date upon which they were collected for all Categories of Necessary Public Services except for Water and Wastewater Facilities. For Water Facilities or Wastewater Facilities collected after July 31, 2014, development impact fees must be used within 15 years of the date upon which they were collected.

(14-06, Amended, 06/19/2014; 08-13, Amended, 05/15/2008; 00-21, Added, 11/16/2000, Approved by the Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-6 Land Use Assumptions

The Infrastructure Improvements Plan shall be consistent with the Town's current Land Use Assumptions for each Service Area and each Category of Necessary Public Services as adopted by the Town pursuant to A.R.S. § 9-463.05.

- A. *Reviewing the Land Use Assumptions.* Prior to the adoption or amendment of an Infrastructure Improvements Plan, the Town shall review and evaluate the Land Use Assumptions on which the Infrastructure Improvements Plan is to be based to ensure that the Land Use Assumptions within each Service Area are consistent with the General Plan.

- B. *Evaluating Necessary Changes.* If the Land Use Assumptions upon which an Infrastructure Improvements Plan is based have not been updated within the last five years, the Town shall evaluate the Land Use Assumptions to determine whether changes are necessary. If, after general evaluation, the Town determines that the Land Use Assumptions are still valid, the Town shall issue the report required in Section 7-10-9 below.
- C. *Required Modifications to Land Use Assumptions.* If the Town determines that changes to the Land Use Assumptions are necessary in order to adopt or amend an Infrastructure Improvements Plan, it shall make such changes as necessary to the Land Use Assumptions prior to or in conjunction with the review and approval of the Infrastructure Improvements Plan pursuant to Section 7-10-9 below.

(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-7 Infrastructure Improvements Plan

- A. *Infrastructure Improvements Plan Contents.* The Infrastructure Improvements Plan shall be developed by Qualified Professionals and may be based upon or incorporated within the Town's Capital Improvements Plan. The Infrastructure Improvements Plan shall:
1. Specify the Categories of Necessary Public Services for which the Town will impose a development impact fee, which may include any or all of the following:
 - a. Water Facilities
 - b. Wastewater Facilities
 - c. Stormwater, Drainage, and Flood Control Facilities
 - d. Library Facilities
 - e. Street Facilities
 - f. Fire and Police Facilities
 - g. Park and Recreations Facilities
 2. Define and provide a map of one or more Service Areas within which the Town will provide each Category of Necessary Public Services for which development impact fees will be charged. Each Service Area must be defined in a manner that demonstrates a Substantial Nexus between the Capital Facilities to be provided in the Service Area and the Service Units to be served by those Capital Facilities. The Town may cover more than one category of Capital Facilities in the same Service Area provided that there is an independent Substantial Nexus or Direct Benefit, as applicable, between each Category of Necessary Public Services and the Service Units to be served.
 3. Identify and describe the Land Use Assumptions upon which the Infrastructure Improvements Plan is based in each Service Area.
 4. Analyze and identify the existing Level of Service provided by the Town to existing Service Units for each Category of Necessary Public Services in each Service Area.
 5. Identify the Level of Service to be provided by the Town for each Category of Necessary Public Services in each Service Area based on the relevant Land Use Assumptions and any established Town standards or policies related to required Levels of Service.
 6. For each Category of Necessary Public Services, analyze and identify the existing capacity of

the Capital Facilities in each Service Area, the utilization of those Capital Facilities by existing Service Units, and the available excess capacity of those Capital Facilities to serve new Service Units including any existing or planned commitments or agreements for the usage of such capacity. The Infrastructure Improvements Plan shall additionally identify any changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing Service Units, or to meet new safety, efficiency, environmental, or other regulatory requirements for services provided to existing Service Units.

7. Identify any Grandfathered Facilities and the impact thereof on the need for Necessary Public Services in each affected Service Area.
8. Estimate the total number of existing and future Service Units within each Service Area based on the Town's Land Use Assumptions.
9. Based on the analysis in Subsection 7-10-7(A)(3)-(6) above, provide a summary table or tables describing the Level of Service for each Category of Necessary Public Services by relating the required Capital Facilities to Service Units in each Service Area, and identifying the applicable Service Unit factor associated with each Category of Development.
10. For each Category of Necessary Public Services, analyze and identify the projected utilization of any available excess capacity in existing Capital Facilities, and all new or expanded Capital Facilities that will be required to provide and maintain the planned Level of Service in each Service Area as a result of the new projected Service Units in that Service Area, for a period not to exceed ten years. Nothing in this Subsection shall prohibit the Town from additionally including in its Infrastructure Improvements Plan projected utilization of, or needs for, Capital Facilities for a period longer than ten years, provided that the costs of such Capital Facilities are excluded from the development fee calculation.
11. For each Category of Necessary Public Services, estimate the total cost of any available excess capacity and/or new or expanded Capital Facilities that will be required to serve new Service Units, including costs of land acquisition, improvements, engineering and architectural services, studies leading to design, design, construction, financing, and administrative costs, as well as projected costs of inflation. Such total costs shall not include costs for ongoing operation and maintenance of Capital Facilities, nor for replacement of Capital Facilities to the extent that such replacement is necessary to serve existing Service Units. If the Infrastructure Improvements Plan includes changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing Service Units, or to meet new regulatory requirements for services provided to existing Service Units, such costs shall be identified and distinguished in the Infrastructure Improvements Plan.
12. Forecast the revenues from taxes, fees, assessments or other sources that will be available to fund the new or expanded Capital Facilities identified in the Infrastructure Improvements Plan, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved Land Use Assumptions. The Infrastructure Improvements Plan shall additionally estimate the time required to finance, construct and implement the new or expanded Capital Facilities.
13. Calculate required Offsets as follows:

- a. From the forecasted revenues in Subsection 7-10-7(A)(12) above, identify those sources of revenue that: (i) are attributable to new development, and (ii) will contribute to paying for the capital costs of Necessary Public Services.
 - b. For each source and amount of revenue identified pursuant to Subsection 7-10-7(A)(13)(a) above, calculate the relative contribution of each Category of Development to paying for the capital costs of Necessary Public Services in each Service Area.
 - c. Based on the relative contributions identified pursuant to Subsection 7-10-7(A)(13)(b) above, for each Category of Necessary Public Services, calculate the total Offset to be provided to each Category of Development in each Service Area.
 - d. For each Category of Necessary Public Services, convert the total Offset to be provided to each Category of Development in each Service Area into an Offset amount per Service Unit by dividing the total Offset for each Category of Development by the number of Service Units associated with that Category of Development.
 - e. Beginning August 1, 2014, for purposes of calculating the required Offset, if the Town imposes a construction, contracting, or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate that is imposed on the majority of other transaction privilege tax classifications in the Town, the entire excess portion of the construction, contracting, or similar excise tax shall be treated as a contribution to the capital costs of Necessary Public Services provided to new development unless the excess portion is already taken into account for such purpose pursuant to this Section.
 - f. In determining the amount of required Offset for land included in a community facilities district established under A.R.S. Title 48, Chapter 4, Article 6, the Town shall take into account any Capital Facilities provided by the district that are included in the Infrastructure Improvements Plan and the capital costs paid by the district for such Capital Facilities, and shall Offset impact fees assessed within the community facilities district proportionally.
- B. *Multiple Plans.* An Infrastructure Improvements Plan adopted pursuant to this Subsection may address one or more of the Town's Categories of Necessary Public Services in any or all of the Town's Service Areas. Each Capital Facility shall be subject to no more than one Infrastructure Improvements Plan at any given time.
- C. *Reserved Capacity.* The Town may reserve capacity in an Infrastructure Improvements Plan to serve one or more planned future developments, including capacity reserved through a Development Agreement pursuant to Section 7-10-12 below. All reservations of existing capacity must be disclosed in the Infrastructure Improvements Plan at the time it is adopted.
- (14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-8 Adoption and Modification Procedures

- A. *Adopting or Amending the Infrastructure Improvements Plan.* The Infrastructure Improvements Plan shall be adopted or amended subject to the following procedures:
1. *Major Amendments to the Infrastructure Improvements Plan.* Except as provided in

Paragraph 2 of this Subsection, the adoption or amendment of an Infrastructure Improvement Plan shall occur at one or more public hearings according to the following schedule, and may occur concurrently with the adoption of an update of the Town's Land Use Assumptions as provided in Section 7-10-6 above:

- a. Sixty days before the first public hearing regarding a new or updated Infrastructure Improvements Plan, the Town shall provide public notice of the hearing and post the Infrastructure Improvements Plan and the underlying Land Use Assumptions on its website; the Town shall additionally make available to the public the documents used to prepare the Infrastructure Improvements Plan and underlying Land Use Assumptions and any proposed changes to Capital Facilities.
 - b. The Town shall conduct a public hearing on the Infrastructure Improvements Plan and underlying Land Use Assumptions at least 30 days, but no more than 60 days, before approving or disapproving the Infrastructure Improvements Plan.
 2. *Minor Amendments to the Infrastructure Improvements Plan.* Notwithstanding the other requirements of this Section, the Town may update the Infrastructure Improvements Plan and/or its underlying Land Use Assumptions without a public hearing if all of the following apply:
 - a. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not add any new Category of Necessary Public Services to any Service Area.
 - b. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not increase the Level of Service to be provided in any Service Area.
 - c. Based on an analysis of the Fee Report and the Town's adopted development impact fee schedules, the changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions would not, individually or cumulatively with other amendments undertaken pursuant to this Subsection, have caused a development impact fee in any Service Area to have been increased by more than five per cent above the development impact fee that is provided in the current development impact fee schedule.
 - d. At least 30 days prior to the date that the any amendment pursuant to this Section is adopted, the Town shall post the proposed amendments on the Town website.
- B. *Amendments to the Fee Report.* Any adoption or amendment of a Fee Report and fee schedule shall occur at one or more public hearings according to the following schedule:
1. The first public hearing on the Fee Report must be held at least 30 days after the adoption or approval of and Infrastructure Improvements Plan as provided in Subsection A of this Section. The Town must give at least 30 days notice prior to the hearing, provided that this notice may be given on the same day as the approval or disapproval of the Infrastructure Improvements Plan.
 2. The Town shall make the Infrastructure Improvements Plan and underlying Land Use Assumptions available to the public on the Town's website 30 days prior to the public hearing described in Paragraph (1) of this Subsection.

3. The Fee Report may be adopted by the Town no sooner than 30 days, and no later than 60 days, after the hearing described in Paragraph (1) of this Subsection.

4. The development fee schedules in the Fee Report adopted pursuant to this Subsection shall become effective as set forth in A.R.S. § 9-463.05.

(14-06, Amended, 06/19/2014; 11-11, Amended, 12/15/2011, Amended by deleting B. and reserved for future use.; 09-09, Amended, 12/03/2009, Fee schedule included in the Ordinance.; 08-13, Amended, 05/15/2008; 06-02, Amended, 05/04/2006, Chart listed in Section #2 was deleted as the annexation of the State Trust Land was completed on May 4, 2006, which was prior to the July 1, 2006 deadline that then required the Chart listed in Section #3 be the rates used for calculations.; 06-07, Amended, 03/16/2006; 06-06, Amended, 01/19/2006; 06-02, Amended, 01/05/2006, Heading was previously named Town Marshal Development Fee/Effective 90 days after the adoption of this Ordinance; 01-02, Amended, 01/18/2001, Council Amended 00-22, Effective 4/19/01 at 12:01 a.m. ; 00-22, Added, 11/16/2000, Approved by Council, Effective 2/15/2001 at 12:01 a.m.)

Section 7-10-9 Timing for the Renewal and Updating of the Infrastructure Improvements Plan and the Land Use Assumptions

- A. *Renewing the Infrastructure Improvements Plan.* Except as provided in Subsection B of this Section, not later than every five years the Town shall update the applicable Infrastructure Improvements Plan and Fee Report related to each Category of Necessary Public Services pursuant to Section 7-10-8 above. Such five-year period shall be calculated from the date of the adoption of the Infrastructure Improvements Plan or the date of the adoption of the Fee Report, whichever occurs later.

- B. *Determination of No Changes.* Notwithstanding Subsection 7-10-9(A) above, if the Town determines that no changes to an Infrastructure Improvements Plan, underlying Land Use Assumptions, or Fee Report are needed, the Town may elect to continue the existing Infrastructure Improvements Plan and Fee Report without amendment by providing notice as follows:

1. Notice of the determination shall be published at least 90 days prior to the end of the five-year period described in Subsection 7-10-9(A) above.
2. The notice shall identify the Infrastructure Improvements Plan and Fee Report that shall continue in force without amendment.
3. The notice shall provide a map and description of the Service Area(s) covered by such Infrastructure Improvements Plan and Fee Report.
4. The notice shall identify an address to which any resident of the Town may submit, within 60 days, a written request that the Town update the Infrastructure Improvements Plan, underlying Land Use Assumptions, and/or Fee Report and the reasons and basis for the request.

- C. *Response to Comments.* The Town shall consider and respond to any timely requests submitted pursuant to Subsection 7-10-9(B)(4) above.

(14-06, Amended, 06/16/2014; 06-02, Delete Renumbered, 01/05/2006, Previous heading named Street Development Fee - deleted and Section 7-10-13 renumbered to 7-10-9; 01-04, Amended, 01/18/2001, Council Amended 00-23, Effective 4/19/01 at 12:01 a.m.; 00-23, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-10 Collection of Development Impact Fees

- A. *Collection.* Development impact fees, together with administrative charges assessed pursuant to Subsection 7-10-10(A)(5) below, shall be calculated and collected prior to issuance of permission to commence development; specifically:
1. Unless otherwise specified pursuant to a Development Agreement adopted pursuant to Section 7-10-12 below, development impact fees shall be paid prior to issuance of a Building Permit according to the current development impact fee schedule for the applicable Service Area(s) as adopted pursuant to this Article, or according to any other development impact fee schedule as authorized in this Article.
 2. If the development is located in a Service Area with a Stormwater, Drainage, and Flood Control development impact fee, and neither a Building Permit, Water, or sewer service connection is required, the Storm Drainage development impact fee due shall be paid at the time any permit is issued for the development.
 3. No Building Permit, Water or sewer connection, or certificate of occupancy shall be issued if a development impact fee is not paid as directed in the previous Subsections.
 4. If the Building Permit is for a change in the type of building use, an increase in square footage, a change to land use, or an addition to a residential or non-residential point of demand to the Water or Wastewater system, the development impact fee shall be assessed on the additional service units resulting from the expansion or change, and following the development impact fee schedule applicable to any new use type.
 5. For issued permits that expire or are voided, development impact fees and administrative charges shall be as follows:
 - a. If the original permittee is seeking to renew an expired or voided permit, and the development impact fees paid for such development have not been refunded, then the permittee shall pay the difference between any development impact fees paid at the time the permit was issued and those in the fee schedule at the time the permit is reissued or renewed.
 - b. If a new or renewed permit for the same development is being sought by someone other than the original permittee, the new permit Applicant shall pay the full development impact fees specified in the fee schedule in effect at the time that the permits are reissued or renewed. If the original permittee has assigned its rights under the permits to the new permit Applicant, the new permit Applicant shall pay development impact fees as if it were the original permittee.
- B. *Exceptions.* Development impact fees shall not be owed under either of the following conditions:
1. Development impact fees have been paid for the development and the permit(s) which triggered the collection of the development impact fees have not expired or been voided.
 2. The approval(s) that trigger the collection of development impact fees involve modifications to existing residential or non-residential development that do not: (a) add new Service Units,

(b) increase the impact of existing Service Units on existing or future Capital Facilities, or (c) change the land-use type of the existing development to a different Category of Development for which a higher development impact fee would have been due. To the extent that any modification does not meet the requirements of this Paragraph, the development impact fee due shall be the difference between the development impact fee that was or would have been due on the existing development and the development impact fee that is due on the development as modified.

C. *Temporary Freezing of Development Impact Fee Schedules.* New developments in the Town shall be temporarily exempt from increases in development impact fees that result from the adoption of new or modified development impact fee schedules as follows:

1. On or after the day that the first Building Permit is issued for a single-family residential development, the Town shall, at the permittee's request, provide the permittee with an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that the first Building Permit is issued, and which shall expire at the end of the first business day of the 25th month thereafter. During the effective period of the applicable development impact fee schedule, the Developer shall pay the fees on that schedule, and any Building Permit issued for the same single-family residential development shall not be subject to any new or modified development impact fee schedule.
2. On or after the day that the final approval, as defined in A.R.S. § 9-463.05(T)(4), is issued for a commercial, industrial or multifamily development, the Town shall provide an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that final development approval of a site plan or final subdivision plat is given, and which shall expire at the end of the first business day of the 25th month thereafter. During the effective period of the applicable development impact fee schedule, any Building Permit issued for the same development shall not be subject to any new or modified development impact fee schedule.
3. Any Category of Development not covered under Subsections 7-10-10(C)(1) and (2) above shall pay development impact fees according to the fee schedule that is current at the time of collection as specified in Subsection 7-10-10(A) above.
4. Notwithstanding the other requirements of this Subsection, if changes are made to a development's final site plan or subdivision plat that will increase the number of service units after the issuance of a development impact fee schedule issued pursuant to this Subsection 7-10-10(C), the Town may assess any new or modified development impact fees against the additional service units. If the Town reduces the amount of an applicable development impact fee during the period that a development impact fee schedule issued pursuant to this Subsection 7-10-10(C) of this Section is in force, the Town shall assess the lower development impact fee.

D. *Option to Pursue Special Fee Determination.* Where a development is of a type that does not closely fit within a particular Category of Development appearing on an adopted development impact fee schedule, or where a development has unique characteristics such that the actual burdens and costs associated with providing Necessary Public Services to that development will differ substantially from that associated with other developments in a specified Category of Development, the Town may require the Applicant to provide the Town Manager or authorized designee with an alternative development impact fee analysis. Based on a projection of the actual burdens and costs that will be associated with the development, the alternative development

impact fee analysis may propose a unique fee for the development based on the application of an appropriate Service Unit factor, or may propose that the development be covered under the development impact fee schedule governing a different and more analogous Category of Development. The Town Manager or authorized designee shall review the alternative impact fee analysis and shall make a determination as to the development impact fee to be charged. Such decision shall be appealable pursuant to Section 7-10-13 below. The Town Manager or authorized designee may require the Applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.

(14-06, Amended, 06/19/2014; 06-02, Repealed, 01/05/2006; 00-24, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-11 Development Impact Fee Credits and Credit Agreements

- A. *Eligibility of Capital Facility.* All development impact fee Credits must meet the following requirements:
1. One of the following is true:
 - a. The Capital Facility, or the financial contribution toward a Capital Facility that will be provided by the Developer and for which a Credit will be issued, must be identified in an adopted Infrastructure Improvements Plan and Fee Report as a Capital Facility for which a development impact fee was assessed; or
 - b. The Applicant must demonstrate to the satisfaction of the Town that, given the class and type of improvement, the subject Capital Facility should have been included in the Infrastructure Improvements Plan in lieu of a different Capital Facility that was included in the Infrastructure Improvements Plan and for which a development impact fee was assessed. If the subject Capital Facility is determined to be eligible for a Credit in this manner, the Town shall amend the Infrastructure Improvements Plan to (i) include the subject replacement facility and (ii) delete the Capital Facility that will be replaced.
 2. Credits shall not be available for any infrastructure provided by a Developer if the cost of such infrastructure will be repaid to the Developer by the Town through another agreement or mechanism. To the extent that the Developer will be paid or reimbursed by the Town for any contribution, payment, construction, or dedication from any Town funding source including an agreement to reimburse the Developer with future-collected development impact fees pursuant to Section 7-10-12 below, any Credits claimed by the Developer shall be: (a) deducted from any amounts to be paid or reimbursed by the Town; or (b) reduced by the amount of such payment or reimbursement.
- B. *Eligibility of Subject Development.* To be eligible for a Credit, the Subject Development must be located within the Service Area of the eligible Capital Facility.
- C. *Calculation of Credits.* Credits will be based on that portion of the costs for an eligible Capital Facility identified in the adopted Infrastructure Improvements Plan for which a development fee was assessed pursuant to the Fee Report. If the Gross Impact Fee for a particular category of Necessary Public Service is adopted at an amount lower than the maximum amount justified by the Fee Report, the amount of any Credit shall be reduced in proportion to the difference between the maximum amount justified by the Fee Report, and the Gross Impact Fee adopted. A Credit shall not exceed the actual costs the Applicant incurred in providing the eligible Capital Facility.

D. *Credit Allocation.* Before any Credit can be issued to a Subject Development (or portion thereof), the Credit must be allocated to that development as follows:

1. The Developer and the Town must execute a Credit Agreement including all of the following:
 - a. The total amount of the Credits resulting from provision of an eligible Capital Facility.
 - b. The estimated number of Service Units to be served within the Subject Development.
 - c. The method by which the Credit values will be distributed within the Subject Development.
2. It is the responsibility of the Developer to request allocation of development impact fee Credits through an application for a Credit Agreement (which may be part of a Development Agreement entered into pursuant to Section 7-10-12 below).
3. If a Building Permit is issued or a Water/sewer connection is purchased, and a development impact fee is paid prior to execution of a Credit Agreement for the Subject Development, no Credits may be allocated retroactively to that permit or connection. Credits may be allocated to any remaining permits for the Subject Development in accordance with this Article.
4. If the entity that provides an eligible Capital Facility sells or relinquishes a development (or portion thereof) that it owns or controls prior to execution of a Credit Agreement or Development Agreement, Credits resulting from the eligible Capital Facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor(s) in interest for the Subject Development.
5. If multiple entities jointly provide an eligible Capital Facility, all entities must enter into a single Credit Agreement with the Town, and any request for the allocation of Credit within the Subject Development(s) must be made jointly by the entities that provided the eligible Capital Facility.
6. Credits may only be reallocated from or within a Subject Development with the Town's approval of an amendment to an executed Credit Agreement, subject to the following conditions:
 - a. The entity that executed the original agreement with the Town, or its legal successor in interest and the entity that currently controls the Subject Development are parties to the request for reallocation.
 - b. The reallocation proposal does not change the value of any Credits already issued for the Subject Development.
7. A Credit Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:
 - a. The entity that executed the original agreement with the Town or its legal successor in interest, the entity that currently controls the Subject Development, and the entity that controls the non-contiguous parcel are parties to the request for reallocation.
 - b. The reallocation proposal does not change the value of any Credits already issued for the

Subject Development.

- c. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.
- d. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.
- e. The Credit Agreement specifically states the value of the Credits to be allocated to each parcel and/or Service Unit, or establishes a mechanism for future determination of the Credit values.
- f. The Credit Agreement does not involve the transfer of Credits to or from any property subject to a Development Agreement.

E. *Credit Agreement.* Credits shall only be issued pursuant to a Credit Agreement executed in accordance with Subsection D of this Section. The Town Manager is authorized by this Article to enter into a Credit Agreement with the controlling entity of a Subject Development, subject to the following:

- 1. The Developer requesting the Credit Agreement shall provide all information requested by the Town to allow it to determine the value of the Credit to be applied.
- 2. An application for a Credit Agreement shall be submitted to the Town by the Developer within one year of the date on which ownership or control of the Capital Facility passes to the Town.
- 3. The Developer shall submit a draft Credit Agreement to the Town Manager or authorized designee(s) for review in the form provided to the Applicant by the Town. The draft Credit Agreement shall include, at a minimum, all of the following information and supporting documentation:
 - a. A legal description and map depicting the location of the Subject Development for which Credit is being applied. The map shall depict the location of the Capital Facilities that have been or will be provided.
 - b. An estimate of the total Service Units that will be developed within the Subject Development depicted on the map and described in the legal description.
 - c. A list of the Capital Facilities, associated physical attributes, and the related costs as stated in the Infrastructure Improvements Plan.
 - d. Documentation showing the date(s) of acceptance by the Town, if the Capital Facilities have already been provided.
 - e. The total amount of Credit to be applied within the Subject Development and the calculations leading to the total amount of Credit.
 - f. The Credit amount to be applied to each Service Unit within the Subject Development for each Category of Necessary Public Services.

4. The Town's determination of the Credit to be allocated is final.
 5. Upon execution of the Credit Agreement by the Town and the Applicant, Credits shall be deemed allocated to the Subject Development.
 6. Any amendment to a previously-approved Credit Agreement must be initiated within two years of the Town's final acceptance of the eligible Capital Facility for which the amendment is requested.
 7. Any Credit Agreement approved as part of a Development Agreement shall be amended in accordance with the terms of the Development Agreement and Section 7-10-12 below.
- F. *Credit Issuance.* Credits allocated pursuant to Subsection 7-10-11(D) above may be issued and applied toward the Gross Impact Fees due from a development, subject to the following conditions:
1. Credits issued for an eligible Capital Facility may only be applied to the development impact fee due for the applicable Category of Necessary Public Services, and may not be applied to any fee due for another Category of Necessary Public Services.
 2. Credits shall only be issued when the eligible Capital Facility from which the Credits were derived has been accepted by the Town or when adequate security for the completion of the eligible Capital Facility has been provided in accordance with all terms of an executed Development Agreement.
 3. Where Credits have been issued pursuant to Subsection 7-10-11(F)(2), an impact fee due at the time a Building Permit is issued shall be reduced by the Credit amount stated in or calculated from the executed Credit Agreement. Where Credits have not yet been issued, the Gross Impact Fee shall be paid in full, and a refund of the Credit amount shall be due when the Developer demonstrates compliance with Subsection 7-10-11(F)(2) in a written request to the Town.
 4. Credits, once issued, may not be rescinded or reallocated to another permit or parcel, except that Credits may be released for reuse on the same Subject Development if a Building Permit for which the Credits were issued has expired or been voided and is otherwise eligible for a refund under Subsection 7-10-14(A)(2)(a) below.
 5. Notwithstanding the other provisions of this Section 7-10-11, Credits issued prior to January 1, 2012, may only be used for the Subject Development for which they were issued. Such Credits may be transferred to a new owner of all or part of the Subject Development in proportion to the percentage of ownership in the Subject Development to be held by the new owner.

(14-06, Amended, 06/19/2014; 06-02, Repealed, 01/05/2006; 00-25, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-12 Development Agreements

Development Agreements containing provisions regarding development impact fees, development impact fee Credits, and/or disbursement of revenues from development impact fee accounts shall comply with the following:

- A. *Development Agreement Required.* A Development Agreement is required to authorize any of the following:
1. To issue Credits prior to the Town's acceptance of an eligible Capital Facility.
 2. To allocate Credits to a parcel that is not contiguous with the Subject Development and that does not meet the requirements of Subsection 7-10-11(D)(7) above.
 3. To reimburse the Developer of an eligible Capital Facility using funds from development impact fee accounts.
 4. To allocate different Credit amounts per Service Unit to different parcels within a Subject Development.
 5. For a single family residential Dwelling Unit, to allow development impact fees to be paid at a later time than the issuance of a Building Permit as provided in this Section.
- B. *General Requirements.* All Development Agreements shall be prepared and executed in accordance with A.R.S. § 9-500.05 and any applicable requirements of the Town Code. Except where specifically modified by this Section, all provisions of Section 7-10-11 above shall apply to any Credit Agreement that is authorized as part of a Development Agreement.
- C. *Early Credit Issuance.* A Development Agreement may authorize Credit Issuance prior to acceptance of an eligible Capital Facility by the Town when the Development Agreement specifically states the form and value of the security (i.e. bond, letter of Credit, etc.) to be provided to the Town prior to Credit Issuance. The Town Attorney shall determine the acceptable form and value of the security to be provided.
- D. *Non-Contiguous Credit Allocation.* A Development Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:
1. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.
 2. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.
 3. The Development Agreement specifically states the value of the Credits to be allocated to each parcel and/or Service Unit, or establishes a mechanism for future determination of the Credit values.
- E. *Uneven Credit Allocation.* If the Credits are not to be allocated evenly, the Development Agreement must specify how Credits will be allocated amongst different parcels on a per Service Unit basis. If the Development Agreement is silent on this topic, all Credits will be allocated evenly amongst all parcels on a per Service Unit basis.
- F. *Use of Reimbursements.* Funds reimbursed to Developers from impact fee accounts for construction of an eligible Capital Facility must be utilized in accordance with applicable law for the use of Town funds in construction or acquisition of Capital Facilities, including A.R.S. § 34-201, *et seq.*

- G. *Deferral of Fees.* A Development Agreement may provide for the deferral of payment of development impact fees for a single-family residential development beyond the issuance of a Building Permit; provided that a development impact fee may not be paid later than 15 days after the issuance of the certificate of occupancy for that Dwelling Unit. The Development Agreement shall provide for the value of any deferred development impact fees to be supported by appropriate security, including a surety bond, letter of credit, or cash bond.
- H. *Waiver of Fees.* If the Town agrees to waive any development impact fees assessed on development in a Development Agreement, the Town shall reimburse the appropriate development impact fee account for the amount that was waived.
- I. *No Obligation.* Nothing in this Section obligates the Town to enter into any Development Agreement or to authorize any type of Credit Agreement permitted by this Section.
(14-06, Amended, 06/19/2014; 06-02, Repealed, 01/05/2006; 01-03, Amended, 01/18/2001, Council Amended 00-26, Effective 4/19/01 at 12:01 a.m.; 00-26, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-13 Appeals

A development impact fee determination by Town staff may be appealed in accordance with the following procedures:

- A. *Limited Scope.* An appeal shall be limited to disputes regarding the calculation of the development impact fees for a specific development and/or permit and calculation of Service Unit's for the development.
- B. *Form of Appeal.* An appeal shall be initiated in such written form as the Town may prescribe, and submitted to the Town Manager or authorized designee.
- C. *Timing of Appeal to Manager.* The Applicant may appeal the calculation to the Town Manager or authorized designee within 30 calendar days of the calculation.
- D. *Action by Manager.* The Town Manager or authorized designee shall act upon the appeal within 14 calendar days of receipt of the appeal, and the Applicant shall be notified of the Town Manager or authorized designee's decision in writing.
- E. *Final Decision.* The Town Manager or authorized designee's decision regarding the appeal is final.
- F. *Fees During Pendency.* Building permits may be issued during the pendency of an appeal if the Applicant (1) pays the full impact fee calculated by the Town at the time the appeal is filed or (2) provides the Town with financial assurances in the form acceptable to the Town Attorney equal to the full amount of the impact fee. Upon final disposition of an appeal, the fee shall be adjusted in accordance with the decision rendered, and a refund paid if warranted. If the appeal is denied by the Town Manager or authorized designee, and the Applicant has provided the Town with financial assurances as set forth in clause (2) of this paragraph, the Applicant shall deliver the full amount of the impact fee to the Town within ten days of the Town Manager or designee's final decision on the appeal. If the Applicant fails to deliver the full amount of the impact fees when required by this Subsection, the Town may draw upon such financial assurance instrument(s) as necessary to recover the full amount of the impact fees due from the Applicant.

(14-06, Amended, 06/19/2014; 06-02, Renumbered, 01/05/2006, Renumbered as Section 7-10-9; 01-05, Amended, 01/18/2001, Council Approved amending 00-27, Effective 4/19/01 12:01 a.m.; 00-27, Added, 11/16/2000, Approved by Council)

Section 7-10-14 Refunds of Development Impact Fees

- A. *Refunds.* A refund (or partial refund) will be paid to any current owner of property within the Town who submits a written request to the Town and demonstrates that:
1. The permit(s) that triggered the collection of the development impact fee have expired or been voided prior to the commencement of the development for which the permits were issued and the development impact fees collected have not been expended, encumbered, or Pledged for the repayment of Financing or Debt; or
 2. The owner of the subject real property or its predecessor in interest paid a development impact fee for the applicable Capital Facility on or after August 1, 2014, and one of the following conditions exists:
 - a. The Capital Facility designed to serve the subject real property has been constructed, has the capacity to serve the subject real property and any development for which there is reserved capacity, and the service which was to be provided by that Capital Facility has not been provided to the subject real property from that Capital Facility or from any other infrastructure.
 - b. After collecting the fee to construct a Capital Facility the Town fails to complete construction of the Capital Facility within the time period identified in the Infrastructure Improvements Plan, as it may be amended, and the corresponding service is otherwise unavailable to the subject real property from that Capital Facility or any other infrastructure.
 - c. For a Category of Necessary Public Services other than Water or Wastewater Facilities, any part of a development impact fee is not spent within ten years of the Town's receipt of the development impact fee. Any part of a development impact fee for Water or Wastewater Facilities is not spent within 15 years of the Town's receipt of the development impact fee. For the purpose of determining whether fees have been spent, the Town shall use a first-in, first-out process.
 - d. Any part of a development impact fee for Water or Wastewater Facilities is not spent within 15 years of the Town's receipt of the development impact fee. For the purpose of determining whether fees have been spent, the Town shall use a first-in, first-out process.
 - e. The development impact fee was calculated and collected for the construction cost to provide all or a portion of a specific Capital Facility serving the subject real property and the actual construction costs for the Capital Facility are less than the construction costs projected in the Infrastructure Improvements Plan by a factor of 10% or more. In such event, the current owner of the subject real property shall, upon request as set forth in this Section A, be entitled to a refund for the difference between the amounts of the development impact fee charged for and attributable to such construction cost and the amount the development impact fee would have been calculated to be if the actual construction cost had been included in the Fee Report. The refund contemplated by this Subsection shall relate only to the costs specific to the construction of the applicable Capital Facility and shall not include any related design, administrative, or other costs not directly incurred for construction of the Capital Facility that are included in the development impact fee as permitted by A.R.S. § 9-463.05.

- B. *Earned Interest.* A refund of a development impact fee shall include any interest actually earned on the refunded portion of the development impact fee by the Town from the date of collection to the date of refund; provided, however that interest is not required to be paid if the refund is requested by the Developer or property owner due to voluntary cessation or abandonment of work. All refunds shall be made to the record owner of the property at the time the refund is paid.
- C. *Refund to Government.* If a development impact fee was paid by a governmental entity, any refund shall be paid to that governmental entity.
- D. *Time Limitation.* Any refund request must be made not later than 180 days following the occurrence of any event described in Subsections 7-10-14(A)(2)(a)-(e) above.

(14-06, Added, 06/19/2014)

Section 7-10-15 Oversight of Development Impact Fee Program

- A. *Annual Report.* Within 90 days of the end of each fiscal year, the Town shall file with the Town Clerk an unaudited annual report accounting for the collection and use of the fees for each Service Area and shall post the report on its website in accordance with A.R.S. § 9-463.05(N) and (O), as amended.
- B. *Biennial Audit.* In addition to the Annual Report described in Subsection 7-10-15(A) above, the Town shall provide for a biennial, certified audit of the Town's Land Use Assumptions, Infrastructure Improvements Plan and development impact fees.
 - 1. An audit pursuant to this Subsection shall be conducted by one or more Qualified Professionals who are not employees or officials of the Town and who did not prepare the Infrastructure Improvements Plan.
 - 2. The audit shall review the collection and expenditures of development fees for each project in the plan and provide written comments describing the amount of development impact fees assessed, collected, and spent on capital facilities.
 - 3. The audit shall describe the Level of Service in each Service Area, and evaluate any inequities in implementing the Infrastructure Improvements Plan or imposing the development impact fee.
 - 4. The Town shall post the findings of the audit on the Town's website and shall conduct a public hearing on the audit within 60 days of the release of the audit to the public.
 - 5. For purposes of this Section, a certified audit shall mean any audit authenticated by one or more of the Qualified Professionals conducting the audit pursuant to Subsection 7-10-15(B)(1) above.

(14-06, Added, 06/19/2014)

Article 7-11

ENFORCEMENT OF STATE RESIDENTIAL RENTAL PROPERTY REGISTRATION

Sections:

7-11-1 Enforcement of State Residential Rental Property Registration

Section 7-11-1 Enforcement of State Residential Rental Property Registration

- A. "Residential rental property" shall have the same meaning as provided by Ariz. Rev. Stat. § 33-1901, as amended.
- B. All owners of residential rental property located within the corporate boundaries of the Town shall register with the Maricopa County Assessor the information required by Ariz. Rev. Stat. § 33-1902, as amended, in the manner prescribed by the Assessor.
- C. The Town shall assess a civil penalty in accordance with Ariz. Rev. Stat. § 33-1902, as amended, against any owner who fails to comply with the provisions thereof.

(09-05, Added, 03/05/2009)

Article 7-12

ILLEGAL CONSTRUCTION SITE ACTIVITY

Sections:

7-12-1	Purpose and Intent
7-12-2	Mitigation of Negative Impacts
7-12-3	Building Permit Extension of Time
7-12-4	Unrelated Equipment, Material or Debris
7-12-5	Authority of Chief Building Official

Section 7-12-1 Purpose and Intent

The Town of Fountain Hills supports legal building activity in all its forms. The Town also recognizes that certain building activities may negatively impact adjacent property. While these impacts should be tolerated for the initial period of time associated with typical building activity, their prolonged existence can be a nuisance, particularly to adjacent neighbors. This Article is adopted for the purpose of mitigating the negative impacts that unreasonably prolonged building-related activities have on neighboring property.

(09-07, Added, 09/17/2009)

Section 7-12-2 Mitigation of Negative Impacts

- A. The owner of any property subject to a building permit for construction activity on that property shall not maintain on the property, or allow to be maintained on the property, construction activities that cause unreasonable negative health, safety or welfare impacts to neighboring properties.
- B. If a building permit is expired for construction on property, the owner thereof shall immediately (1) remove, or cause to be removed, any construction equipment, materials and debris and (2) restore the property to as safe a condition as existed prior to commencement of construction activities thereon, as determined by the Chief Building Official.
- C. The Chief Building Official shall (1) notify the property owner of any conditions on such property that are in violation of Subsection 7-12-2(A) or (B) above by first class mail and (2) provide the property owner with a reasonable period of time to correct or mitigate the condition. The Chief Building Official shall determine if and when the condition has been corrected.
- D. Should the condition continue beyond a reasonable period of time, as determined by the Chief Building Official and included in the notice request under Subsection 7-12-2(C) above, the property shall be considered a nuisance pursuant to Article 10-2 of this Code and shall be subject to all penalties related thereto. In addition to prosecuting the nuisance in the manner described in this Code, the Town may, at its sole option, also cause the removal of such nuisance by any means permitted pursuant to Ariz. rev. Stat. § 9-499, as amended, or Article 10-4 of this Code.

(09-07, Added, 09/17/2009)

Section 7-12-3 Building Permit Extension of Time

- A. Prior to any extension of time granted to a property owner for a building permit, the Chief Building Official shall inspect the property to ensure that no unsafe conditions exist and that the property owner is not in violation of any provision of this Article 7-12.
 - B. Prior to extending any permit, the Chief Building Official shall ensure that any stock piled dirt or other construction material is fully contained on the property and does not exceed a height of twenty-five (25) feet, measured from natural grade.
- (09-07, Added, 09/17/2009)

Section 7-12-4 Unrelated Equipment, Material or Debris

- A. It shall be a violation of this Code for a property owner or contractor to keep on property any equipment, material or debris unrelated to authorized construction activity on the property.
 - B. It shall be the responsibility of the property owner to ensure that all debris resulting from authorized construction is contained within an approved container on the site.
- (09-07, Added, 09/17/2009)

Section 7-12-5 Authority of Chief Building Official

The provisions of this Article shall not restrict or otherwise limit the ability of the Chief Building Official to take whatever action may be necessary in the event of an immediate threat to public health or safety as a result of any construction related activity.

(09-07, Added, 09/17/2009)

Chapter 8

BUSINESS REGULATIONS

Articles:

- 8-1 BUSINESS LICENSE**
- 8-2 PEDDLERS, CANVASSERS AND SOLICITORS**
- 8-3 SPECIAL EVENTS**
- 8-4 ADULT BUSINESS LICENSE REGULATIONS**
- 8-5 SPECIAL EVENT LIQUOR LICENSES**

Article 8-1

BUSINESS LICENSE

Sections:

8-1-1	Definitions
8-1-2	License Required
8-1-3	Application and Issuance
8-1-4	Term of Licenses; Renewal
8-1-5	Number of Licenses
8-1-6	License to be Exhibited
8-1-7	Inspector of Licenses
8-1-8	Duties and Powers of Inspectors
8-1-9	Transfer of License
8-1-10	Business License Fees
8-1-11	Restrictions; Suspension; Revocation
8-1-12	Appeals
8-1-13	Violations; Penalties
8-1-14	Severability

Section 8-1-1 Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Canvasser” is a Person who attempts to make personal contact with a resident or business person at his/her residence, place of business or other venue without prior specific invitation or appointment from the resident or business person, for the primary purpose of (i) attempting to enlist non-monetary support for or against a particular religion, philosophy, ideology, political party, issue or candidate, or other cause, even if incidental to such purpose the Canvasser accepts a voluntary donation for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event or service.
- B. “Commercial” means and includes the sale of goods or services for monetary compensation, consideration or profit.
- C. “Finance Director” means the person designated by the Town Manager to be the chief financial officer for the Town or the authorized designee of the chief financial officer.
- D. “Peddler” is a Person who attempts to make personal contact with a resident or business person at his/her residence, place of business or other venue without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service for a Commercial purpose.
- E. “Person” shall mean an individual, corporation, partnership, limited liability company, incorporated association and any other legal entity.
- F. “Solicitor” is a Person who attempts to make personal contact with a resident or business person at his/her residence, place of business or other venue without prior specific invitation or appointment from the resident or business person, for the primary purpose of (i) attempting to

solicit funds for a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political, religious or other non-commercial purpose, or (ii) distributing a handbill or flyer advertising a Commercial event or service.

(16-01, Amended, 08/18/2006)

Section 8-1-2 License Required

- A. It is unlawful for any Person or other entity, whether as principal or agent, either for himself/itself or for another Person or entity, or as a member of any firm or entity, to commence, practice, transact or carry on any trade, calling, profession, occupation or business within the Town limits without first having procured a license from the Town to do so and without complying with all regulations of such trade, calling, profession, occupation or business as specified or required by the United States Government or the State of Arizona and its political subdivisions. No license for businesses located within the Town shall be issued without verification by the Zoning Administrator or the authorized designee that no violation of the Town's zoning regulations will occur by such issuance.
- B. The practicing or carrying on of any trade, calling, profession, occupation or business by any Person or entity without first having procured a license from the Town to do so, or without complying with any and all regulations of such trade, calling, profession, occupation or business, as required by other law or by this Article, shall constitute a separate violation of this Article for each and every day that such trade, calling, profession, occupation or business is practiced, carried on or conducted within the Town.
- C. The only exceptions to the licensing requirements of this Section are:
 - 1. Non-profit (providing a valid tax exemption determination from the Internal Revenue Service), educational institutions, fraternal and service clubs, bona fide religious organizations, and agencies of any federal, state or local governments.
 - 2. Non-profit private clubs where a basic membership fee covers the cost of the use of facilities.
 - 3. Any profession exempted from local licensing by State law.
 - 4. Garage sales, including carport, estate sales, and yard sales, so long as such sales are (a) carried on wholly within the property lines on which the dwelling unit is located, (b) held for the purpose of selling items that are primarily surplus to the residential use, (c) operated for not more than three consecutive days and held not more than four times within a calendar year at the same dwelling unit, (d) limited to the hours between 7:00 a.m. and 5:00 p.m. and (e) advertised using signage in conformance with the sign regulations as designated in Chapter 6 of the Zoning Ordinance for the Town of Fountain Hills.
 - 5. Persons or entities solely providing delivery of goods purchased from locations outside the corporate limits of the Town.
- D. Nothing in Subsection 8-1-2(C) above shall prohibit the Town from requiring a business license from any person or entity entering into any contractual relationship with the Town.

- E. The penalty for operating without the license required by this Article shall be set forth in the Town's fee schedule, as adopted by the Town Council as part of the Town's annual budget or by separate resolution. No license shall be issued or renewed until all penalties and fees have been paid in full.
- F. A person or entity found to have commenced, practiced, transacted or carried on any trade, calling, profession, occupation or business within the Town without complying with this Section 8-1-2 shall not be permitted to receive a license under this Chapter until the full amount of the license fee, plus any penalty amount, as set forth in the Town's fee schedule, has been paid.

(16-01, Amended, 08/18/2016)

Section 8-1-3 Application and Issuance

- A. The Finance Director shall, upon receipt of a properly completed application for a business license, verification of the data contained thereon and payment of all applicable fees and charges, prepare and issue a license under this Article. Each license shall include the amount charged for the same, the expiration date, the name of the Person or entity to which it is issued, the trade, calling, profession, occupation or business licensed and the location or place of business where the trade, calling, profession, occupation or business is to be carried on, transacted or practiced.
- B. A mistake made by the Finance Director or the authorized designee in issuing any license or collecting the correct license fee from any Person or entity shall not prevent the Town from (1) collecting the correct amount of fee or (2) revoking any license erroneously issued and refunding the fee collected.
- C. No greater or lesser amount of money shall be charged or received by the Finance Director for any license than is provided for in this Article, and no license shall be issued for any period of time other than as provided herein.
- D. All charges for a license required by this Article shall be paid in advance and in lawful money of the United States of America at the Town Finance Department.
- E. Every application shall be accompanied by the appropriate application fee in an amount set forth in the Town's fee schedule, as adopted by the Town Council as part of the Town's annual budget or by separate resolution. License application fees are non-refundable.

(16-01, Amended, 08/18/2016)

Section 8-1-4 Term of Licenses; Renewal

- A. A license issued pursuant to this Article shall be valid until the expiration date on the face of the license and may be renewed for subsequent one-year periods during such times as the Person or entity is in compliance with this Article and all fees have been paid. The renewal charge for annual licenses provided herein shall become due and payable prior to expiration of the then-current license period.
- B. When the fee for any license renewal required hereunder is unpaid from and after the license expiration date, such fee shall be delinquent and the Finance Director or the authorized

designee shall add thereto an amount equal to 25% of said fee, as a penalty.
(16-01, Amended, 08/18/2016)

Section 8-1-5 Number of Licenses

- A. A separate charge for a license shall be paid for each branch establishment or separate place of business in which any Person or entity carries on, transacts or practices a trade, calling, profession, occupation or business.
- B. When more than one trade, calling, profession, occupation or business is carried on, transacted or practiced by the same Person or entity, whether at one fixed place of business or without any fixed place of business, one license shall be required for each trade, calling, profession, occupation or business (as determined by the number of distinct tax identification numbers).
- C. When more than one trade, calling, profession, occupation or business is carried on, transacted or practiced by more than one Person or entity at a single fixed place of business, a separate license shall be required for each Person and entity for each trade, calling, profession, occupation or business (as determined by the number of distinct tax identification numbers).

(16-01, Amended, 08/18/2016)

Section 8-1-6 License to be Exhibited

- A. Each Person or entity having a license and having a fixed place of business with the Town shall keep said license, while in force, in a conspicuous location within the place of business.
- B. Each Person or entity having a license and having no fixed place of business within the Town, or the Person or entity's sole representative, shall carry such license with him at all times while engaged in any activity for which the license was issued. A Person or entity acting for a licensed Person or entity and not being the sole representative acting for such Person or entity may carry with him a copy of the license plainly marked or stamped "Duplicate."
- C. Each Person or entity having a license shall produce and exhibit the same whenever requested to do so.

(16-01, Amended, 08/18/2016)

Section 8-1-7 Inspector of Licenses

- A. The Finance Director shall be inspector of licenses and may designate, with approval of the Town Manager, such other assistant inspectors as may be required to enforce this Chapter 8.
- B. Each assistant inspector shall report to the Finance Director the name of any Person or entity carrying on, transacting or practicing any trade, calling, profession or business within the Town without first having obtained a license as required by this Article.

(16-01, Amended, 08/18/2016)

Section 8-1-8 Duties and Powers of Inspectors

- A. The Finance Director, or the authorized designee, each in the discharge and performance of his duties, shall have and exercise the following powers:
1. To issue a citation for any violation of the provisions of this Chapter.
 2. To enter, free of charge and at any reasonable time, any place of business for which a license is required by this Article and to demand exhibition of the license for the current period of time, provided such entry shall be in accordance with the inspection provisions of Ariz. Rev. Stat. § 9-831 *et seq.*, as amended. If such Person or entity fails to exhibit such license, such Person or entity shall be liable to the penalties provided for violation of this Code.

(16-01, Amended, 08/18/2016)

Section 8-1-9 Transfer of License

A license issued under the provisions of this Article may not be assigned or transferred to any other Person or entity without first obtaining permission from the Finance Director.

(16-01, Amended, 08/18/2016)

Section 8-1-10 Business License Fees

The Town shall charge fees for the issuance or renewal of any business licenses under this Chapter in such amounts as approved by the Town Council by separate resolution or by the fee schedule adopted as part of the Town's annual budget. No license fee shall be prorated.

(16-01, Amended, 08/18/2016; 09-08, Amended, 07/02/2009)

Section 8-1-11 Restrictions; Suspension; Revocation

- A. Licenses issued under the provisions of this Chapter may be restricted, suspended or revoked by the Finance Director, after notice and hearing as set forth in Sections 8-1-11 (B) and (C) below, for any of the following causes:
1. Fraud, misrepresentation or false statement contained in the license application.
 2. Fraud, misrepresentation or false statement made in the course of carrying on the business.
 3. Any violation of this Chapter.
 4. Conviction of any crime (misdemeanor or greater) within the time period beginning two years prior to license issuance and continuing until the license is terminated.
 5. Conducting a business in violation of any Town ordinance, county ordinance or federal or state law relating to the public health, safety and welfare.

- B. Notice of the hearing for restrictions, suspension or revocation of a license shall be given in writing, by the Finance Director, setting forth specifically the grounds for the restrictions, suspension or revocation and the time and place of the hearing. Such notice shall be mailed to the licensee at the address listed on the business license application at least 10 days prior to the date set for the hearing. The mailing of such notice shall constitute proper notice to the licensee.
- C. After reviewing the information submitted at the hearing, the Finance Director shall do one of the following:
 - 1. Restrict, suspend or revoke the license as set forth in the notice.
 - 2. Modify the restriction, suspension or revocation in the notice.
 - 3. Overturn the determination in the notice.

(16-01, Amended, 08/18/2016)

Section 8-1-12 Appeals

- A. Any Person or entity aggrieved by the denial of an application for license, by the restrictions placed upon the license or by the suspension or revocation of such license, shall have the right of appeal. Such appeal shall be taken by filing with the Town Manager or the authorized designee, within 14 days after such denial, restriction, suspension or revocation, a written statement setting forth fully the grounds for the appeal.
- B. The Town Manager or the authorized designee shall appoint a neutral hearing officer and set a time and a place for hearing of such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided for notice of a hearing on suspension or revocation.
- C. The burden of proof at the hearing shall be on the applicant to establish, by a preponderance of the evidence, that he or she meets all requirements for holding a license under this Article. The hearing officer shall hear such testimony and consider such evidence as is relevant to the determination of such issues. The hearing officer shall not be bound by technical rules of evidence or procedure in conducting the hearing.
- D. The hearing officer shall render a written decision within 30 days after the hearing is concluded based on the evidence presented by the Town and the applicant. The decision of the hearing officer shall be final.

(16-01, Amended, 08/18/2016)

Section 8-1-13 Violations; Penalties

- A. Civil (non-criminal) violations. It shall be a civil (non-criminal) violation, punishable as set forth in Article 1-8 of this Code, for a Person to do any of the following:
 - 1. Fail to perform any act or duty required by any provision of Article 8-1 through 8-3, or Article 8-5 of this Chapter.
 - 2. Violate the terms and/or conditions of any license issued under the provisions of Article

8-1 through 8-3, or Article 8-5 of this Chapter.

- B. Criminal violations. It shall be a criminal violation, punishable as set forth in Article 1-8, for a Person to do any of the following:
1. Intentionally or purposely fail to perform any act or duty required by any provision of this Article.
 2. Fail to perform any act or duty required by any provision of this Chapter and such Person has been previously found responsible, civilly or criminally, for a violation of this Chapter.
 3. Fail to perform any act or duty required by any provision of Article 8-4 of this Chapter.
 4. Violate the terms and/or conditions of any license issued under the provisions of Article 8-4 of this Chapter.
- C. Enforcement of judgments. Any judgment for abatement, restitution or civil (non-criminal) penalties taken pursuant to this Chapter may be enforced as any other civil judgment.
- D. Violations not exclusive. Violations of this Chapter are in addition to any other violation enumerated within this Code and in no way limit the penalties, actions or procedures which may be taken by the Town for any violation of this Chapter which is also a violation of any other provision of this Code or any other applicable law. The remedies specified herein are cumulative and the Town Manager, or the authorized designee, or the Town Prosecutor, may proceed under these or any other remedies authorized by law.

(16-01, Amended, 08/18/2016)

Section 8-1-14 Severability

It is hereby declared to be the intention of the Town Council that the articles, sections, paragraphs, sentences, clauses, phrases and words of this Article are severable, and if any article, section, paragraph, sentence, clause, phrase or word(s) of this Article shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining articles, sections, paragraphs, sentences, clauses, phrases and words of this Article.

(16-01, Amended, 08/18/2016)

Article 8-2

PEDDLERS, CANVASSERS AND SOLICITORS

Sections:

- 8-2-1 Purpose**
- 8-2-2 Business License Required**
- 8-2-3 Peddler/Solicitor License Requirements**
- 8-2-4 Exemptions**
- 8-2-5 Application Procedure**
- 8-2-6 License Issuance Standards**
- 8-2-7 License Expiration; Non-transferability; Issuance and Renewal**
- 8-2-8 Posting License; Issuance of Identification Cards**
- 8-2-9 Hours of Operation**
- 8-2-10 Trespass**
- 8-2-11 Written Receipts Required**
- 8-2-12 Location for Transaction of Business Regulated**
- 8-2-13 Creation of Undue Noise Prohibited**
- 8-2-14 Display of Licenses**
- 8-2-15 License Revocation or Suspension; Appeal**

Section 8-2-1 Purpose

The Town Council desires to regulate the activities of Peddlers, Solicitors and Canvassers within the Town in a manner so as to protect against fraudulent and criminal activity and to ensure to the Town's residents and business population the maximum amount of privacy and security in their homes and places of business that is permissible in light of court decisions mandating certain access to residents and residential areas and businesses and business areas by Peddlers, Solicitors and Canvassers. It is, therefore, the intent of the Town Council in enacting this Article to recognize the potential for fraudulent and criminal activity in connection with door-to-door peddling, soliciting and similar activities, as well as the unique character and nature of the Town's residential and business neighborhoods, while providing opportunity for Peddlers, Solicitors and Canvassers as mandated by law. This Article should be interpreted so as to be in conformity with relevant state and federal court decisions including, but not limited to, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002).

(16-01, Amended, 08/18/2016)

Section 8-2-2 Business License Required

No Person may apply for a license under this Article without first obtaining a business license under Article 8-1 above.

(16-01, Amended, 08/18/2016)

Section 8-2-3 Peddler/Solicitor License Requirements

No Person shall act as a Peddler or Solicitor within the Town limits without first obtaining from the Town a license in accordance with this Article. A Canvasser is not required to have a license.

(16-01, Amended, 08/18/2016)

Section 8-2-4 Exemptions

- A. The provisions of this Article shall not apply to the following:
1. Payments required by law to be collected or paid.
 2. Payments to or from governmental agencies.
 3. Public utility employees in the performance of their employment duties.
 4. Persons engaging in the sale of newspaper or magazine subscriptions.
 5. School children engaging in school authorized or sponsored fundraising activities.
 6. Merchants or their employees delivering goods in the regular course of business.
 7. Subject to the organization providing a valid tax exemption determination from the Internal Revenue Service, charitable, religious, patriotic or philanthropic organizations, except as covered under the appropriate section below.
 8. Garage sales, including carport, estate sales, and yard sales, so long as such sales are (a) carried on wholly within the property lines on which the dwelling unit is located, (b) held for the purpose of selling items that are primarily surplus to the residential use, (c) operated for not more than three consecutive days and held not more than four times within a calendar year at the same dwelling unit, (d) limited to the hours between 7:00 a.m. and 5:00 p.m. and (e) advertised using signage in conformance with the sign regulations as designated in Chapter 6 of the Zoning Ordinance for the Town of Fountain Hills.

(16-01, Amended, 08/18/2016; 09-08, Amended, 07/02/2009)

Section 8-2-5 Application Procedure

- A. Filing an application. A written and signed application for a Peddlers or Solicitors license shall be filed with the Finance Director, and the Finance Director shall, in conformance with the standards set forth in this Article, either grant or deny the requested license. In the event the Finance Director fails to act upon an application within the time prescribed herein, the license shall be deemed denied.
- B. Contents of application. An application for a Peddler or Solicitor license shall include the following information:
1. If the applicant is an individual:
 - a. The name, address, telephone number, date of birth, physical description, social security number and two satisfactory photographs (approximately one inch by one inch, taken within 60 days prior to filing the application) of the individual applying for the license. One of the required photographs will be attached to the applicant's identification card issued pursuant to Section 8-2-8 below, and the other will be retained by the Finance Director.

- b. The name, address, and telephone number of the entity holding the business license for which the applicant will be conducting the licensed activity.
 - c. The motor vehicle make, model, year, color and state license plate number of any vehicle which will be used by the applicant to conduct the licensed activity.
 - d. Whether the applicant has used or been known by any other names or aliases within five years prior to the date that the application is submitted.
 - e. Whether the individual applicant has been convicted of any felony within five years prior to the date that the application is submitted.
 - f. Signed National Background Screening Consent Form
2. If the applicant is not an individual:
- a. The applicant's correct business or organization name, federal employer's tax identification number or social security number, Fountain Hills business license number, address and telephone number for its principal office.
 - b. The name, address, telephone number, date of birth, social security number, physical description and two satisfactory photographs (approximately one inch by one inch, taken within 60 days prior to filing this application) of each employee or agent who will be conducting the licensed activity. One of the required photographs will be attached to the employee's or agent's identification card issued pursuant to Section 8-2-8 below, and the other will be retained by the Finance Director.
 - c. The motor vehicle make, model, year, color and state license plate number of any vehicle that will be used by the applicant or the applicant's employees or agents to conduct the licensed activity.
 - d. Whether any officer, director, general partner, managing member or other person with authority to participate directly and regularly in the management of the applicant's business, or any employee or agent who will be conducting the licensed activity, has used or been known by any other names or aliases within five years prior to the date that the application is submitted.
 - f. Whether any officer, director, general partner, managing member or other person with authority to participate directly and regularly in the management of the applicant's business, or any employee or agent who will be conducting the licensed activity, has been convicted of any felony within five years prior to the date that the application is submitted.
3. In the case of an application for a Peddlers license, a complete description of the goods or services to be sold in the Town, together with information describing the sales methods to be used and a copy of any written materials that will be furnished to residents or businesses.
4. In the case of a Solicitors license, information describing the methods to be used to solicit funds and a copy of any written materials that will be furnished to residents or businesses

for Commercial purposes.

5. The length of time desired for the license (not to exceed 90 days).
 6. The signature of the applicant.
 7. Signed National Background Screening Consent Form
- C. Change in information. If, while any application is pending, or during the term of any license granted hereunder, there is any change in the information set forth in the application, the applicant shall notify the Finance Director in writing thereof within 24 hours after such change.
- D. Filing Fee. At the time of filing the application, the non-refundable license fee, including any background check/investigation fees, must be paid in the amount set forth in the Town's fee schedule adopted as part of the annual budget or by separate resolution.
- E. Form of license. Licenses issued under this Article shall bear the name and address of the business to which the license is issued, the number of the license, dates within which the licensee may conduct the licensed activities. All licenses must be signed by the Finance Director.
- (16-01, Amended, 08/18/2016)

Section 8-2-6 License Issuance Standards

- A. No individual shall be issued a license under this Article if such individual:
1. Knowingly makes any false or misleading statement in the course of applying for or renewing a license.
 2. Has been convicted of any felony involving dishonesty, deceit, theft, assaultive conduct or sexual misconduct within five years prior to the date that the application is submitted.
 3. Is under the age of 18 years.
 4. Has been denied a license required by this Article or had such a license revoked, for a period of six months following the final denial or revocation decision.
- B. No Person that is not an individual shall be issued a license under this Article if any of the following individuals would be disqualified from being issued a license under subsection (A):
1. Any officer or director, or employee or agent that will be conducting the licensed activity, of an applicant that is a corporation.
 2. Any general partner, or employee or agent that will be conducting the licensed activity, of an applicant that is a partnership.
 3. Any managing member, or employee or agent that will be conducting the licensed activity, of an applicant that is a limited liability company.
 4. Any person with authority to participate directly and regularly in the management of the

applicant's business, or employee or agent that will be conducting the licensed activity, of an applicant that is any other legal entity.

- C. No license shall be issued until the required background investigation is complete.
(16-01, Amended, 08/18/2016)

Section 8-2-7 License Expiration; Non-transferability; Issuance and Renewal

- A. Any license issued under this Article shall be valid only for the period set forth on the face of the license, which shall not exceed 90 days.
- B. No license issued under this Article shall be transferable between persons.
- C. No license shall be issued or renewed under this Article unless the licensee is in full compliance with all provisions of this Code at the time of renewal.
(16-01, Amended, 08/18/2016)

Section 8-2-8 Posting License; Issuance of Identification Cards

The license issued to the individual or corporate licensees hereunder shall be posted in a conspicuous place if such licensees are using a vehicle or building. The Finance Director shall issue an identification card to each individual licensee having upon it the pertinent information contained in such license. Agents and representatives of corporate and firm applicants shall be issued similar identification cards. All such cards shall be shown upon request.
(16-01, Amended, 08/18/2016)

Section 8-2-9 Hours of Operation

It shall be unlawful for any Peddler, Solicitor or Canvasser to enter upon any residential premises places of business or other venues for the purpose of peddling, soliciting or canvassing earlier than 9:00 a.m. of any day or after 7:00 p.m. or sunset, whichever is earlier, of any day. This Section shall not be interpreted to grant any individual permission to enter upon private property.
(16-01, Amended, 08/18/2016)

Section 8-2-10 Trespass

It shall be unlawful for any Peddler, Solicitor or Canvasser to enter upon any residential premises, place of business or other venue for the purpose of peddling, soliciting or canvassing where, in public view, a sign posted indicating "No Peddlers, Solicitors or Canvassers", "Do Not Disturb", "No Trespassing", or other sign indicating that the residents or business persons do not wish their privacy to be disturbed.
(16-10, Amended, 08/18/2016)

Section 8-2-11 Written Receipts Required

Any Peddler or Solicitor receiving money or anything having a value of 10 dollars or more from any

person under a sale or goods or service, or solicitation of funds made pursuant to a license issued hereunder shall give to such person or business a written receipt, signed by the Peddler or Solicitor, showing plainly the name and license number of the Person under whose license the sale or solicitation is conducted, and the date and the amount received.

(16-01, Amended, 08/18/2016)

Section 8-2-12 Location for Transaction of Business Regulated

No license issued hereunder shall grant an exclusive right to any location in the public street or park, nor shall any licensee be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this Article, the judgment of the Finance Director, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced. No flyers or handbills may be left on unattended vehicles. Flyers or handbills must be hand-delivered to individuals, and may not be left on unoccupied residences or places of business.

(16-01, Amended, 08/18/2016)

Section 8-2-13 Creation of Undue Noise Prohibited

No licensee nor any person in his behalf shall shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud-speaking radio or sound-amplifying system, upon any of the streets, alleys, parks or other public places of the Town or upon any private premises in the Town where sound produced therefrom can be plainly heard upon the public thoroughfares for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

(16-01, Amended, 08/18/2016)

Section 8-2-14 Display of Licenses

At all times that an individual is conducting activities subject to a license under this Article within the Town, such individual shall carry on his or her person a copy of the license issued by the Town for the licensed activities. Such individual shall display the copy of the license upon request.

(16-01, Amended, 08/18/2016)

Section 8-2-15 License Revocation or Suspension; Appeal

A license requested or granted under this Article may be denied, restricted, suspended or revoked, and the applicant or licensee may appeal such denial, restriction, suspension or revocation according to the procedure set forth in Article 8-1 of this Code.

(16-01, Amended, 08/18/2016)

Article 8-3

SPECIAL EVENTS

Sections:

- 8-3-1 Purpose and Intent**
 - 8-3-2 Definitions**
 - 8-3-3 Permit Required**
 - 8-3-4 Exemptions**
 - 8-3-5 Applications**
 - 8-3-6 Fees and Deposits**
 - 8-3-7 Criteria for review and approval**
 - 8-3-8 Special Event calendar requirements**
- Section 8-3-1 Purpose and Intent**

The Town Council acknowledges that Special Events potentially enhance the lifestyle of the citizens of Fountain Hills and create unique venues for expression, entertainment, and business that are not otherwise provided within the framework of the Town Code. The purpose of Article 8-3 is to establish an administrative process for permitting and regulating certain temporary activities conducted on public property or private property when public safety is impacted. This Article is intended to provide fair and reasonable regulations governing the time, place, and manner in which a Special Event may take place, and in doing so, protect the health, safety and welfare of the public.

(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, Deleted and Replaced; 01-09, Added, 05/17/2001, Adopted)

Section 8-3-2 Definitions

In this Article, unless the context otherwise requires:

- A. “Block Party” means the closure of a short cul-de-sac or a limited-portion of a two-lane local roadway for a period of less than six hours for the purpose of a neighborhood gathering.
- B. “Charitable Nonprofit Organization” means any person(s), partnership, association, corporation or other group or entity that is exempt from federal taxation (must provide copy of a valid determination letter from the Internal Revenue Service) and whose activities are conducted for unselfish, civic or humanitarian motives, or for the benefit of others, and not for political or Commercial gain of any private individual or group, and may include, but shall not be limited to patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, charitable, scientific, historical, church, athletic or medical activities.
- C. “Farmer’s Market”, “Bazaar Days”, “Market Days”, “Sidewalk Sale”, etc. means any outside retail activity on public property or on private property in a commercially zoned district that is temporarily extended beyond the permanent venue/site of day-to-day business.
- D. “Grand-fathered Event” means an event that has annually occurred in the community for a period exceeding five consecutive years and continues to provide a significant benefit to local organizations, clubs, associations, community groups or the community as a whole.

- E. “Holiday Event” means an event that is related to a recognized holiday or season and includes the Thanksgiving Day Parade, the Sunrise Easter Service at Fountain Park, the July 4th celebration at Fountain Park, and the Holiday Lighting activities on the Avenue of the Fountains.
- F. “Special Event” means any event that will take place on Town property, including but not limited to parks, open space, streets, sidewalks or rights-of-way, or on private property, and which by its nature could cause a significant disruption of pedestrians or vehicular traffic in the area and/or that requires traffic safety measures. An event is not a “Special Event” for the purposes of this Article if all of the following are true: (1) the event takes place on private property, (2) the event does not require the closure of any Town street, sidewalk or right-of-way, and (3) the event does not require any municipal services beyond the currently existing, permanent, in-ground infrastructure.
- G. “Special Event Committee” means the group of Town staff members designated by the Town Manager that is charged with (1) reviewing Special Event applications for compliance with the Town Code and (2) recommending Special Events for approval by the Town Manager.
- H. “Sponsor” means the applicant, organizer, operator or principal agent who is responsible for all aspects of the Special Event’s planning, implementation and conduct.
(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, Deleted and replaced; 01-09, Added, 05/17/2001)

Section 8-3-3 Permit Required

No Person or entity shall engage in, participate in, aid, form or start any Special Event as defined in this Article without first obtaining a Special Event permit issued by the Town. A Special Event permit application must be filed prior to or in conjunction with a Special Event Liquor License application, as set forth in Article 8-5 below. Failure to comply with this requirement will constitute a civil violation punishable as set forth in Article 1-8 of this Code.

(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, Deleted and replaced; 01-09, Added, 05/17/2001, Adopted)

Section 8-3-4 Exemptions

As long as the following activities are in compliance with all Town codes, ordinances and regulations, they are exempt from the Special Event permitting requirements of this Article:

- A. “Block Party” as defined in Section 8-3-2 of this Article. Block Party events are exempt from the Special Event process but do require the administrative approval of a right-of-way encroachment permit from the Town.
- B. “Farmer’s Market”, “Bazaar Days”, “Market Days”, “Sidewalk Sale”, as defined in Section 8-3-2 of this Article. Said activities require the application and issuance of a temporary use permit from the Development Services Department pursuant to the Town’s Zoning Ordinance, Section 5.16.
- C. Garage sales, including carport, estate sales, and yard sales, so long as such sales are (1) carried on wholly within the property lines on which the dwelling unit is located, (2) held for the purpose of selling items that are primarily surplus to the residential use, (3) operated for not more than three consecutive days and held not more than four times within a calendar year at the same

dwelling unit, (4) limited to the hours between 7:00 a.m. and 5:00 p.m. and (5) advertised using signage in conformance with the sign regulations as designated in Chapter 6 of the Zoning Ordinance for the Town of Fountain Hills.

- D. Construction activity within the public rights-of-way that has encroachment permits approved and issued by the Development Services Department.
- E. Holiday sales that are related to a state or nationally recognized holiday or season such as Christmas tree or pumpkin sales. Holiday sales must be set up and conducted in one location and obtain a temporary use permit through the Development Services Department.
- F. Fund-raising Special Events held by Charitable Nonprofit Organizations that meet the following criteria:
 - 1. The fund-raising Special Event shall be carried on entirely within a building, or if outdoors, entirely within a clearly defined/designated piece of public or private property. If the fund-raising Special Event involves outdoor activity, such activity shall be limited to six outdoor Special Events per year per organization.
 - 2. All proceeds derived from the Special Event shall go to one or more Charitable Nonprofit Organization(s).
 - 3. Adequate parking must be available for the fund-raising Special Event. If outdoor Special Events occupy more than 25% of the area normally used for parking, creating the need for off-site parking and the possibility of traffic or safety hazards, Town officials shall be notified to determine if Town services are required. If the Town Manager or the authorized designee determines that Town services are required, the fundraising Special Event shall be subject to a Special Event permit.
 - 4. Signs must comply with the sign regulations as designated in Chapter 6 of the Zoning Ordinance for the Town of Fountain Hills.
 - 5. If the fundraising Special Event involves an activity that would typically require a temporary use permit under the Town's Zoning Ordinance, a temporary use permit must be obtained prior to the Special Event.
- G. A governmental, educational or religious organization acting within the normal course and scope of its typical functions or activities.

(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, Deleted and replaced; 01-09, Added, 05/17/2001, Adopted)

Section 8-3-5 Applications

- A. Applications for Special Event permits shall be made on forms furnished by the Town. Every application shall be accompanied by the appropriate application fee in an amount set forth in the Town's fee schedule, as adopted by the Town Council as part of the Town's annual budget or by separate resolution.
- B. If the Special Event is designed to be held by or for any Person other than the Sponsor, the Sponsor for such permit shall file with the application a communication in writing from the Person proposing to hold the Special Event, authorizing the Sponsor to apply for the permit on

his/its behalf.

- C. All applications for Special Events must be completed and submitted to the Town no less than 90 days prior to the Special Event in order to be considered for scheduling on the Special Event calendar as outlined in Section 8-3-8 below. An application will not be deemed complete unless all related Special Event Liquor License applications are submitted at the same time as the Special Event application.
- D. The application for a Special Event permit shall set forth, at a minimum, the following information:
 - 1. The name, street address, telephone number and email address of the Person seeking to conduct the Special Event.
 - 2. If the Special Event is to be conducted for, on behalf of, or by an organization or business, the name, physical address and telephone number of the headquarters of the organization, the names of the principal persons responsible for the organization, the federal tax ID number of the organization, and email addresses for the principal contacts of the organization.
 - 3. The name, physical address, work and home telephone numbers and email address of the on-site Special Event manager.
 - 4. The name, physical address, telephone number and email address of the promoter and Sponsor of the Special Event, if different than the applicant.
 - 5. If the Special Event involves sponsorship or participation of a Charitable Nonprofit organization, the organization's name, federal employer's tax identification number or determination of tax exempt status, physical address, telephone number and email address.
 - 6. The name of the Special Event and the location where the Special Event is to take place. If the Special Event is on private property, the property owner's name, telephone number, email address, and a written acknowledgement from the owner granting permission for use of the property. If applicable, the location shall include the route to be traveled, the starting and termination points, and any closures of streets, sidewalks or rights-of-way requested. A site plan of the Special Event area must be included with the application.
 - 7. A parking plan showing available parking that is adequate to accommodate the anticipated attendees of the Special Event. If parking is to be on private property, written proof of permission of the property owner must be included with the application. Parking on the property must be adequate to serve any existing permanent uses as well as the Special Event use.
 - 8. A description of the Special Event including activities, anticipated attendance, entertainment, and type of retail sales, if any. If there will be vendors, artists or concessionaires, supply a list including business names, owner names, booth numbers, addresses, Arizona state sales tax number (TPT number) and Fountain Hills business license numbers no later than 10 days prior to the Special Event. Any changes or additions shall be submitted to the Town prior to the end of the first day of the Special

Event.

9. The date and hours when the Special Event is to be conducted, including set up and take down time.
10. The approximate number of persons, vehicles and equipment, if any, that will be involved in the Special Event, including, without limitation, description of the vehicles or equipment. If animals are to be included in the Special Event, the applicant must specify the types of animals to be included, the areas to be used as pens for the animals and any vehicles to be used for transporting the animals.
11. Information regarding the amount and type of advertising that will be done to promote the Special Event.
12. Information on specific features of the Special Event including, but not limited to, tents, canopies, open flames and cooking, fireworks, temporary fencing, temporary structures, first aid services, port-a-johns, waste control, generators, carnival/amusement rides, lighting, signs/banners, and inflatables. Information should include the company name, physical address, contact name, telephone number and email address of each service provider. Special Event features may require inspection and/or special permits from building, engineering, fire, and/or health departments. The site of the Special Event must be adequately served by utilities and sanitary facilities.
13. Description and location of Town infrastructure (i.e. electric and/or water) that will be needed for the Special Event.
14. A map and/or site plan clearly depicting the location of all signage, directional and/or promotional, that will be used in conjunction with the Special Event, as well as a plan for ensuring signage shall not be posted earlier than two weeks prior to the first day of the Special Event and must be removed within 48 hours following the Special Event's conclusion.
15. Information on Special Event security and emergency medical services including company names, physical addresses, contacts, telephone numbers, email addresses and scheduled hours personnel will be at the Special Event.
16. Information regarding the serving of alcohol, if any, at the Special Event and copies of the appropriate state Liquor Licenses/applications, where applicable.
17. An estimate of all non-permit fees anticipated in connection with the Special Event, as detailed in Section 8-3-6 of this Article. All applicable Town Departments shall review the application and recommend stipulations that must be met by the applicant, at his own cost, to insure the health, safety and welfare of the public. Each Town Department shall provide cost estimates or services to be provided in connection with the Special Event. These fees, where applicable, include but are not limited to fees for law enforcement, traffic engineering services, field services, cleaning/damage deposits, and building safety inspections.
18. A certificate of insurance naming the Town as an additional insured must be on file with the Town at least 10 days prior to the start of the Special Event. Such insurance is to be in amounts determined necessary by the Town Manager in his sole discretion, but in no

event less than \$1 million combined single limit personal injury and property damage covering owned and non-owned auto liability, premise liability and comprehensive general, including product liability where indicated. An additional liquor legal liability policy, in an amount of \$1 million, unless a different amount is approved by the Town Manager in his sole discretion, naming the Town as an additional insured, will be required for Special Events serving alcoholic beverages. All insurance shall be provided by companies licensed to do business, in Arizona.

19. A certification statement including a liability release and indemnification agreement signed by the Sponsor's authorized agent. The statement shall include the applicant's acknowledgment that all transactions in the course of the Special Event are subject to any applicable Town, county and/or state sales tax and assurance that all Special Event participants shall be notified regarding sales tax regulations.

(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, Deleted and replaced; 01-09, Added, 05/17/2001, Adopted)

Section 8-3-6 Fees and Deposits

Any application for a Special Event, including Special Events held by Charitable Nonprofit Organizations, will be subject to the applicable deposits and fees in amounts set forth on the fee schedule approved by the Town Council as part of the Town's annual budget or by separate resolution, as follows:

- A. A non-refundable application fee shall be submitted with each Special Event application. Applications received without the application fee will not be accepted. A Commercial Special Event sharing sponsorship with a Charitable Nonprofit Organization shall not be exempt from the application fee set forth in this subsection.
- B. If an Special Event application is approved by the Town Manager or the authorized designee for inclusion on the Special Event calendar, the applicant may be required to deposit with the Town an amount of money equal to the estimate of all non-permit fees submitted with the application as specified in Section 8-3-5(D)(17) of this Article. Local Charitable Nonprofit Organizations are exempt from non-permit fees except cleaning/damage deposits and rental fees, where applicable. The Town reserves the right to require Charitable Nonprofit Organizations to obtain services such as law enforcement, security, emergency medical, traffic engineering, etc. to ensure that public safety standards are met. This exemption does not apply to Commercial Special Events sharing sponsorship with Charitable Nonprofit Organizations.
 1. Deposits pursuant to this subsection shall be paid to the Town not later than 30 days prior to the Special Event. If the deposits and fees are not received within the specified time, the Special Event will be administratively removed from the calendar and the Special Event will be canceled.
 2. A post-Special Event Town expenditure review shall be conducted to determine the Town's actual Special Event-related expenses. Depending on the results of this review and subsequent reconciliation, the Town shall refund any monies received by the applicant in excess of the actual amount expended by the Town or shall invoice the applicant for any additional Town-incurred costs not covered by the estimated deposit.
- C. All Special Event Liquor License fees shall be submitted at the time of application for a Special Event.

(16-01, Amended, 08/18/2016; 11-13, Amended, 12/20/2011, Deleted and replaced; 09-08, Amended, 07/02/2009; 01-09, Added, 05/17/2001, Adopted)

Section 8-3-7 Criteria for review and approval

- A. The Special Event Committee shall make recommendations to the Town Manager regarding all Special Event applications. Special Event Committee recommendations must be completed and submitted to the Town Manager not less than 30 calendar days prior to the Special Event in order to be considered for scheduling on the Special Event calendar. In order to recommend approval of an application, the Special Event Committee shall include, at a minimum, findings that each of the following criteria has been met:
1. The Special Event is widely attended and supported by the Fountain Hills community.
 2. The conduct of the Special Event, including street closures, detours and/or disruptions, will not substantially interrupt the safe and orderly movement of other traffic contiguous to its location or route.
 3. The nature, scope, location, and conduct of the Special Event are not reasonably likely to cause injury to persons or property or create a hazard to the health, safety and welfare of the public and the surrounding properties or land uses.
 4. The Special Event is consistent and/or compatible with community interests.
 5. The Special Event generates an economic impact for the Town of Fountain Hills to be used for community priorities.
 6. The Special Event application has been completed, all requirements therein have been satisfactorily met and application fees have been submitted to the Town.
 7. The conduct of the Special Event does not require the diversion of so great a number of Town staff to prevent normal service to the Town or of law enforcement officers to prevent normal law enforcement protection to the Town.
- B. The Town Manager shall approve, approve with stipulations or deny the Special Event request within 10 calendar days of receipt of an application from the Special Event Committee. In the event that the Town Manager does not approve, approves with stipulations or denies the Special Event within 10 calendar days of receipt of a recommendation, the Special Event application shall be deemed denied.
- C. An applicant whose Special Event request is denied by the Town Manager may appeal the decision according to the procedure set forth in Section 8-1-12 above.
- D. The Town in its sole direction, reserves the right to alter or cancel a Special Event permit after it has been issued, provided all license fees are returned to the applicant.
- E. If a Special Event includes alcoholic beverage service, the Special Event Liquor License application required by Article 8-5 below shall not be approved until after the Special Event is approved pursuant to this Section 8-3-7.

(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, 8-3-7 Heading revised was: Major Event Calendar; Deleted and replaced; 01-09, Added, 05/17/2001, Adopted)

Section 8-3-8 Special Event calendar requirements

The Town Manager or the authorized designee shall keep a calendar of all approved special events within each calendar year. The Special Events calendar shall be established according to the following process:

- A. Holiday Events and Grand-fathered Events shall automatically be scheduled on the Special Event calendar on their regularly-scheduled dates. Inclusion on the Special Event calendar does not exempt the Special Event Sponsor from submitting a complete Special Event application by the required 90-day deadline and receiving the required Special Event approval.
- B. Two or more separate Special Events may not occupy the same location on the same calendar day. Special Event organizers may coordinate and combine their Special Events and jointly file a Special Event application. Each separate organizer shall comply with all requirements of the Special Event application.

(16-01, Amended, 08/18/2016; 11-13, Amended, 11/03/2011, Heading revised was: Criteria for Staff Recommendation and Town Council Approval, Deleted and replaced; 01-09, Added, 05/17/2001, Adopted)

Article 8-4

ADULT BUSINESS LICENSE REGULATIONS

Sections:

8-4-1	Purpose
8-4-2	License Required
8-4-3	Issuance of License
8-4-4	Fees
8-4-5	Inspection
8-4-6	Expiration of License
8-4-7	Suspension
8-4-8	Denial or Revocation
8-4-9	Transfer of License

Section 8-4-1 Purpose

For the purposes of this Article, the defined terms set forth in Chapter 21 of the Town of Fountain Hills Zoning Ordinance shall apply.

(16-01, Amended, 08/18/2016; 06-18, Added, 06/15/2006)

Section 8-4-2 License Required

- A. It is unlawful:
 - 1. For any Person to operate an adult business without a valid adult business license issued by the Town pursuant to this Code.
 - 2. For any Person who operates an adult business to employ a person to work for the adult business who is not licensed as an adult business employee by the Town pursuant to this Code.
 - 3. For any person to obtain employment with an adult business without having secured an adult business employee license pursuant to this Code.
- B. An application for a license must be made on forms provided by the Town.
- C. All applicants must be qualified according to the provisions of this Code. The applicant shall provide all material listed on the application and necessary to support the application, and the Town Manager or the authorized designee may request, and the applicant shall provide, such additional information, including applicant fingerprinting and background check, as to enable the Town to determine whether the applicant meets the qualifications established in this Code. The applicant shall pay the Town's reasonable costs and expenses associated with fingerprinting and background checks.
- D. A Person who wishes to operate an adult business must sign the application for a license as an applicant. If a Person other than an individual wishes to operate an adult business, all persons legally responsible for the operations of the sexually oriented business or who have power to

control or direct its operations must sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each application must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

E. The completed application for an adult business license shall contain the following information and shall be accompanied by the following documents or information:

1. If the applicant is:
 - a. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age.
 - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and controlling stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
2. If the applicant intends to operate the adult business under a name other than that of the applicant; he or she must state (a) the adult business's fictitious name and (b) submit the required registration documents.
3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this Code, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
4. Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar adult business ordinances from another city or county denied, suspended or revoked, including the name and location of the adult business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this Code whose license has previously been denied, suspended or revoked, including the name and location of the adult business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
5. Whether the applicant or a person residing with the applicant holds any other licenses under this Code or other similar adult business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
6. The single classification of license for which the applicant is filing.
7. The location of the proposed adult business, including a legal description of the property, street address, and telephone number(s), if any.

8. The applicant's mailing address and residential address.
 9. A recent photograph of the applicant(s).
 10. The applicant's valid driver's license number.
 11. A floor plan or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The floor plan or diagram must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises.
 12. A property survey prepared within 30 days prior to application by a registered land surveyor depicting the property lines of any established uses identified under Section 21-3 of the Fountain Hills Zoning Ordinance within the distances set forth in Section 21-3 in relation to the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
 13. If an applicant wishes to operate an adult business, other than an adult motel, which intends to exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, electronic video media, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 21-5 of the Fountain Hills Zoning Ordinance.
- F. Before any applicant may be issued an adult business employee license, the applicant shall submit on a form to be provided by the Town the following information:
1. The applicant's name or any other name (including stage aliases used by the individual).
 2. A certified copy or original birth certificate showing date and place of birth as proof that individual is at least 18 years of age.
 3. Height, weight, hair and eye color.
 4. Present residence address and telephone number.
 5. Present business address and telephone number.
 6. Date, issuing state and number of driver's license or other identification card information.
- G. Attached to the application form for an adult business employee license as provided above, shall be the following:
1. A color photograph of the applicant taken within the last 60 days clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Town's law enforcement department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 2. A statement detailing the license history of the applicant for the 5 years immediately preceding the date of the filing of the application, including whether such applicant (a) previously operated or is seeking to operate, in this or any other county, city, state, or

country an adult business, (b) has ever had a license, permit, or authorization to do business denied, revoked, or suspended or (c) had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

3. A statement whether the applicant has been convicted of a specified criminal activity as defined in this Code and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(16-01, Amended, 08/18/2016; 06-18, Added, 06/15/2006)

Section 8-4-3 Issuance of License

- A. For an adult business employee license, the application shall be referred to the appropriate Town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within 60 days from the date the completed application is filed. If the Town fails to approve or deny the license within 60 days after receipt of an application, the license shall be deemed to have been approved. After the investigation, the Town shall issue a license, unless it is determined by a preponderance of the evidence that at least one or more of the following findings is true:
 1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 2. The applicant is under the age of 18 years.
 3. The applicant has been convicted of a specified criminal activity as defined in this Code.
 4. The adult business employee license is to be used for employment in a business prohibited by federal, local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance.
 5. The applicant has had an adult business employee license revoked by the Town within two years of the date of the current application. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 8-4-8.
- B. A license granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Town that the applicant has not been convicted of any specified criminal activity as defined in this Code or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 8-4-4.
- C. Thirty days prior to the expiration of a license, an applicant must submit a completed adult business application for renewal. The Town shall approve the issuance of a renewed license to an applicant unless it is determined by a preponderance of the evidence that at least one of the following findings is true:

1. An applicant is under 18 years of age.
 2. An applicant or a person with whom the applicant is residing is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.
 3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 4. An applicant or a person with whom the applicant is residing has been denied a license by the Town to operate a sexually oriented business within the preceding 12 months or whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
 5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity as defined in this Code.
 6. The premises to be used for the adult business have not been approved by the Maricopa County health department, the Town fire department, and the Town building official as being in compliance with applicable laws and ordinances.
 7. The license fee required by this ordinance has not been paid.
 8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Code.
- D. The license, if granted shall state on its face the name of the Person or Persons to whom it is granted, the expiration date, the address of the adult business and the classification for which the license is issued. All licenses shall be posted in a conspicuous place at or near the entrance to the adult business so that they may be easily read at any time.
- E. The Maricopa County health department, the Town fire department, and the Town building official shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the Town.
- F. An adult business license shall issue for only one classification as found in Section 21-2 of the Fountain Hills Zoning Ordinance.
- G. If a permit is issued, the Town shall issue an identification card. The identification card shall include the name of the licensee, a photograph of the licensee, the number of the permit, and the dates of issuance and expiration.

(16-01, Amended, 08/18/2016; 06-18, Amended, 06/15/2006, added the text: nor pseudoephedrine and/or; 06-18, Added, 06/15/2006)

Section 8-4-4 Fees

- A. Every application for an adult business license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee or such other fee as established by the Town Council as part of its annual budget or by separate resolution.

- B. In addition to the application and investigation fee required above, every adult business that is granted a license (new or renewal) shall pay to the Town an annual nonrefundable license fee upon license issuance or renewal or such other fee as established by the Town Council as part of its annual budget or by separate resolution.
- C. Every application for an adult business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual nonrefundable application, investigation, and license fee or such other fee as established by the Town Council as part of its annual budget or by separate resolution.
- D. All license applications and fees shall be submitted to the Finance Director.
(16-01, Amended, 09/19/2016; 06-18, Added, 06/15/2006)

Section 8-4-5 Inspection

- A. An applicant or licensee shall permit representatives of the Town Law Enforcement Department, Fire Department, Zoning Department, or other Town departments, agencies or agents to conduct lawful inspections of the premises of an adult business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates an adult business or his agent or employee commits a Class 1 misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.
(16-01, Amended, 08/18/2016)

Section 8-4-6 Expiration of License

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 8-4-3. Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration date of the license will not be affected. Any applicant whose license has expired must cease any activities permitted under the license until such time as a renewed license is issued.
- B. When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.
(16-01, Amended, 08/18/2016)

Section 8-4-7 Suspension

The Town shall suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has either (A) violated or is not in compliance with any Section of this ordinance or (B) refused to allow an inspection of the adult business premises as authorized by this Article.
(16-01, Amended, 08/18/2016)

Section 8-4-8 Denial or Revocation

- A. The Town shall deny or revoke a license if a cause of suspension under Section 8-4-7 occurs twice within any 12-month period.
- B. The Town shall deny or revoke a license if it determines that any of the following have occurred:
 - 1. A licensee gave false or misleading information in the material submitted during the application process.
 - 2. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises.
 - 3. A licensee has knowingly allowed prostitution on the premises.
 - 4. A licensee knowingly operated the adult business during a period of time when the licensee's license was suspended or expired.
 - 5. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises.
 - 6. A licensee is delinquent in payment to the Town, County, or State for any taxes or fees past due.
- C. If the Town determines that grounds exist to deny or revoke a license under this Article, the Town shall notify the applicant, licensee in writing of the intent to deny or revoke, including the grounds therefore.
- D. Within 10 work days of receipt of such notice, the recipient may respond to the notice in writing, stating the reasons why the license should not be denied or revoked. If the Town does not receive a response in the time required, the Town's notice shall be the final administrative action of denial or revocation. The Town shall send an additional notice to confirm the denial or revocation notice within five business days after the time to respond expires.
- E. If the Town receives a response, within 15 business days of receipt, the Town shall either (1) notify the applicant, or licensee of the Town's withdrawal of the intent to deny or revoke or (2) notify the applicant, or licensee of the date, time and place for a hearing in a manner consistent with Section 8-1-12(B) – (D) above before a hearing officer appointed by the Town Manager or the authorized designee.
- F. If the Town fails to send a timely notification either withdrawing the intent to deny or revoke or scheduling a hearing, a decision in favor of the applicant or licensee is deemed made.
- G. The hearing shall be conducted not less than 15 or more than 20 business days after the Town's receipt of the response.
- H. If the hearing officer finds no grounds to deny the license, the Town shall issue the license. If the hearing officer finds no grounds to revoke the license, the Town shall withdraw the intent to

revoke and deem the license valid. The Town shall take action required under this subsection within five business days of the hearing officer's written decision.

- I. In the case of an intent to deny or revoke a license, the licensee may continue to operate for 15 days after the decision becomes final. The decision shall be deemed final at the end of five business days after it is mailed and shall constitute a final administrative action.
- J. All notices under this Section shall be sent by certified mail to the applicant or licensee's address on file with the Town.
- K. When the Town revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult business license for one year from the date the revocation became effective. If, subsequent to revocation, the Town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(16-01, Amended, 08/18/2016)

Section 8-4-9 Transfer of License

A licensee shall not transfer his/her license to another, nor shall a licensee operate an adult business under the authority of a license at any place other than the address designated in the application.

(16-01, Amended, 08/18/2016)

Article 8-5

SPECIAL EVENT LIQUOR LICENSES

Sections:

- 8-5-1 Purpose**
- 8-5-2 License Required**
- 8-5-3 Application; Review; Conditions**

Section 8-5-1 Purpose

Alcoholic beverages may only be permitted at a Special Event if approved by both the Town Council and the Director of the Arizona Department of Liquor Licensing and Control as set forth in this Article and Ariz. Rev. Stat. § 4-203.02, as amended. Sponsors seeking approval by the Town Council shall adhere to the requirements set forth in this Article and Ariz. Rev. Stat. § 4-203.02, as amended. For the purposes of this Article, the defined terms set forth in Article 8-3 above shall apply.

(16-01, Amended, 08/18/2016; 07-09, Added, 10/18/2007, Adopted)

Section 8-5-2 License Required

In addition to other penalties provided by applicable law, it is violation of this Article to serve alcohol in an area not licensed by the Arizona Department of Liquor Licensing and Control without first obtaining a Special Event Liquor License pursuant to this Article.

(16-01, Amended, 08/18/2016; 07-09, Added, 10/18/2007, Adopted)

Section 8-5-3 Application; Review; Conditions

The following conditions shall be met in order to obtain Town Council approval of a Special Event Liquor License.

- A. A complete Special Event Permit Application pursuant to Article 8-3 of this Code, including all applicable Town fees, must be submitted prior to or in conjunction with a Special Event Liquor License application under this Article. A Special Event Liquor License application will not be approved until the related Special Event has been approved by the Special Event Committee and the Town Manager or the authorized designee and/or the Town Council as set forth in Section 8-3-7 of this Code. All Special Event Liquor License applications must be submitted in complete form, including all attachments and fees, at least 90 days before the Special Event date. If there are multiple Special Event Liquor License applications affiliated with one Special Event, all such applications must be submitted as a complete packet for review at one time.
- B. It is the Special Event Sponsor's responsibility to obtain any information required to complete the application. An incomplete application will be returned.
- C. Every application shall be accompanied by the appropriate application fee in an amount set forth in the Town's fee schedule, as adopted by the Town Council as part of the Town's annual budget or by separate resolution.
- D. Previous violations by the Sponsor of this Code or a Special Event Liquor License may impact the Town's recommendation for future permits.

- E. Those serving liquor must meet all requirements of the Arizona Department of Liquor Licensing and Control.
- F. Security Requirements.
 - 1. The Special Event Liquor License Sponsor must provide a plan for security during liquor sales, including methods for ensuring alcohol does not leave the area covered by the Special Event Liquor License. A Special Event layout indicating ingress/egress points, security, fencing, etc., must be included with the application. The Town Manager or the authorized designee will establish minimum security requirements for Special Events with alcoholic beverage service. The Maricopa County Sheriff's Office will determine whether the Town Manager's minimum security requirements or whether additional security personnel are required. The Town Manager or the authorized designee shall approve or deny all security plans for Special Event Liquor Licenses after receiving a security recommendation from the Maricopa County Sheriff's Office.
 - 2. The Sponsor shall ensure the Special Event venue is set up according to the layout approved by the Town Manager or the authorized designee. The Special Event may be closed if any significant deviation from the approved plan is not remedied after a demand for compliance by the Town Manager or the authorized designee.
 - 3. Required security personnel must be on-site from the time liquor service begins until all event patrons have cleared the designated area.
 - 4. Security personnel must be deployed in a manner that prevents alcohol from leaving designated areas.
 - 5. The Special Event Liquor License applicant shall immediately notify the Town Manager or the authorized designee if conditions change after issuance of the Special Event Liquor License. In the event of such notice, the Town will evaluate the changes and determine if additional security measures are warranted. If warranted, the applicant shall provide such additional security measures at its sole expense.
- G. Only the vendor or authorized designee holding the approved Special Event Liquor License is allowed to bring alcohol into the Special Event. There must be a designated bartender responsible for serving the alcohol at all times. At no time are guests allowed to bring in their own alcohol.
- H. Consumption of alcohol by any service staff or volunteers while on duty is strictly prohibited. Upon completion of shift or service hours, staff or volunteers must remove any indicators that identify them as staff or volunteers, such as badges, uniforms, event apparel (t-shirt, hat, etc.) in order to consume alcohol on the Special Event premises.
- I. Sponsors shall ensure conformance with all state and local laws governing the serving and consumption of beer, wine and spirits.
- J. Sponsors or their authorized designees are required to have all proper mechanisms in place to prevent under age consumption.

(16-01, Amended, 08/18/2016; 07-09, Added, 10/18/2007, Adopted)

Chapter 9

PARKS AND RECREATION

Articles:

- 9-1 PARKS AND RECREATION DEPARTMENT**
- 9-2 DELETED**
- 9-3 WATERCOURSE PRESERVATION AND HABITAT ORDINANCE**
- 9-4 PARK RULES AND REGULATIONS**
- 9-5 FOUNTAIN HILLS MCDOWELL MOUNTAIN PRESERVE**

Article 9-1

PARKS AND RECREATION DEPARTMENT

Sections:

- 9-1-1 Established**
- 9-1-2 Appointment and Compensation of Director**
- 9-1-3 Powers and Duties of Director**
- 9-1-4 Employees and Equipment**

Section 9-1-1 Established

There is hereby created the department of parks and recreation, a department of the town. It shall consist of the director of parks and recreation, who shall be the head of the department and all employees assigned thereto. All such employees shall perform their duties subject to the supervision of the director. The director of parks and recreation shall supervise the department in accordance with all applicable personnel ordinances and shall exercise such powers and perform such duties as are required by resolution, ordinances or directives from the council and town manager.

Section 9-1-2 Appointment and Compensation of Director

The position of director of parks and recreation is hereby declared as an appointive position, whose appointment and removal shall be up to the sole discretion of the town manager; compensation shall be determined in accordance with the established policies of the town.

Section 9-1-3 Powers and Duties of Director

The director of parks and recreation shall:

- A. Administer and operate existing recreation and park areas, facilities and programs and plans for the acquisition, development and operation of proposed facilities and programs in accordance with policies and procedures set by the council and town manager.
- B. Prepare an annual budget for presentation under the direction of the town manager.
- C. Inform the general public of the services and facilities being provided by the department of parks and recreation; address professional, civic and lay groups on recreational subjects; solicit suggestions from the general public on increasing the effectiveness of the recreation program; cooperate with governmental and voluntary organizations and agencies in solving of recreation problems and provide, upon request, assistance of a technical nature to community agencies and organizations on problems related to recreation and park facilities and programs.
- D. Assist community organizations in the promotion of recreational activities; conduct studies of local conditions and needs for recreation services facilities and assist with the recruitment and training of professional recreation personnel and volunteer leaders.
- E. Upon request, advise the council and community organizations concerning the expenditure of

public funds for recreation and parks, acquisitions, design and development of recreation facilities and areas.

F. With the approval of the council, post such rules and regulations as deemed necessary for the conduct of persons in the parks and other recreation facilities under the director's jurisdiction and see that the proper ordinances are adopted authorizing said rules and regulations.

G. Perform other duties as may be assigned by the town manager.
(01-16, Amended, 12/04/2001; 99-17, Amended, 04/01/1999)

Section 9-1-4 Employees and Equipment

Manpower and equipment necessary to satisfactorily perform the above functions, including the maintenance and improvement of facilities may be secured either by the hiring of new employees and the purchase or lease of equipment or by assignment of employees and equipment, either in whole or in part, from the staff or equipment assigned in the main to other departments of the town, all at the option of the town manager with the approval of the council if required.

Article 9-2

DELETED

Sections:

9-2-1 Deleted

9-2-2 Deleted

9-2-3 Deleted

9-2-4 Deleted

9-2-5 Deleted

9-2-6 Deleted

9-2-7 Deleted

Section 9-2-1 Deleted

(14-04, Deleted, 08/07/2014; 01-23, Amended, 01/17/2002)

Section 9-2-2 Deleted

(14-04, Deleted, 08/07/2014)

Section 9-2-3 Deleted

(14-04, Deleted, 08/07/2014; 99-34, Amended, 12/02/1999; 94-01, Amended, 01/20/1994)

Section 9-2-4 Deleted

(14-04, Deleted, 08/07/2014)

Section 9-2-5 Deleted

(14-04, Deleted, 08/07/2014)

Section 9-2-6 Deleted

(14-04, Deleted, 08/07/2014)

Section 9-2-7 Deleted

(14-04, Deleted, 08/07/2014)

Article 9-3

WATERCOURSE PRESERVATION AND HABITAT ORDINANCE

Sections:

- 9-3-1 Purpose and Intent**
- 9-3-2 Definitions**
- 9-3-3 Development of Washes**
- 9-3-4 Voter Approval of Development**
- 9-3-5 Restrictions on Transfer or Alienation**
- 9-3-6 Modification, Amendment or Appeal**
- 9-3-7 Severability**

Section 9-3-1 Purpose and Intent

Washes owned by the town are valuable natural resources that contribute to the quality of life for the residents of the town. Such washes assist in natural groundwater recharge, support wildlife habitat and provide natural open space. The washes are an integral part of the town's unique Sonoran Desert heritage. The washes are our legacy to the citizens of the town. These regulations are specifically intended to accomplish the following:

- A. Maintain the natural state of any washes now owned by the town or to be acquired by whatever means by the town.
- B. Provide for natural groundwater recharge.
- C. Provide for wildlife corridors.
- D. Provide open space areas in a natural and unaltered desert environment.

Section 9-3-2 Definitions

- A. "Development" means any human alteration to the natural state of the land including its vegetation, soil, geology or hydrology for any use except flood control, fire control and matters of public safety or emergency, or easement use or maintenance, or maintenance of any existing structure or fixture existing as of the twenty-eighth day of May, 1996.
- B. "Wash" means any natural watercourse as existing on land owned or to be owned by the town including the immediately adjacent banks of any such wash.

Section 9-3-3 Development of Washes

No development of any wash shall occur except by an affirmative vote of town electors in any general election held by the town.

Section 9-3-4 Voter Approval of Development

Any proposed development of any wash, submitted for voter approval, shall be submitted only after comprehensive studies including, but not limited to the following, have occurred and have been made available in their entirety to the public in at least three open meetings, preceded by at least seven days notice, and at least thirty days prior to any general election:

- A. A comprehensive inventory and study of, and impact on all vegetation, wildlife and existing recreational uses to be impacted by any proposed development.
- B. Comprehensive recommendations to mitigate any impact to vegetation, wildlife and existing recreational uses.
- C. All alternatives to such development.
- D. Review and analysis of capital costs of any proposed development, including projections of any maintenance expenses projected out at least five years.

Section 9-3-5 Restrictions on Transfer or Alienation

No sale, swap, trade, lease, transfer or other alienation of any town interest in any wash shall occur without affirmative approval of town electors voting in any town general election.

Section 9-3-6 Modification, Amendment or Appeal

This article shall not be amended, modified or repealed except by affirmative vote of the town electors voting in any general town election.

Section 9-3-7 Severability

Should any section of this article be determined to be void, unlawful or of no effect, the remaining sections shall continue to be fully applicable and shall be deemed to be in full force and effect.

Article 9-4

PARK RULES AND REGULATIONS

Sections:

- 9-4-1 Purpose and Intent**
- 9-4-2 Consumption of Alcohol at Town Owned Parks**
- 9-4-3 Rules and Regulations at Town Owned Parks**
- 9-4-4 Operation of Model Aircraft or Unmanned Aircraft**

Section 9-4-1 Purpose and Intent

Town owned parks provide excellent recreational opportunities and encourage enhanced quality of life to Town residents. Such parks are maintained and operated with an emphasis on safety, cleanliness, and beauty. These regulations are specifically intended to provide rules and regulations for each Town-owned park and is accomplished as follows:

(01-16, Added, 12/04/2001)

Section 9-4-2 Consumption of Alcohol at Town Owned Parks

- A. The consumption of spirituous liquor as defined in Paragraph 31 of §A.R.S. 4-101 is prohibited in Town-owned parks unless pursuant to a valid Arizona special events liquor license and the expressed written permission of the Town Council.
- B. The consumption of beer and wine on the premises of Town-owned parks is limited and restricted to specific permitted areas. Upon receipt of a completed application form and payment of the proper fee, the director shall review the application and issue the permit pursuant to printed rules and regulations developed by the director.
- C. Penalty: Violation of any provision of this section shall, upon conviction, be considered a Class 1 Misdemeanor.

(01-16, Amended, 12/04/2001)

Section 9-4-3 Rules and Regulations at Town Owned Parks

- A. All persons who use Town owned Parks shall obey the following rules while on park property.
 - 1. No open fires.
 - 2. No overnight camping.
 - 3. No firearms or weapons, except as authorized by Arizona law.
 - 4. No pets allowed, except when on a leash that is held in the hand of an adult in control of the pet. Animal waste shall be immediately removed by the adult in control of the pet in all Town park facilities. Activities within the off-leash recreational facility are exempt from the leash provision.

5. No person shall operate skateboards, roller blades, inline skates, bicycles or any rolling (nonmotorized) vehicle in Town parks where such activity is specifically prohibited by appropriate posting or in an unsafe manner so as to infringe upon the safety of themselves or other park users. Activities within the bounded area of the skate park facility are exempt from this provision.
6. The skate park facility, splash park facility and off-leash recreational facility shall each be subject to their own unique and specific rules. Rules and regulations shall be visibly posted at the skate park facility, and are subject to change by action of the director.
7. Park hours shall be visibly posted at each park.
8. No vehicles except in designated parking areas and in non-designated areas pursuant to a valid permit. Any vehicles left after 11:00 p.m. will be towed at the owner's expense.
9. No golfing or practicing of golf on grass areas.
10. No glass beverage containers.
11. No unauthorized vendors.
12. Model aircraft or unmanned aircraft and incendiary rockets are prohibited, except as provided in Section 9-4-4.
13. Lakes, fountains, and other waterways shall not be used for swimming, wading, bathing, fishing, or boating.
14. No person shall tether, launch or land a hot air balloon in a Town park except with the permission of authorized Town staff and a Special Event Permit.
15. No person shall occupy a facility within a park that has been reserved by another person.
16. The Town of Fountain Hills specifically reserves the right to hold financially liable the parents of any minor child for consequences of the child's infraction of this code and/or any damage a minor child causes on or to Town property.
17. The director shall have the power to enact new park rules at any time to the extent that such rules are consistent with Federal and State law, and this Town Code. Such additional rules will be considered petty offenses as defined under B(1) and B(2) below.

B. Penalties

1. Violations of subsections A(4) through A(15) shall be considered petty offenses if the offender has not committed the same infraction within the last twenty-four (24) months. Petty Offenses shall be punishable by a fine of up to one hundred dollars (\$100.00).
2. Subsequent violations(s) of the same subsection A(4) through A(15) offense within a twenty-four (24) month period shall be considered a Class 3 Misdemeanor, and will be punishable as such under State Law.
3. Violations of subsections A(1), A(2), or A(3) of this section shall be considered a Class 1

Misdemeanors and will be punishable as such under State Law.

(16-12, Amended, 12/01/2016; 16-09, Amended, 09/15/2016; 14-09, Amended, 09/18/2014; 01-16, Amended, 12/04/2001)

Section 9-4-4 Operation of Model Aircraft or Unmanned Aircraft

- A. Pursuant to ARIZ. REV. STAT. §13-3729(D)(3), the takeoff and landing of model aircraft or unmanned aircraft is permitted in the area of Desert Vista Park that is designated and posted for that use.
- B. For purposes of this Article, "Unmanned Aircraft" and "Model Aircraft" have the same meaning prescribed in Sections 331 and 336, respectively, of the FAA Modernization and Reform Act of 2012 (P.L. 112-95), as amended.

(16-09, Added, 09/15/2016)

Article 9-5

FOUNTAIN HILLS MCDOWELL MOUNTAIN PRESERVE

Sections:

- 9-5-1 Purpose and Intent**
- 9-5-2 Definitions**
- 9-5-3 General Preserve Regulations**
- 9-5-4 Central Trailhead Regulations**
- 9-5-5 Golden Eagle Trailhead Regulations**
- 9-5-6 Trailhead and Trail Development**
- 9-5-7 Penalties**
- 9-5-8 Severability**

Section 9-5-1 Purpose and Intent

The Fountain Hills McDowell Mountain Preserve (“the Preserve”) encompasses a scenic area of mountainous, pristine land within Fountain Hills that will be preserved in its natural state for the benefit of this and future generations. In order for the Town to achieve tandem goals of providing trails and trailhead locations to facilitate public access into the Preserve and to safeguard the Preserve for this and future generations, a thorough set of Preserve, trailhead and trails regulations are needed. These regulations are specifically intended to accomplish the following:

- A. Maintain the existing undisturbed, desert environment of the Preserve.
- B. Provide for Preserve use regulations that will maintain wildlife habitat and limit human encroachment to specific areas within the Preserve.
- C. Provide use regulations for the Central Trailhead that will provide public access into the Preserve.
- D. Provide use regulations for the Golden Eagle Trailhead, including access control into the Preserve through McDowell Mountain Park.
- E. Provide for the development of a trail system within the Preserve and connectivity to abutting trail systems in the City of Scottsdale and within McDowell Mountain Park.

(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-2 Definitions

- A. “Camping” means any effort to erect a tent or shelter, sleeping, use of a sleeping bag, or the parking of a trailer or camper for the purpose of sleeping or remaining overnight.
- B. “Central Trailhead” means the developed portions of that trailhead located at the terminus of Eagle Ridge Drive.
- C. “Emergency Access Route” means that roadway between the central trailhead and the southwestern corner of the Eagles Nest subdivision that can be used to evacuate people out of the Eagle Ridge North subdivision.

- D. “Golden Eagle Trailhead” means the developed portions of that trailhead located at the public terminus of Golden Eagle Drive.
- E. The “Preserve” shall mean those lands identified by Resolution 2002-01 as the Fountain Hills McDowell Mountain Preserve
- F. “Special Preserve Permit” means a noncommercial permit issued by the Parks and Recreation Department required for group functions in and around the Central Trailhead.
- G. “Spider Trail” means an unauthorized trail or pathway within the Preserve.
- H. “Trail” means an authorized pathway within the Preserve.
- I. “Violation” means any act that violates any of the rules or regulations contained within this Article, punishable as specified in Section 9-5-7 herein.
(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-3 General Preserve Regulations

The following are prohibited within the Preserve:

- A. Accessing the Preserve by leaving a trail or trailhead. All Preserve visitors shall stay on authorized trails and within trailheads, unless approved by the Director of Community Development.
- B. Accessing the Preserve outside of the posted hours of operation, unless approved by the Director of Community Development.
- C. Alcoholic beverages.
- D. Camping.
- E. Carrying or using any type of glass or ceramic container.
- F. Creating, developing or using any type of spider trail.
- G. Destroying any barriers, signs, or other Town property.
- H. Destroying, damaging or removing any vegetative or mineral resource, including but not limited to any tree, shrub, wildflower, cactus or rock outcropping.
- I. Dogs are prohibited unless on a 6-foot maximum leash at all times, and must remain on trails.
- J. Horses.
- K. Hunting, trapping or otherwise harming or harassing any wildlife.
- L. Littering or depositing garbage, trash, refuse or other obnoxious material anywhere other than in specific Town-provided containers provided for that purpose.

- M. Setting or igniting any type of fire.
- N. Smoking.
- O. Throwing rocks or other objects into washes, including but not limited to up or down hillsides and on or off trails.
- P. Using any vehicle, including motorized vehicles and bicycles, except authorized maintenance vehicles and during emergency evacuations along the Emergency Access Route as directed by emergency personnel.
- Q. Using or discharging any firearm, bow and arrow, slingshot or other weapon.
(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-4 Central Trailhead Regulations

In addition to the prohibitions in Section 9-5-3, the following are prohibited within the Central Trailhead:

- A. Accessing or utilizing the Central Trailhead outside of the posted hours of operation.
- B. Alcoholic beverages, unless as approved by Special Preserve Permit.
- C. Groups of 20 or more people without a Special Preserve Permit, to ensure adequate available parking.
- D. Horses or horse trailers.
- E. Parking vehicles outside of designated parking spaces.
- F. Parking vehicles in the school bus parking spaces, except on weekends. School buses may utilize these parking spaces with prior Town approval.
- G. Use of a covered ramada that has been reserved by others, through a Special Preserve Permit.
- H. Vehicles longer than 19 feet.
(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-5 Golden Eagle Trailhead Regulations

The Golden Eagle Trailhead is a public parking area to provide a primary point for access into the southwestern portion of McDowell Mountain Park from the Town of Fountain Hills. It may also be possible to access the Preserve, through McDowell Mountain Park, from the Golden Eagle Trailhead. All users of the Golden Eagle Trailhead will be directed along public access easements through a private subdivision to gain access to McDowell Mountain Park. All users of McDowell Mountain Park shall abide by those rules and regulations established by Maricopa County for McDowell Mountain Park. In addition to the prohibitions in Section 9-5-3, the following are prohibited within the Golden Eagle Trailhead:

- A. Accessing or utilizing the Golden Eagle Trailhead outside of the posted hours of operation.
- B. Although bicycles may be permitted within McDowell Mountain Park, bicycles are not permitted in the Preserve, even if accessed from the north through McDowell Mountain Park. Bicycles are permitted within the trailhead and the public access easement(s) and into McDowell Mountain Park, if permitted by McDowell Mountain Park rules.
- C. Horses or horse trailers.
- D. Vehicles longer than 19 feet.
(Ordinance 01-23, Added, 01/17/2002)

Section 9-5-6 Trailhead and Trail Development

The McDowell Mountain Preserve Commission will be responsible for the design of any trailhead and the development of any trails within the Preserve.

(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-7 Penalties

The Rules and Regulations contained in Article 9-5 will be considered petty offenses and/or Class 1 Misdemeanors as specified under subsections A through C below:

- A. Violations of the rules and regulations contained in subsections 9-5-3 (A, B, C, E, F, I, J, L, N and O) and Sections 9-5-4 and 9-5-5 shall be considered a petty offense if the offender has not been convicted of the same infraction within the last twenty-four (24) months. Petty offenses shall be punishable by a fine of up to one hundred dollars (\$100.00).
- B. Subsequent conviction(s) of the same subsections 9-5-3 (A, B, C, E, F, I, J, L, N and O) and Sections 9-5-4 and 9-5-5 within a twenty-four (24) month period shall be considered a Class 3 Misdemeanor, and will be punishable as such under State Law.
- C. Violations of the rules and regulations contained in subsections 9-5-3 (D, G, H, K, M, P and Q) of this section shall be considered a Class 1 Misdemeanor and will be punishable as such under State Law.

(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-8 Severability

Should any section of this Article be determined to be void, unlawful or of no effect, the remaining sections shall continue to be fully applicable and shall be deemed to be in full force and effect.

(Ordinance 2002-01, Added, 01/17/2002)

Chapter 10

HEALTH AND SANITATION

Articles:

10-1	SOLID WASTE DISPOSAL AND RECYCLING
10-2	LITTER; NUISANCES
10-3	RESERVED
10-4	REMOVAL OF LITTER
10-5	UNATTENDED CONTAINERS
10-6	ON-SITE REST ROOM FACILITIES
10-7	DUST AND AIRBORNE PARTICULATE CONTROL

Article 10-1

SOLID WASTE DISPOSAL AND RECYCLING

Sections:

10-1-1	Purpose and Scope
10-1-2	Definitions
10-1-3	Collection Services Mandatory; Exemption
10-1-4	Collection Services Generally
10-1-5	Access to Premises Serviced by Town
10-1-6	Spilling of Refuse during Transport
10-1-7	Dumping of Refuse
10-1-8	Use of Another's Containers
10-1-9	Reserved
10-1-10	Resident Responsibilities Generally
10-1-11	Hazardous Waste and Special Refuse
10-1-12	Hours of Collection
10-1-13	State and Local Authority
10-1-14	Inspections and Container Violations
10-1-15	Violations and Citations
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10-1-26	Reserved
10-1-27	Reserved
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10-1-29	Reserved
10-1-30	Reserved

Section 10-1-1 Purpose and Scope

The purpose of this Article is to protect the health and safety of the citizens of the Town and to protect the environment by establishing minimum standards for the storage, collection, treatment, transportation, processing and disposal of Solid Waste and Recyclables.

(10-08, Amended, 11/04/2010, Article 10-1 prior title: Methods of Garbage and Trash Removal)

Section 10-1-2 Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

“Alley” means a public passageway affording a secondary means of access to abutting property for utility, emergency and Solid Waste vehicles.

“Ashes” means all residue from the burning of any combustible material, but does not include ashes from medical waste, Hazardous Waste or special waste.

“Bulk Trash” means all manmade materials that are bulky or cumbersome such as washers, hot water heaters and other appliances, sofas, tables, beds and other large household furniture, yard waste and other Refuse items which by size, shape or quantity will not fit into a residential roll-out container.

“Collection Container” means a Solid Waste Cart, a Recycling Cart, and/or a Green Waste Cart.

“Collection Employee” means any individual employed by the Town for the purpose of effectuating the provisions of this Article.

“Collection Services” means curb-side pick up of Solid Waste, Recyclable Materials and Green Waste.

“Commingle” means to blend or cause to blend together.

“Commercial Solid Waste Generator” means any Person owning, leasing, managing, renting or occupying any business, home-based business, industrial or commercial building, or construction site, which generates Refuse, Solid Waste or Recyclables.

“Construction Waste” means all waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on commercial, institutional and industrial establishments, Dwelling Units, garages, pavements, streets, Alleys, trenches, ditches, underground utilities, excavations and other structures. Construction waste includes but is not limited to rocks, debris, dirt, brick, fill, plaster, and all types of scrap building materials, including but not limited to lumber scraps, shingles, plaster, brick, stone and concrete.

“Contaminate” means to spoil, pollute or make unclean so as to make something unfit for use.

“Customer” means, and includes, any entity, property owner, manager, agent, tenant or occupant of a property within the Town.

“Director” means the Town of Fountain Hills Development Services Department Director or his authorized designee. If the Town does not have a Development Services Director, the Town Manager or authorized designee shall be the Director.

“Dwelling Unit” means any building or structure used solely as a family domicile, including single-family and multifamily units, apartments, Townhouses, condominiums, rooming houses and boarding houses, and manufactured homes.

“Garbage” means all putrescible wastes, except sewer and body wastes, including all organic wastes prepared for or intended to be used as food or which have resulted from the preparation of food, including all such substances from public and private establishments and residences.

“Green Waste Cart” means a receptacle with wheels with a capacity of up to approximately 96 gallons designed or intended to be mechanically dumped into a load-packer type garbage truck for the collection of yard waste from Residential Service Units.

“Hazardous Waste” means any discarded material hazardous by reason of its pathological, explosive, flammable, radiological, corrosive, reactive, or toxic nature. The term shall mean any material that can cause damage or injury to property or Persons. Hazardous waste includes but is not limited to any chemical, compound, mixture, substance, product or other material which is a hazardous waste pursuant to Ariz. Rev. Stat. § 49-921 as may be amended from time to time, or Code of Federal Regulations, Part 261.

“Licensed Solid Waste Contractor” means any Person, firm or entity holding a license issued by the Town that permits the Licensed Solid Waste Collector to operate within the Town for the purpose of providing Solid Waste Collection Services to Commercial Solid Waste Generators.

“Medical Sharps” means discarded sharps used in human or animal care, medical research, or clinical laboratories. This includes hypodermic needles, syringes, pipettes, scalpel blades, blood vials, needles attached to tubing, broken and unbroken glassware, and slides and coverslips. The term medical sharps shall have the same definition as set forth in the Arizona Administrative Code R18-13-1401 as may be amended from time to time.

“Medical Waste” means any Solid Waste that is generated in the diagnosis, treatment, or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs, but does not include hazardous wastes as defined in Ariz. Rev. Stat. § 49-921 other than conditionally exempt small quantity generator waste, and shall have the same meaning as set forth in Ariz. Rev. Stat. § 49-701 as may be amended from time to time.

“Notice” means a written instrument served by the Town in one of the following manners, with time commencing from date of mailing, serving, filing or recording:

1. By the use of United States certified mail to the last known address of the Person to whom it is required to be given.
2. By personal service upon the Person or his lawful representative.

“Person” means any individual, corporation, partnership, company, firm, association, society or other entity of any legal form.

“Premises” means land, buildings, or other structures, or parts thereof.

“Recyclable Material or Recyclables” means any Solid Waste separated from other Solid Waste for the purpose of being recycled. Recyclables may include, but are not limited to metals, plastics, glass, cardboard and paper.

“Recycling” means the process of collecting, separating, cleansing, treating and reconstituting post-consumer materials that would otherwise become Solid Waste and returning them to the economic stream in the form of raw material for reconstituted products.

“Recycling Cart” means a receptacle with wheels with a capacity of up to approximately 96 gallons designed or intended to be mechanically dumped into a loader-packer type garbage truck for the Collection of Recyclables from Residential Service Units and special events.

“Refuse” means “Solid Waste.”

“Residential Service Unit” means a Dwelling Unit for which Collection Services may be provided utilizing individual Collection Containers for each Dwelling Unit and which is not part of a multifamily residential building for which Solid Waste and Recyclables are collected in dumpsters.

“Solid Waste” means all wastes and materials discarded. Solid Waste includes but is not limited to Bulk Waste, Construction Waste, Garbage, Hazardous Waste, Medical Sharps, Medical Waste, Trash and Yard Waste.

“Solid Waste Cart” means a receptacle with wheels with a capacity of up to approximately 96 gallons designed or intended to be mechanically dumped into a loader-packer type garbage truck for the Collection of Residential Solid Waste.

“Solid Waste Collection Services” means the collection and disposal, including the cost of landfills, and other disposal technology required to dispose of Solid Waste and the collection, sorting, sale and disposal of Recyclable Materials.

“Town-Supplied Containers” means those Collection Containers supplied to Residential Service Units by the Town or its contractor, whether or not the cost of the container was paid for by the Town.

“Trash” means rubbish, waste, debris and all other nonputrescible wastes.

“Yard Waste” means brush, grass and vegetation clippings, weeds, twigs, leaves, limbs, branches and trunks from trees, palm fronds and general yard, garden and tree rubbish and waste materials.

(10-08, Amended, 11/04/2010)

Section 10-1-3 Collection Services Mandatory; Exemption

- A. Except as specifically set forth in this Section, not later than July 1, 2011 and continuing thereafter, every Residential Service Unit within the Town’s corporate limits shall be provided with Solid Waste Collection Services, Recyclable Materials Collection Services and Green Waste Collection Services by the Town through a contract with a third party, and the resident thereon shall pay the cost of such Collection Services.
- B. This Section shall not apply to a model home complex not used as a Dwelling Unit.
- C. Upon determination of eligibility by the Town Manager or authorized designee, the July 1, 2011 deadline set forth in Subsection 10-1-3(A) above shall not apply to homes that have contracts in place which were entered into prior to November 4, 2010 and which do not expire prior to July 1, 2011. If deemed eligible, the date upon which Subsection 10-1-3 will be come effective for each such home shall be the date of expiration for that contract, subject to Subsection 10-1-3(D) below. To be eligible for delayed implementation as set forth in this Subsection 10-1-3(C), a homeowner or homeowner’s association, as the case may be, must provide a fully-executed and valid copy of the contract to the Town Manager or designee not later than February 1, 2011.
- D. Notwithstanding Subsection 10-1-3(C) above, in no event shall the delayed implementation date for Collection Services be extended beyond July 1, 2013.

(10-08, Amended, 11/04/2010)

Section 10-1-4 Collection Services Generally

- A. For newly constructed Residential Service Units, Town Collection Services shall commence upon the date the Dwelling Unit is first occupied.
- B. The Town shall provide, through its contractor, the appropriate Collection Containers for all Residential Service Units serviced by the Town's collection system for the accumulation, storage and collection of all Solid Waste and Recyclables. Where a residence with curbside collection requests or is required to maintain more than one Solid Waste Cart, an additional amount may be charged for each additional container.
- C. The Town reserves the right to deny Collection Services for Refuse that the Director or authorized designee determines to be hazardous, and to require the Customer to properly dispose of it by other means.

(10-08, Amended, 11/04/2010)

Section 10-1-5 Access to Premises Serviced by Town

- A. The owner or occupant of property shall ensure the Town has convenient access at all times on collection days to Town Solid Waste Collection Containers placed out for Collection Services.
- B. Containers shall be placed for collection out of the drive lanes at the edge of the pavement for the street. The Town may require Collection Containers to be placed in alternate locations if necessary for public safety.

(10-08, Amended, 11/04/2010; 01-13, Added, 08/02/2001, Council approved Ord. 01-13)

Section 10-1-6 Spilling of Refuse during Transport

- A. It is unlawful for any Person to haul, or cause to be hauled, on or along any public street, right-of-way or Alley in the Town, any Refuse or Recyclables unless such material is contained in the vehicle or receptacle in a manner that prevents the contents from falling out, leaking or spilling, and prevents obnoxious odor from escaping. If any Refuse or Recyclables fall out, leak or spill, such Person shall immediately clean up the Refuse, Recyclables or liquid.
- B. Failure to properly secure a load and any covering of the load to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the road way may be prosecuted as a violation of Ariz. Rev. Stat. § 28-1098 as may be amended from time to time.

(10-08, Amended, 11/04/2010; 01-13, Added, 08/02/2001, Council approved Ord. 01-13)

Section 10-1-7 Dumping of Refuse

It is unlawful for any Person to place or cause to be placed any Refuse or Recyclables upon any public or private property within the Town, except as specifically permitted in this Article.

(10-08, Amended, 11/04/2010; 01-13, Added, 08/02/2001, Council approved Ord. 01-13)

Section 10-1-8 Use of Another's Containers

It is unlawful for any Person to deposit, or cause to be deposited, any Refuse or Recyclables in any Collection Container not assigned to that Person by the Town or its contractor, or a licensed Solid Waste contractor providing Collection Services to property other than Residential Service Units.

(10-08, Amended, 11/04/2010; 01-13, Added, 08/02/2001, Council approved Ord. 01-13)

Section 10-1-9 Reserved

(10-08, Amended, 11/04/2010; 08-06, Added, 02/21/2008)

Section 10-1-10 Resident Responsibilities Generally

Every Person, owner, tenant, Customer or occupant receiving Collection Services shall:

1. Provide for the collection, control and disposition of Refuse in or upon any and all premises owned, leased or occupied by or for them.
2. Cooperate with such agents or agencies as may be provided by law for the collection, control and disposition of Refuse.
3. Maintain and keep clean the Alley adjacent to the Premises owned, leased or occupied by or for them and the area surrounding their Collection Containers free from Refuse and other health hazards.
4. Place or cause to be placed all Refuse and uncontained Recyclables accumulated on the Premises, owned, leased or occupied by or for them in the appropriate Collection Containers; provided that it shall only be a violation subject to penalty as set forth in this Article for the Customer or occupant to place Solid Waste in a Recycling Cart.
5. Keep lids for Collection Containers down in a closed position at all times in order to prevent flies, except when a Collection Container is being filled, emptied or cleaned.
6. Maintain Collection Containers of sufficient number to accommodate the Refuse and Recycling disposal needs of such residence, Premises or establishment, as determined by the Director or authorized designee.
7. Maintain Collection Containers in good repair and in sanitary condition, free of any markings or decals not placed on the Collection Containers by the Town or its contractor. Collection Containers that have become unserviceable due to ordinary wear-and-tear will be replaced by the Town's Contractor, at no cost to the Customer. The Town shall provide Notice in the manner set forth in Section 10-1-14 that a Container (a) has been determined to be no longer serviceable through conditions other than ordinary wear and tear or (b) is being maintained in an unsanitary condition. If Collection Containers supplied by Town or its contractor require cleaning, painting or refurbishing for reasons other than ordinary wear-and-tear, the cost of such work shall be charged to the Customer.

(10-08, Added, 11/04/2010)

Section 10-1-11 Hazardous Waste and Special Refuse

- A. No person shall deposit or cause to be deposited in any Collection Container, anything which will be dangerous or hazardous to the collection equipment or a threat to the health, safety and welfare of the Collection Employees or general public.
- B. Hazardous Waste shall be placed in an appropriate, closed container and plainly and properly marked in accordance with applicable law and industry standards. The Director shall be notified and shall instruct the Customer as to disposal options for such waste.
- C. Explosives such as arms, ammunition, war souvenirs or explosive items or powder of any kind and highly flammable materials shall not be placed in any Collection Container. Persons shall dispose of these items after calling the Town's law enforcement agency for directions and disposal options.
- D. Acids, caustics and rapid oxidizers, including chemicals used in swimming pools, shall not be disposed of in Collection Containers. Persons shall dispose of such chemicals after calling the Director for containment instructions and disposal options.
- E. Warm or hot coals or Ashes shall not be placed in any Collection Container.
- F. Dead small animals may be placed in plastic bags, tied and placed in a Solid Waste Cart. Dead livestock shall not be placed in a Collection Container and shall be disposed of separately by the owner.
- G. Dead small animals in the public right-of-way will be removed and disposed of by calling the Town's Public Works Division.
- H. Medical Sharps may be placed with other Refuse for collection, but must be properly contained in a sealed, puncture-resistant container and clearly labeled as such.
- I. Lead acid batteries, such as automobile or other vehicle batteries, shall not be disposed of in Collection Containers. Persons shall dispose of such waste after calling the Director for disposal and Recycling options.
- J. Waste soil, sand, concrete, masonry block, rock and similar materials shall not be placed in a Collection Container, shall be disposed of separately by the owner, tenant or occupant of the Premises (and not by the Town) and shall not be stored or placed in the public right-of-way.
- K. Except as permitted in Subsection 10-1-22(B)(6), debris resulting from the construction, reconstruction, demolition, or repair of Premises shall not be placed with other Refuse for collection but shall be disposed of directly by the contractor or by the Person owning, occupying, or leasing the Premises wherein such debris is accumulated. All such wastes shall be removed promptly and shall not be stored in any location where it may be blown or otherwise dispersed beyond the construction site.

(10-08, Added, 11/04/2010)

Section 10-1-12 Hours of Collection

It is unlawful to provide Solid Waste Collection Services between the hours of 7:00 p.m. and 6:00 a.m., unless approved in advance, in writing, by the Director.

(10-08, Added, 11/04/2010)

Section 10-1-13 State and Local Authority

Nothing in this Article shall be construed to infringe or supplant the authority of the State or the Maricopa County Environmental Services Division exercised pursuant to the laws of the State.

(10-08, Added, 11/04/2010)

Section 10-1-14 Inspections and Container Violations

- A. Provisions shall be made for regulated inspections by the Town or its designee to secure compliance with this Article. A minimum of 25% of the single-family Recycling Carts shall be inspected each year, and a log of such inspections shall be kept.
- B. Notice of Collection Container violations shall be given by tagging the Collection Container with a tag or label with the violations indicated on the tag or label, or by delivering a Notice in person or by mail to the owner or occupant. If action necessary to remedy the violation is not taken within ten days, the Director may remove the Collection Container and dispose of its contents at the responsible party's expense.

(10-08, Added, 11/04/2010)

Section 10-1-15 Violations and Citations

- A. Any violation of or failure to do or perform any act required by this Article constitutes a civil offense.
- B. Customers of property in violation of this Article may be held individually and jointly responsible for the violation, the prescribed civil penalties and for abating the violation.
- C. Notice of violation.
 - 1. The Town shall seek voluntary compliance with the provisions of this Section before issuing a civil citation or criminal complaint, as applicable. This shall include a written Notice of violation given to the responsible party for the property.
 - 2. A Notice of violation may be issued by the Town Manager or authorized designee.
 - 3. The Notice of violation shall set forth the nature of the violation, the action required to come into compliance with this Article, the time period provided to come into compliance, and the person at the Town to contact for further information.
 - 4. The Town shall use reasonable efforts to ensure that Notices of violation are received by the responsible party; provided, however, failure of the responsible party to receive a

Notice of violation shall not preclude the subsequent issuance of a civil citation or criminal complaint, as applicable.

5. Nothing in this Section shall prevent the Town from taking immediate action to protect the public from an imminent hazard to health or safety as otherwise provided by law.

D. Civil citations.

1. Unless otherwise designated as a criminal offense in this Section, if a violation continues past the compliance time set forth in the Notice of violation, a civil citation may be issued to the Person responsible for the violation.
2. A civil citation may be issued by the Town Manager or authorized designee.
3. The citation shall include the date of the violation, the location of the property and a reference to the section(s) violated.
4. The citation shall direct the defendant to pay the fine imposed pursuant to Subsection 10-1-15(E) or appear in the Fountain Hills Municipal Court within ten days of the issuance of the citation.
5. The citation shall provide notice that if the defendant fails to pay the fine or appear in the Fountain Hills Municipal Court as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation. In addition, a default fee may be imposed for failure to appear.
6. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:
 - a. Hand delivering the citation to the defendant.
 - b. Mailing a copy of the citation by certified or registered mail, return receipt requested, to the defendant's last known address.
 - c. Any means allowed by the Arizona Rules of Civil Procedure for the Superior Court.

E. Civil Penalties.

1. A Person convicted of a violation of this Article, other than Subsections 10-1-6, 10-1-7 or 10-1-11, shall be punishable by a base fine of not more than \$250.
2. Any defendant that fails to pay the fine or appear in the Fountain Hills Municipal Court as directed by a citation issued pursuant to this Section, or who fails to appear at the time and place set for trial of a matter arising under this Section, shall be subject to an additional default fee in an amount established by the Fountain Hills Municipal Court.
3. Any judgments issued by the Fountain Hills Municipal Court shall be subject to all surcharges and fees imposed by State law in addition to the base civil fines required by this Section.
4. Judgments shall be collected in the same manner as any other civil judgment as provided

by law.

F. Criminal penalties. A Person convicted of a violation of Subsections 10-1-6, 10-1-7 or 10-1-11 is guilty of a Class 1 Misdemeanor, punishable by term of not more than six months in jail and a base fine of not more than \$2,500.

G. The penalties set forth in this Section 10-1-15 shall be in addition to any penalty that may be assessed pursuant to State Law or the Maricopa County Environmental Health Code.
(10-08, Added, 11/04/2010)

Section 10-1-16 Reserved

Reserved
(10-08, Added, 11/04/2010)

Section 10-1-17 Reserved

Reserved
(10-08, Added, 11/04/2010)

Section 10-1-18 Reserved

Reserved
(10-08, Added, 11/04/2010)

Section 10-1-19 Reserved

Reserved
(10-08, Added, 11/04/2010)

Section 10-1-20 Town has Exclusive Right to Collect Refuse

The Town and its duly authorized agents, servants or employees have the exclusive right to collect Refuse and Recyclables from Residential Service Units within the Town, except as provided in State law.
(10-08, Added, 11/04/2010)

Section 10-1-21 Collection Service Required

No Customer in possession of any Residential Service Unit within the Town shall avoid or refuse to accept the Refuse disposal service or Recyclable Material service provided by the Town, and any such avoidance or refusal shall not exempt such Customer from the payment of charges for such services
(10-08, Added, 11/04/2010)

Section 10-1-22 Preparation of Refuse for Collection

- A. The Town or its contractor will only collect Refuse that is properly prepared for pick up.
- B. Refuse shall be prepared for pick up as follows:
 - 1. Collection Containers shall be used for curbside collection of residential Refuse.
 - 2. Garbage must be drained of liquids and shall be placed in plastic bags and tied before being placed in Solid Waste Carts.
 - 3. Refuse shall be placed in Solid Waste Carts Only, except for yard waste as set forth in Subsection 10-1-22(B)(5) below. All boxes, cartons, and crates shall be collapsed before being placed in Collection Containers. Also, large boxes and cartons shall be cut up before being placed in the Collection Containers.
 - 4. The Town's regular Collection Service will collect only the Refuse that is contained in the Refuse containers supplied by the Town or its contractor.
 - 5. Residential Customers may dispose of Yard Waste in Solid Waste Carts as long as there is room for the regular Refuse and such material does not interfere with the emptying of the Solid Waste Cart in any way. Yard Waste may also be disposed of in a Green Waste Cart, which shall be available (for an additional fee), to the Customer upon request.
 - 6. Residential Customers may dispose of small amounts of building material (less than 1/2 of the volume of the Solid Waste Cart), except concrete or masonry, provided it is placed in the residential Customer's Solid Waste Cart.
 - 7. The contents of an individual Solid Waste Cart shall not exceed 200 pounds.
 - 8. All garbage shall be bagged and securely tied.
 - 9. Wastes from small animals, pets, or livestock shall be placed in a bag, securely tied and then placed in the Solid Waste Cart.
 - 10. Lids for Solid Waste Carts must be kept down in a closed position at all times in order to prevent flies, except when a container is being filled, emptied or cleaned.
- C. Recyclables shall be prepared for pick up as follows:
 - 1. Recyclables must be reasonably clean, empty, dry and loose, and shall not be bagged or put in sealed box when placed in Recycling Carts.
 - 2. Only Recyclables may be placed in Recycling Carts. Large boxes and cartons shall be cut up or collapsed before being placed in Recycling Carts.
 - 3. Recycling Collection Service will collect only Recyclables contained in the Recycling Carts.
 - 4. Shredded paper must be in a clear plastic bag when placed in Recycling Carts.

D. Bulk Trash shall be prepared for pick up as follows:

1. Bulk Trash is collected on an on-call basis only, for an additional fee.
2. A pile up to four feet by four feet by eight feet of Bulk Trash shall be considered a single load of Bulk Trash and shall be subject to a fee for collection. Larger amounts shall be subject to additional fees.
3. All brush, tree limbs and cuttings included in the Bulk Trash shall not exceed five feet in length and 12 inches in diameter.
4. Bulk Trash shall be placed on private property within plain view as seen from the public right-of-way for pick up no earlier than the day immediately preceding the designated collection day.
5. Items must be placed parallel to the street adjacent to the owner's property line for collection.
6. Bulk Trash may not be placed on sidewalks, curbing or public right-of-way in any manner as to interfere with or be hazardous to pedestrians or vehicles, or with any mechanized Collection vehicle in such a manner as to interfere with its being emptied.
7. Appliances, air conditioners and other items that involve freon gases are not accepted as part of normal Bulk Trash service.
8. Items not accepted for collection will be left. The following are unacceptable materials: Disposable or unwanted material resulting from construction, repair or demolition of the Premises; large auto parts; tires; used oil; rocks, soil-like and concrete materials; unbagged leaves and grass clippings; and vegetation over five feet in length and 12 inches in diameter. These items must be disposed of at a landfill by the owner, lessee or occupant, or by an alternative service, such as roll-off containers.
9. Century plants, cacti and similar plants hazardous to Collection Employees shall be contained in cardboard boxes with a total weight not to exceed 60 pounds per box.

(10-08, Added, 11/04/2010)

Section 10-1-23 Container Damage or Loss

Each Town-supplied Collection Container shall be assigned to the property or Premises and not to the owner or occupant of the property or Premises. No Person who occupies any property or Premises to which a Collection Container has been assigned may remove the Collection Container from the assigned property or Premises for any reason. The Town shall not be responsible for damage or loss of a Collection Container, and in the event of damage other than ordinary wear and tear of such container, the Person who occupies the property or Premises to which a Collection Container has been assigned may be charged for such damage or loss, at the option of Director. The Town or its contractor, as applicable, will replace Collection Containers that fail due to ordinary wear and tear.

(10-08, Added, 11/04/2010)

Section 10-1-24 Placement of Collection Containers

- A. Collection Containers shall be placed in the street at the curb line or edge of pavement, as applicable. A minimum separation of three feet is required between Collection Containers.
 - B. Collection Containers shall not be placed for collection before 6:00 p.m. of the day preceding regular collection and shall be removed from the curb by 6:00 a.m. of the day after collection.
 - C. All Collection Containers shall be stored between collection days so as to not be visible from the street or public rights-of-way.
- (10-08, Added, 11/04/2010)

Section 10-1-25 Frequency of Residential Solid Waste Collection

- A. The days and hours of Solid Waste, Green Waste and Recyclable Materials collection shall be established by the Director or authorized designee.
- B. Regular Solid Waste service shall be supplied once a week (or twice a week if optional service is selected by the customer) to all Residential Service Units. Where more than one Solid Waste Cart is maintained for a single Residential Service Unit, all containers will be serviced on the same day.
- C. Regular Recycling Service shall be supplied once a week for all Residential Service Units. Where more than one Recycling Cart is maintained for a single Residential Service Unit, all containers will be serviced on the same day.
- D. Regular Green Waste Collection Service shall be supplied once a week, on the same day as regular Recycling Service, to all Residential Service Units that have requested such services at an additional fee. Where more than one Green Waste Cart is maintained for a single Residential Service Unit, all containers will be serviced on the same day.

Section 10-1-26 Reserved

Reserved
(10-08, Added, 11/04/2010, Reserved)

Section 10-1-27 Reserved

Reserved
(10-08, Added, 11/04/2010, Reserved)

Section 10-1-28 Reserved

Reserved
(10-08, Added, 11/04/2010, Reserved)

Section 10-1-29 Reserved

Reserved
(10-08, Added, 11/04/2010, Reserved)

Section 10-1-30 Reserved

Reserved
(10-08, Added, 11/04/2010, Reserved)

Article 10-2

LITTER; NUISANCES

Sections:

10-2-1	Definitions
10-2-2	Public Nuisances Defined
10-2-3	Litter in Public Places; Construction Debris
10-2-4	Depositing Litter in Gutters
10-2-5	Litter Thrown from Vehicles
10-2-6	Littering from Trucks
10-2-7	Littering in Parks
10-2-8	Deposit of Commercial Handbills on Public Property
10-2-9	Handbills: Commercial and Non-Commercial
10-2-10	Dropping Litter from Aircraft
10-2-11	Deposit of Litter on Occupied Private Property
10-2-12	Maintenance of Litter-Free Premises
10-2-13	Vacant Lots
10-2-14	Business Establishments - Receptacles
10-2-15	Unightly Premises
10-2-16	Maintenance of Pools, Spas and Similar Water Features
10-2-17	Abatement of Nuisances
10-2-18	Penalties

Section 10-2-1 Definitions

In this article, unless the context otherwise requires:

- A. "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation or for flight in the air, and includes, but is not limited to, helicopters and lighter-than-air dirigibles and balloons.
- B. "Animal" means any and all types of animals, both domestic and wild, male and female, singular and plural.
- C. "Authorized private receptacle" means a litter storage and collection receptacle as required and authorized in this article.
- D. "Commercial Handbill" means any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed, or otherwise reproduced original or copies of any matter or literature:
 - 1. Which is not defined as in this chapter as either a newspaper or a non-commercial handbill; and
 - 2. Which advertises for sale any merchandise, product, commodity, or thing; or
 - 3. Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests thereof by sales; or

4. Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind, when in either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order. Nothing contained in this clause shall be derived to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license, where such license is or may be required by any law of this state, or under any ordinance of this town; or
 5. Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.
- E. "Fowl" means any and all fowl, domesticated and wild, male and female, singular and plural.
- F. "Garbage" means putrescible animal and vegetable wastes, resulting from the handling, preparation, cooking and consumption of food.
- G. "Litter" means garbage, refuse and rubbish and all other waste material which, if thrown or deposited in a manner prohibited by this article, tends to create a danger to public health, safety and welfare, and includes, but not by way of limitation, paper and metal, such as containers or cans.
- H. "Major repair" means the removal from any vehicle of a major portion thereof, including, but not limited to, the differential, transmission, head, engine block or oil pan.
- I. "Newspaper" means a publication regularly issued for dissemination of current news, matters of general interest and local happenings at stated short intervals of time whether such publication is distributed by paid subscription or for free. Such publication shall be from a known office of publication and shall bear the dates of issue and shall be numbered consecutively.
- J. "Non-commercial handbill" means any printed or written matter, any sample or device, circular, leaflet, pamphlet, magazine paper booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the definitions of a commercial handbill or a newspaper.
- K. "Park" means a park, reservation, playground, recreation center or any other public area in the town owned or used by the town and devoted to public recreation.
- L. "Private premises" means any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and includes but is not limited to any yard, grounds, walk, driveway, porch, steps, vestibule or mail box belonging or appurtenant to such dwelling, house, building or other structure.
- M. "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.
- N. "Refuse" means all putrescible and non-putrescible solid wastes, except body wastes, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned, wrecked or junked vehicles or

parts thereof and solid market and industrial wastes.

- O. "Rubbish" means non-putrescible solid wastes consisting of both combustible and non-combustible wastes, such as paper, wrappings, cigarettes, cardboard, metal cans, yard clippings, leaves, metal, wood, glass, bedding, crockery and similar materials.
- P. "Streets or road" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and includes the whole right-of-way of the public entity maintaining said way, whether such right-of-way is paved or not.
- Q. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks, except for a device propelled solely by human power.

(98-01, Amended, 01/15/1998)

Section 10-2-2 Public Nuisances Defined

The following specific acts, omissions, conditions and things in or upon any private lot, building, structure or premises, or in or upon any public right-of-way, streets, avenue, alley, park, parkway or other public or private place in the town are hereby declared to be public nuisances, to wit:

- A. Privies, vaults, cesspools, sumps, pits or like places which are not securely protected from insects or rodents, or which are foul or malodorous, or which are not securely closed and protected or, if necessary, illuminated so as to prevent persons or objects from falling therein.
- B. Filthy, littered or trash-covered exterior areas, including all buildings and structures thereon and areas adjacent thereto.
- C. Animal manure in any quantity which is not securely protected from insects and the elements, or which is kept or handled in violation of any ordinance of the town or Maricopa County; provided, however, that nothing in this subsection shall be deemed to prohibit the utilization of such animal manure on any farm, garden or ranch in such a manner and for such purposes as are compatible with customary methods of good husbandry.
- D. Poison oak, poison ivy, or any noxious or toxic weeds or uncultivated plants (whether growing or otherwise), weeds, tall grass, uncultivated shrubs or growth higher than 24 inches or which present a fire hazard.
- E. Accumulations of bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster and all other trash and abandoned material, unless the same be kept in covered bins or metal receptacles approved by this code or any town ordinance.
- F. Accumulations of trash, litter, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding excelsior, packing straw, packing hay, or other packing material, lumber, scrap iron, tin, and other metal, or anything whatsoever in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard.
- G. Any unsightly and dangerous building, billboard or other structure, or any old abandoned or

partially destroyed building or structure, or any building or structure commenced and abandoned.

- H. All places used or maintained as junk yards or dumping grounds, or for the wrecking, disassembling, repair or rebuilding of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn out, wrecked or abandoned automobiles, trucks, tractors or machinery of any kind or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to interfere with the comfortable enjoyment or the quality of life or property by and of others; provided, however, that nothing contained in this subsection shall be deemed to prohibit any automobile wrecking yard or other junk yard where the same is otherwise permitted by the town zoning ordinance and amendments thereto, which is operated in conformity therewith.
- I. Any putrid, unsound or unwholesome bones, meat, hides, skins, or the whole or any part of any dead animal, fish or fowl, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances accumulated on private or public property; provided, however, nothing herein contained shall prevent the temporary retention of waste in receptacles in the manner provided by a county health officer, this code or ordinance of the town.
- J. The erection, continuance or use of any building, room or other place in said town for the exercise of any trade, employment or manufacture which, by noxious exhalations, including, but not limited to, smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, which is discomforting or offensive or detrimental to the health of individuals or of the public, except for normal exhalation or smoke produced by normal heating devices.
- K. Causing, allowing or permitting any artificial illumination of such intensity as to interfere substantially and unnecessarily with the use and enjoyment of public or private property by any considerable number of people, or with the lawful use of any school, public place or public street, or with any governmental or public function of the town, or as to constitute a hazard or threat to the public health, safety and welfare of the people of the town; provided, this subsection shall not apply where the person responsible for said artificial illumination is authorized by the town manager, any school within the town, this code or any ordinance of the town.
- L. Burning of refuse. No outside burning is allowed.
- M. Any unguarded or abandoned excavation, pit, well or hole dangerous, injurious or harmful to life or property.
- N. To leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under the control of any person and in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside, without first removing said door or lid, snap lock or other locking device from said icebox, refrigerator or container.
- O. The doing of any act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or other thing either:
 - 1. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous the free passage or use, in the customary manner, of any stream, public park, parkway, square,

sidewalk, street or highway in the town and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal.

2. Obstructs the free use of property so as to essentially interfere with the comfortable enjoyment of life and property by an entire community or neighborhood or by a considerable number of persons.
- P. To leave or permit to remain overnight in the front yard of any private premises, construction equipment whether free standing or on one or more axles; or to store overnight in the front yard of any private premises, any building materials whether free standing or on pallets or skids, when such equipment or materials are not for use at the premises or stored pursuant to a valid and current building permit issued by the town for work at that premises. Equipment and materials may be stored in the side yard area of any private premises so long as they are screened from public view by a wall, fence or other permitted screen.
- Q. To allow any swimming or architectural pool, spa, pond, fountain or similar water feature located on real property within the Town to remain or be maintained in a condition that poses a health or safety hazard, harbors insect infestation or creates a visible deteriorated or blighted appearance including, without limitation, a stagnant or unfiltered condition.
- R. To park, store or maintain a vehicle in violation of Articles 11-1 or 12-3 of this Code.
(17-02, Amended, 06/01/2017; Ordinance 07-08, Amended, 08/02/2007, text added)

Section 10-2-3 Litter in Public Places; Construction Debris

- A. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the town except in public receptacles, or in authorized private receptacles for collection.
- B. Construction debris shall not remain uncontained for more than twenty-four hours and shall be contained at all times upon the premises.

Section 10-2-4 Depositing Litter in Gutters

No person shall sweep into or deposit in any gutter, street or other public place within the town the accumulation of litter from any public or private sidewalk or driveway or any building or lot. Persons owning or occupying property or places of business shall keep the sidewalk and parkway in front of their premise free of litter.

Section 10-2-5 Litter Thrown from Vehicles

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the town, or upon private property.

Section 10-2-6 Littering from Trucks

No person shall drive or move any truck or other vehicle within the town unless such vehicle is so

constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place.

Section 10-2-7 Littering in Parks

No person shall throw or deposit litter in any park within the town except in public receptacles and in such manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or public place. Where public receptacles are not provided, all litter shall be carried away from the park by the person responsible for its presence and properly disposed of.

Section 10-2-8 Deposit of Commercial Handbills on Public Property

No person shall throw or deposit any commercial or non-commercial handbill in or upon any sidewalk, street or other public place within the town, nor shall any person hand out or distribute or sell any commercial handbill in any public place, but nothing in this section shall be deemed to prohibit any person from handing out or distributing on any sidewalk, street or other place within the town, without charge to the receiver thereof, any non-commercial handbill to any person willing to accept it.

Section 10-2-9 Handbills: Commercial and Non-Commercial

- A. No person shall throw or deposit any commercial or non-commercial handbill in or upon any vehicle, but it is not unlawful on any public place for a person to hand out or distribute without charge to the receiver thereof, a non-commercial handbill to any occupant of a vehicle who is willing to accept it.
- B. No person shall throw or deposit any commercial or non-commercial handbill in or upon any private premises which are known, or should be known, to such person to be temporarily or continuously uninhabited or vacant.
- C. No person shall throw, deposit or distribute any commercial or non-commercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on the premises in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing", "No Peddlers or Agents", "No Advertisement", or any similar notice, indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed, or to have any handbill left upon such premises.
- D. No person shall throw, deposit or distribute any commercial or non-commercial handbill in or upon private premises which are inhabited unless the handbill is so placed or deposited as to secure or prevent the handbill from being blown or drifted about the premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations. The provisions of this section shall not apply to the distribution of mail by the United States nor of newspapers as defined by this article.
- E. No person shall throw, deposit or distribute any commercial handbill in or upon private premises which are inhabited except upon the acceptance thereof, or the express consent therefor, by an occupant of such premises.

Section 10-2-10 Dropping Litter from Aircraft

No person in any aircraft shall throw out, drop or deposit within the town any litter, handbill or any other object.

Section 10-2-11 Deposit of Litter on Occupied Private Property

No person shall throw or deposit litter on any occupied private property within the town, 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 street, sidewalk or other public place or upon any private property.

Section 10-2-12 Maintenance of Litter-Free Premises

The owner or person in control of any private property shall at all times maintain the premises free of litter; but this section shall not prohibit the storage of litter in authorized private receptacles for collection, or within any building when not in violation of any health, fire, building or any other regulation, ordinance, order or statute.

Section 10-2-13 Vacant Lots

No person shall throw or deposit litter on any open or vacant private property within the town whether owned by such person or not.

Section 10-2-14 Business Establishments - Receptacles

No person occupying or employed in any business establishment shall deposit any litter in any receptacle, unless such receptacle shall be provided with a lid of sufficient weight to prevent the escape of any litter from the receptacle. This provision shall not apply to boxes, either postboard or wooden, not less than six inches square in size, provided a receptacle shall be provided of sufficient size to prevent any such boxes from being carried or deposited by the elements upon any street, alley or other public place.

Section 10-2-15 Unsightly Premises

Every person owning, managing, or having charge, control or occupancy of any real property in the town shall not allow any part of such property visible from the street or adjoining premises to become so unsightly or untidy as to substantially detract from the appearance of the immediate neighborhood or tend to threaten the safety and welfare of the immediate neighborhood.

Section 10-2-16 Maintenance of Pools, Spas and Similar Water Features

A. It shall be the unlawful for any person owning, managing, or having charge, control or occupancy

of any real property in the town to allow any swimming or architectural pool, spa, pond, fountain or similar water feature located on such real property to remain or be maintained in a condition that poses a health or safety hazard, harbors insect infestation or creates a visible deteriorated or blighted appearance including, without limitation, a stagnant or unfiltered condition.

- B. All such pools, spas, ponds, fountains and similar water features shall be maintained to prevent bacterial growth, algae formation, debris accumulation and noxious odors.
- C. For the purposes of this section, the term "architectural" shall mean a constructed or excavated exterior area designed to hold water on a continuous basis other than for swimming, diving or bathing purposes.
- D. Emergency Abatement.
 - 1. For the purposes of this subsection, "imminent hazard" shall mean a condition existing upon any real property, whether within or without a building that, if left un-mitigated, would cause a reasonable person to believe that such condition presents an immediate threat to life, health or public safety.
 - 2. If a condition exists that would cause a violation of Section 10-2-16 of this chapter and such condition presents an imminent hazard to life, health or public safety, the Town may initiate an emergency abatement procedure as set forth below:
 - a. The Town shall notify, in writing, the owner, the owner's authorized agent, the owner's statutory agent, an occupant or the person responsible for the real property upon which the violation exists to correct the violation within 24 hours of receipt of such notice. The notice shall specify that, if the responsible party does not correct the violation within 24 hours of receipt of the notice, the Town may abate the violation and charge the cost of such abatement, plus reasonable administrative costs, to the property owner. Notice shall be deemed proper by any of the following methods:
 - (1) By hand delivering a copy of the notice to the owner, the owner's authorized agent, the owner's statutory agent, an occupant, lessee and/or person responsible for the violation, which notice shall be deemed given on the date that the notice is so delivered.
 - (2) By mailing of a copy of the notice, via US Mail (certified, return receipt requested) to the owner, the owner's authorized agent, the owner's statutory agent, an occupant, lessee and/or person responsible for the violation at the last known address, which notice shall be deemed given three days after such notice is deposited in the US Mail.
 - (3) By prominently posting a copy of the notice on the property, which notice is deemed given on the date of such posting.
 - b. The Town Manager or authorized designee may, at any time after the

condition creating the imminent hazard has been identified, and only after attempting to make contact with the occupants of the real property upon which the imminent hazard exists, enter upon the real property for the sole purpose of placing devices or chemicals to prevent insect breeding until such time as the imminent hazard may be fully abated.

3. When any such person to whom notice, as aforesaid, has been given, and on or before the date of compliance on the notice, fails, neglects or refuses to abate from such property the condition causing the imminent hazard, the Town Manager or designee is authorized and directed to cause same to be abated at the expense of the owner or person controlling such property. Upon completion of the work, the Town Manager or designee shall prepare a verified statement of account of the actual cost of such abatement, the date the work was completed, and the street address and the legal description of the property on which said work was done, including five percent for additional inspection and other incidental costs in connection therewith. The verified statement shall be personally served on the owner or person controlling such property, in the manner provided in Rule 4(d) of the Arizona Rules of Civil Procedure, or mailed to the owner or person controlling such property at his last known address by certified or registered mail, or the address to which the tax bill for the property was last mailed. If the owner does not reside on such property, a duplicate notice shall also be sent to him by certified or registered mail at his last known address. The owner or person controlling such property shall have 30 days from the date of service to appeal in writing to the Council from the amount of the assessment as contained in the verified statement. If an appeal is not filed with the Town Clerk within such 30-day period, then the amount of the assessment as determined by the Town Manager or designee shall become final and binding. If an appeal is taken, the Council shall, not later than its second regular meeting following receipt of such appeal notice, hear and determine the appeal. The Council may affirm the amount of the assessment, modify the amount thereof, or determine that no assessment at all shall be made. The decision of the Council shall be final and binding on all persons.
4. If no appeal is taken from the amount of the assessment described in subsection 3 above, or if an appeal is taken and the Council has affirmed or modified the amount of the assessment, the original assessment or the assessment as so modified, shall be recorded in the office of the Maricopa County recorder and, from the date of its recording, shall be a lien on said lot or tract of land until paid. Such liens shall be prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes. A sale of the property to satisfy a lien obtained under the provisions of this section shall be made upon judgment of foreclosure or order of sale. The Town shall have the right to bring an action to enforce the lien in the superior court at any time after the recording of the assessment, but failure to enforce the lien by such 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. A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.

(Ordinance 07-08, Amended, 08/02/2007, text added; 06-21, Added, 08/17/2006)

Section 10-2-17 Abatement of Nuisances

A public nuisance committed under this article may be abated (A) as set forth herein, (B) as set forth in Article 10-4 of this Code or (C) by any other means provided by law.

(Ordinance 07-08, Amended, 08/02/2007; 06-21, Renumbered, 08/17/2006)

Section 10-2-18 Penalties

Any person, whether as principal, owner, agent, tenant, employee or otherwise who maintains a nuisance upon any property within the town, violates any provision of this article, or fails to comply with any provision of this article, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable as provided in Article 1-8 of this code. The conviction of any person hereunder shall not relieve such person from the responsibility to correct such violation, nor prevent the enforcement, correction or removal thereof in any manner authorized by law. Every day that a nuisance is permitted to exist, or caused to continue to exist under this article shall be deemed a separate violation.

(06-21, Renumbered, 08/17/2006)

Article 10-3

RESERVED

Sections:

10-3-1 Reserved

10-3-2 Reserved

10-3-3 Reserved

Section 10-3-1 Reserved

(17-02, Repealed, 06/01/2017)

Section 10-3-2 Reserved

(17-02, Repealed, 06/01/2017)

Section 10-3-3 Reserved

(17-02, Repealed, 06/01/2017)

Article 10-4

REMOVAL OF LITTER

Sections:

- 10-4-1 Notice to Remove**
- 10-4-2 Service of Notice**
- 10-4-3 Appeal to Town Council**
- 10-4-4 Removal by Town**
- 10-4-5 Lien for Removal**
- 10-4-6 Placement of Debris**

Section 10-4-1 Notice to Remove

To compel the removal of litter through the provisions of this section and of Sections 10-4-2 through 10-4-5, if a person owning and/or controlling any property fails, neglects or refuses to remove or properly dispose of litter, located on property owned and/or controlled by such person, both the owner of the property and the person who is in control of the property shall be given written notice by the clerk to remove all litter from such property within thirty days from the date the notice was received by the owner and/or person in control of the property, and prior to the date of compliance on the notice. Such notice shall be received not less than thirty days before the date set thereon for compliance and shall contain an estimate of the cost of removal by the town, a statement that unless the person owning and/or controlling such property complies therewith within thirty days from the date such written notice is received that the town will, at the expense of both the person owning and the person controlling said property, perform the necessary work at a cost not to exceed the estimate given in the notice, and that the owner and/or the controller of the property may appeal in writing to the clerk within thirty days from the date the notice is received by him and prior to the date of compliance.

Section 10-4-2 Service of Notice

Notice shall be personally served on the owner or person controlling such property, by a police officer of the town in the manner provided in Rule 4(d) of the Arizona Rules of Civil Procedure, or mailed to the owner or person controlling such property at his last known address by certified or registered mail, or the address to which the tax bill for the property was last mailed. If the owner does not reside on such property, a duplicate notice shall also be sent to him by certified or registered mail at his last known address.

Section 10-4-3 Appeal to Town Council

Prior to the date set for compliance on the notice, the owner or person controlling such property may appeal in writing to the town council from the demand of the notice. The town council shall hear and determine the same and the decision of the town council shall be final. The town council may either affirm or reverse the decision or modify the scope of the work as required in the notice.

Section 10-4-4 Removal by Town

When any such person to whom notice, as aforesaid, has been given, and on or before the date of compliance on the notice, or within such further time as may have been granted by the council on appeal, fails, neglects or refuses to move from such property any or all litter, the clerk is authorized and directed to cause same to be removed and disposed of at the expense of the owner or person controlling such property. Upon completion of the work, the clerk shall prepare a verified statement of account of the actual cost of such removal or abatement, the date the work was completed, and the street address and the legal description of the property on which said work was done, including five percent for additional inspection and other incidental costs in connection therewith, and shall serve a duplicate copy of such verified statement upon the person owning or controlling such property in the manner prescribed in Section 10-4-2. The owner or person controlling such property shall have thirty days from the date of service upon him to appeal in writing to the council from the amount of the assessment as contained in the verified statement. If an appeal is not filed with the clerk within such thirty day period, then the amount of the assessment as determined by the manager shall become final and binding. If an appeal is taken, the council shall, at its next regular meeting, hear and determine the appeal and may affirm the amount of the assessment, modify the amount thereof, or determine that no assessment at all shall be made. The decision of the council shall be final and binding on all persons.

Section 10-4-5 Lien for Removal

If no appeal is taken from the amount of the assessment, or if an appeal is taken and the council has affirmed or modified the amount of the assessment, the original assessment or the assessment as so modified shall be recorded in the office of the county recorder and, from the date of its recording, shall be a lien on said lot or tract of land until paid. Such liens shall be prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes. A sale of the property to satisfy a lien obtained under the provisions of this section shall be made upon judgment of foreclosure or order of sale. The town shall have the right to bring an action to enforce the lien in the superior court at any time after the recording of the assessment, but failure to enforce the lien by such 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. A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.

Section 10-4-6 Placement of Debris

It is unlawful for any person, firm or corporation to place any rubbish, trash, filth or debris upon any private or public property not owned or under the control of said person, firm or corporation and, in addition to any fine which may be imposed for a violation of any provision of this section, shall be liable for all costs which may be assessed pursuant to this article for the removal of said rubbish, trash, filth or debris.

Article 10-5

UNATTENDED CONTAINERS

Sections:

10-5-1 Unattended Containers

Section 10-5-1 Unattended Containers

No person shall place, display or maintain any unattended container for soliciting deposit of recyclable materials or donated items in any exterior location within the town limits, except in conformance with all of the following provisions:

- A. Such unattended containers may be located only within the parking lot of private property lawfully zoned, developed and used for commercial or industrial purposes or at schools, churches or charitable organizations which have similar parking facilities.
- B. Such unattended containers may be located only with the permission of the property owner, his agent or the person in possession of the property, and the container owner's name and current telephone number shall be displayed thereon in a conspicuous location.
- C. The owner of such unattended container and the property owner shall jointly or severally maintain all exterior areas within twenty-five feet of the container free from litter.

Article 10-6

ON-SITE REST ROOM FACILITIES

Sections:

10-6-1 On-Site Rest Room Facilities

Section 10-6-1 On-Site Rest Room Facilities

All construction sites shall provide on-site rest room facilities for employees while construction is occurring in conformance with all of the following provisions:

- A. There shall be a minimum of one toilet provided on-site for every single-family residential construction project. When the same general contractor has two single-family residential construction projects on adjoining lots with the same street frontage, one toilet located as close as possible to the common property shall fulfill the requirements of this article for both sites.
- B. When there is a non-single-family residential construction site, there shall be one toilet facility for every five thousand square feet of building area. Any fraction thereof shall be rounded up to require the additional toilet facility.

Article 10-7

DUST AND AIRBORNE PARTICULATE CONTROL

Sections:

- 10-7-1 Leaf Blowers**
- 10-7-2 Unpaved Areas**
- 10-7-3 Exemptions**
- 10-7-4 Compliance Monitoring**

Section 10-7-1 Leaf Blowers

It shall be unlawful for any person operating a leaf blower to blow landscape debris or dust into a public roadway.

(Ordinance 08-09, Amended, 04/17/2008; Ordinance 08-05, Added, 03/06/2008)

Section 10-7-2 Unpaved Areas

- A. Parking, maneuvering, ingress and egress areas at developments other than residential buildings with four or fewer units shall be maintained with one or more of the following dustproof paving methods:
 - 1. Asphaltic concrete.
 - 2. Cement concrete.
 - 3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate.
 - 4. A stabilization method approved by the Town.
- B. Parking, maneuvering, ingress and egress areas 3,000 square feet or more in size at residential buildings with four or fewer units shall be maintained with one or more of the following dustproof paving methods:
 - 1. Asphaltic concrete.
 - 2. Cement concrete.
 - 3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate.
 - 4. A stabilization method approved by the Town.

(Ordinance 08-05, Added, 03/06/2008)

Section 10-7-3 Exemptions

The provisions of Sections 10-7-1 and 10-7-2 do not apply to any site that has a permit issued by a control officer as defined in Arizona Revised Statutes Section 49-471, as amended, for the control of fugitive dust from dust generating operations.

(Ordinance 08-05, Added, 03/06/2008)

Section 10-7-4 Compliance Monitoring

A. Right of Entry; Inspection

The Town Manager or authorized designee shall be permitted to enter and inspect property subject to the provisions set forth in this Section as often as may be necessary to determine compliance with this Article.

1. If a property owner or occupant has security measures in place on the property that require proper identification and clearance before entry into the property, the property owner or occupant shall make the necessary arrangements to allow access to representatives of the Town.
2. Any temporary or permanent obstruction to safe and convenient access to the property to be inspected shall be promptly removed by the property owner or occupant upon request of the Town Manager or authorized designee and shall not be replaced until the inspection is complete. The costs to provide such access shall be borne by the property owner or occupant.

B. Search Warrants

If the Town Manager or authorized designee has been refused access to any part of the property believed to be in violation of this Article, and he/she is able to demonstrate probable cause that there may be a violation of any provision of this Article, or that there is a need to verify compliance with this Article or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Town Manager or authorized designee may seek issuance of a search warrant from any court of competent jurisdiction.

(Ordinance 08-05, Added, 03/06/2008)

Chapter 11

OFFENSES

Articles:

11-1 OFFENSES

Article 11-1

OFFENSES

Sections:

11-1-1	Abandoned Vehicles
11-1-2	Dangerous Constructions
11-1-3	Defacing Public and Private Property
11-1-4	Fireworks
11-1-5	Fences - Barbed Wire or Electric
11-1-6	Curfew Hours for Minors
11-1-7	Noise
11-1-8	Obstruction of View
11-1-9	Offensive Premises
11-1-10	Searchlights
11-1-11	Signs and Banners
11-1-12	Spitting
11-1-13	Water - Flow Upon Streets Prohibited
11-1-14	Discharge of Firearms
11-1-15	Smoking Prohibited
11-1-16	Criminal Trespass
11-1-17	Use of Town-owned Washes

Section 11-1-1 Abandoned Vehicles

A. Definitions. In this section unless the context requires otherwise:

1. "Abandoned vehicle" has the meaning set forth in Title 28 of the Arizona Revised Statutes and additionally means any vehicle that is missing current license plates or tabs, is inoperable, is missing body parts, is incapable of operating under its own power, is missing glass or has shattered or broken glass that prevents safe operation, is missing wheels or has flat tires.
2. "Abandoned vehicle parts" means any vehicle part which is inoperable, unclaimed, scrapped, junked, discarded or not used in or on any vehicle.
3. "Classic car" means a vehicle licensed pursuant to A.R.S. Title 28, Chapter 3, Article 2 as a horseless carriage, classic car or historic vehicle.
4. "Private property" means land owned by any person other than the United States, the state, or a political subdivision of the state.
5. "Unsheltered" means anything located outside a garage in such a manner as to be visible to a person standing upon any public street, alley, sidewalk or right-of-way or to any person standing at ground level upon any adjoining piece of property.
6. "Vehicle" means a self-propelled device in, upon or by which any person or property is or may be transported or drawn upon a public highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

7. "Vehicle parts" means any parts, components or accessories of a vehicle.

B. Unsheltered Storage Prohibited

1. The unsheltered storage of any abandoned vehicle or abandoned vehicle parts on private or public property within the corporate limits of the town for the time periods set forth in A.R.S. §28-4801(1), as amended, is hereby declared to be a nuisance and dangerous to the public safety.
2. The provisions of paragraph 1 of this subsection shall not apply to the storage of abandoned vehicles or abandoned vehicle parts on the premises of a business enterprise operating in a lawful place and manner when necessary to the operation of such business enterprise or to a storage place or depository for vehicles or vehicle parts maintained in a lawful place and manner. The exceptions contained in this paragraph shall be an affirmative defense to be pled and proved by the defendant in any judicial proceedings under this section.

C. Removal

1. The owner, tenant, lessee or other occupant of any private property within the corporate limits of the town upon which storage is prohibited by subsection B of this section and also the owner of such abandoned vehicles or abandoned vehicle parts involved in such storage shall jointly and severally abate the nuisance.
2. Any person who fails, neglects or refuses to abate such nuisance shall be notified in writing pursuant to Subsection 1-8-3(c) of this Code to abate the nuisance within the time period appearing on such written notice.
3. When any person to whom notice has been provided according to this subsection fails, neglects or refuses for more than ten days from the date appearing on the notice to abate the nuisance, the town manager or his designee is hereby authorized to remove the abandoned vehicle or abandoned vehicle parts from the premises, store same, and dispose of same according to law.
4. The owner, tenant, lessee or other occupant of any private property, from which the town has removed an abandoned vehicle or abandoned vehicle parts pursuant to this section, shall be liable for all costs incurred in removing said items from the property.
5. Every person who fails, neglects or refuses to abate the abandoned vehicle or abandoned vehicle parts nuisance after notice as provided in this section shall also be guilty of a Class 1 Misdemeanor. The imposition of any sentence shall not exempt the offender from compliance with the requirements of this section.

(17-02, Amended, 06/01/2017)

Section 11-1-2 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 11-1-3 Defacing Public and Private Property

- A. Definitions. The following words, terms and phrases, when used in this Section, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
1. "Etch" means to permanently alter a surface by use of an etching solution or implement.
 2. "Graffiti" means writing, drawing, inscribing, etching, spray painting, sketching or otherwise applying a message, slogan, sign, image or symbol or mark of any type on any public or private building, structure or surface made without the express permission of the responsible party.
 3. "Responsible party" means an owner, occupant, lessor, lessee, manager, licensee or other person having the right to control property upon which graffiti occurs.
- B. It is unlawful for any person to deface any public property, including but not limited to writing or drawing thereon, or painting or pasting thereon, or attaching thereto any handbill or advertisement or other drawing or to scratch, mar, disfigure or defile such property or the floors or walls thereof. A complaint may be filed against any person in violation of this section by any citizen of the town or any police officer or other public official of the town who witnesses the incident.
- C. It is unlawful for any person to deface any private property, by writing or drawing thereon or by painting or pasting thereon, or attaching thereto any handbill or advertisement or other drawing or to scratch, mar, disfigure or defile such property or the floor or walls thereof without the express permission of the owner of such property. In the event of a violation of this subsection, the owner or the person entitled to possession may file with the law enforcement agency a complaint against any individual who violates this section of the code.
- D. In the event of a conviction for a first offense under this section, the minimum fine shall be \$100 with a maximum fine of \$1,000; the fine for a second conviction under this section shall be a minimum fine of \$300 with a maximum fine of \$2,500. In the event the defendant charged is a juvenile, his parents or other persons with whom he resides or who have custody over such juvenile shall be likewise cited and shall be subject to the fines provided herein.
- E. In addition to the fines provided herein, the town magistrate may impose other appropriate sentencing, including the requiring of public service time within the town limits, cleaning up graffiti, picking up waste and other papers and providing for such other community service as the court deems appropriate.
- F. The council is specifically authorized to offer a reward for the apprehension of parties who might be guilty of violation of this section and to solicit reward funds and other cooperation from the citizens and business community of the town.
- G. Graffiti prohibited. All sidewalks, walls, buildings, fences, signs, and other structures or surfaces shall be kept free from graffiti that is visible from the street, right-of-way or other public or private property.
1. Notice of Abatement. If it is determined by the Town that graffiti exists on property in violation of this Section, the Town shall, in writing, notify the responsible party with a notice

of abatement. The notice of abatement shall direct that the graffiti be abated within 20 days of receipt of the notice. The notice of abatement shall state that in the event the responsible party fails to abate the graffiti within the time period specified in the notice of violation, the Town may, in addition to the civil penalty remedies set forth in Section 1-8, abate the graffiti as set forth in Subsection (G)(2) below, and may bill the responsible party for the cost and administrative charge as set forth in Subsection (G)(2) below. The notice of abatement may be served by regular mail, personal service or by posting the subject property.

2. Town's authority to abate. If the responsible party fails to abate the graffiti as required by the notice of abatement, the Town may proceed to abate the graffiti and may bill the responsible party for the cost thereof plus an administrative charge of ten percent of the cost of abatement. The Town or its authorized private contractor is expressly authorized to enter private property and abate graffiti thereon in accordance with this section.

(13-05, Amended, 05/16/2013)

Section 11-1-4 Fireworks

- A. Definitions. The following words, terms and phrases, when used in this Section, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

1. **“Consumer firework”** means those fireworks defined as such by Ariz. Rev. Stat. § 36-1601, as amended.
2. **“Display firework”** means those fireworks defined as such by Ariz. Rev. Stat. § 36-1601, as amended.
3. **“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.
4. **“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, including a Consumer Firework, Display Firework or Permissible Consumer Firework as defined by Ariz. Rev. Stat. § 36-1601, as amended.
5. **“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 as defined in Ariz. Rev. Stat. § 36-1601, as amended.
6. **“Permissible consumer fireworks”** means those fireworks defined as such by Ariz. Rev. Stat. § 36-1601, as amended.
7. **“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.
8. **“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. Use of Fireworks prohibited; exceptions.

1. The use, discharge or ignition of Fireworks within the corporate limits of the Town is prohibited, except that Permissible Consumer Fireworks may be used during the periods of June 24 through July 6 and December 24 through January 3 of each year.
2. Nothing in this Section shall be construed to prohibit the use, discharge or ignition of Novelty Items or the occurrence of a Supervised Public Display of Fireworks.
3. Permits may be granted by the Fire Chief or authorized designee for conducting a properly Supervised Public Display of Fireworks. Every such Supervised 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 or authorized designee has authority to impose conditions on any permits granted.
4. Failure to comply with any permit requirements issued by the Fire Chief or authorized designee is a civil offense punishable by a base fine of up to one thousand dollars (\$1,000) for each violation.

C. Sale of Fireworks.

1. The sale of fireworks within the corporate limits of the Town is prohibited, except that Permissible Consumer Fireworks may be sold during the periods of May 20 through July 6 and December 10 through January 3 of each year.
2. No person shall sell or permit, authorize the sale of Permissible Consumer Fireworks in conflict with State law. Nothing in this Subsection C or in this Section shall be construed to prohibit the sale of novelty items.
3. No person shall sell, permit or authorize the sale of Permissible Consumer Fireworks to a person who is under sixteen (16) years of age.
4. Permits for the sale of Permissible Consumer Fireworks are required and may be granted by the Fire Chief or his authorized designee. Violations of this Section or Arizona Revised Statutes, Chapter 13, Article 1, shall be grounds for immediate revocation of such permit.
5. The storage of fireworks within the corporate limits of the Town shall be in accordance with the National Fire Protection Association Standards 1124, 2006 Edition, as amended.

D. Posting of signs by persons engaged in the sale of Fireworks; civil penalty.

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, including Permissible Consumer Fireworks except novelty Items as defined by Town Code, Section 11-1-4, is prohibited within the corporate limits of the Town.
 - b. Consumer Fireworks authorized for sale under State law may not be sold to persons

under the age of sixteen (16).

2. Signs required under this Section shall be placed at each cash register and in each area where Fireworks are displayed for sale.
3. The Fire Chief or authorized 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 Town's website and filed with the Town Clerk's office.
4. Failure to comply with Subsections 11-1-4(D)(1) or (2) of this Section is a civil offense punishable by a base fine of up to seven hundred fifty dollars (\$750.00).

E. Authority to enforce violations of this Section; Means of enforcement.

1. The Fire Chief or authorized designee, a Maricopa County Sheriff Deputy, a Town Code Enforcement Officer or the Town Prosecutor may issue civil complaints to enforce violations of this Section designated as civil offenses.
2. Any person authorized pursuant to this section to issue a civil citation may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil citation.

F. Liability for emergency responses related to use of Fireworks.

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 required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this Section is prima facie evidence of liability under this Section.
2. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to Subsection 11-1-4(F)(1) of this Section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The liability imposed under this Section is in addition to and not in limitation of any other liability that may be imposed.

G. Penalty. Unless otherwise specifically set forth in this section, the civil penalty for violating any prohibition or requirement imposed by this section is a base fine of one thousand dollars (\$1,000) for each violation.

(14-05, Amended, 06/05/2014; 10-05, Amended, 10/21/2010)

Section 11-1-5 Fences - Barbed Wire or Electric

Unless permitted by zoning, it is unlawful for any person to erect or maintain within the town any electric fence or any fence constructed in whole or in part of barbed wire. Any such fence is hereby declared a public nuisance and subject to abatement by order of the town court.

Section 11-1-6 Curfew Hours for Minors

A. Definitions. In this section unless the context otherwise requires:

1. "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action.
2. "Guardian" means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by an authorized agency or court; or at least twenty-one years of age and authorized by a parent or guardian to have the care and custody of a minor.
3. "Insufficient control" means failure to exercise reasonable care and diligence in the supervision of the juvenile.
4. "Minor" means any person under eighteen years of age.
5. "Parent" means a person who is a natural parent, adoptive parent or step-parent of another person.

B. Offenses.

1. It is unlawful for any minor under the age of sixteen years to be in, about or upon any place in the town away from the property where the youth resides between the hours of 10:00 P.M. and 5:00 A.M. of the following day.
2. It is unlawful for any minor sixteen years of age or older and under the age of eighteen, to be in, about or upon any place in the town away from the property where the child resides between the hours of 12:00 A.M. and 5:00 A.M.
3. It is unlawful for a parent or guardian of a minor to knowingly permit, or by insufficient control, allow a minor to violate paragraphs 1 or 2 of this subsection.
4. It is unlawful for a parent, guardian or other person having the care, custody or supervision of the minor to fail or refuse to take custody of the minor after such demand is made upon him by a law enforcement officer who arrests the minor for violation of paragraphs 1 or 2 of this subsection.

C. Defenses/Exceptions.

It is a defense to prosecution under subsection B, including paragraph 3 of subsection B, of this section that the minor was:

1. Accompanied by the minor's parent or guardian.
2. With prior permission of the parent or guardian, in a motor vehicle involved in interstate travel.
3. With prior permission of the parent or guardian, in an employment activity or going to or returning home from an employment activity without any detour or stop by the most direct route.

4. Involved in an emergency.
5. With prior permission of the parent or guardian, was engaged in reasonable, legitimate and specific business or activity. Examples include, but are not limited to, a juvenile with prior permission of the parent or guardian, attending an official school, religious or other recreational activity supervised by adults who take responsibility for the minor, or going to or returning home from an official school, religious or other recreational activity supervised by adults who take responsibility for the minor.
6. With prior permission of the parent or guardian, engaged in a reasonable and legitimate exercise of First Amendment rights protected by the United States Constitution.
7. Married and sixteen years of age or over, or in the military.
8. On the sidewalk abutting their residence or on the exit door neighbor's property with the consent of the neighbor.

D. Enforcement.

1. Before taking any enforcement action under this section, a police officer shall attempt to ascertain the apparent offender's age and reason for being in the place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based upon the circumstances, the minor's responses and minor's conduct, no defense as provided in subsection C of this section is probably present.
2. In addition to any other powers he/she may have, any law enforcement officer who arrests a minor for violating any of the provisions of paragraphs 1 or 2 of subsection B of this section is also hereby empowered to demand of the parent, guardian or other person having the care, custody or supervision of the minor that such parent, guardian or other person come and take the minor into custody. The law enforcement officer is also empowered to take the minor to a designated location where arrangements can be made for a parent, guardian or other appropriate party to take the minor into custody. Should there be a failure of the parent, guardian or other person to take custody of such minor, the officer may then be empowered to take the minor home.

- E. Penalty. First offense convictions, under this section, shall be sentenced as a petty offense. Second offense convictions, under this section, shall be sentenced as a class 2 misdemeanor. Third and all subsequent convictions under this section shall be sentenced as a class 1 misdemeanor.

Section 11-1-7 Noise

- A. Purpose. The purpose of this Section is to promote the health and general welfare of the citizens and businesses of the Town by balancing the need to protect the community against unreasonable noise with the legitimate goal of promoting and encouraging commercial and business growth in the community.
- B. Definitions. The following words, terms and phrases, when used in this Section, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

1. “‘A’ band level” means the total sound level of all noise as measured with a sound level meter using an A-weighting network. The unit is the dB(A).
 2. “Complainant” means a person who files a noise complaint.
 3. “Decibel” means a sound pressure that is 20 times the logarithm to the base 10 of the ratio of the pressure of sound to the reference pressure, 2×10^{-5} newton/meter².
 4. “Emergency work” means any (a) work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency that has or may result in a disruption of service and that is necessary to restore property to a safe condition following a public calamity, (b) work required to protect the health, safety or welfare of persons or property or (c) work by private or public utilities when restoring utility service.
 5. “Noise violation” means any noise created that exceeds the maximum limits as specified in this Section.
 6. “Sound level (noise level)” means the sound measured with the A-weighting and slow response by a sound level meter.
 7. “Sound level meter” means an instrument including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels that satisfies the pertinent requirements for Type 1 sound level meters as set forth in the most recent version of American Standard Specifications for Sound Level Meters ANSI S1.4-1983.
 8. “Sound Source” means the cause and location of the noise.
- C. Measurement Standard. Sound level shall be measured with a sound level meter operated in accordance with the manufacturer’s guidelines and instructions.
- D. Noise Violations Prohibited. Subject to the complaint processing provisions in Subsection 11-1-7(E) below, it shall be a violation of this Section to emit or allow to be emitted noise in excess of the permissible noise levels set forth in Table 1 below.

Table 1 Permissible Noise Levels:		
Measurement Location	Time	Decibel dB(A)
Wall of structure proximate to complainant’s location ¹	6:00 am to 10:00 ² pm	70
Wall of structure proximate to complainant’s location	10:00 ² pm to 6:00 am	50

¹For sounds emanating from within a multifamily residential building (in a unit or the common area of the building), the measurement location shall be anywhere in a dwelling unit within that building.

²The 10:00 p.m. cut-off time may be extended to 11:00 p.m. in conjunction with a temporary use permit issued by the Town pursuant to Section 2.03 of the Town Zoning Ordinance.

- E. Complaint Processing. After receiving a noise complaint from a complainant, an individual authorized under Subsection H of this Section shall measure the noise level with such measurements being made at the wall of the complainant’s location. The authorized individual shall determine a noise violation has occurred when the decibel levels at the

complainant's location exceed the maximum decibel levels set forth in Table 1 above.

- F. Sound Truck. 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 that emits loud and raucous noises and is attached to and upon any vehicle.
- G. Braking devices. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated within the Town any compression release or other engine braking device designed to aid in the braking or deceleration of any vehicle which results in noise in excess of that which would otherwise be produced from such vehicle without such braking device. The provisions of this Subsection do not apply to public safety vehicles or to any vehicle while descending Golden Eagle Boulevard.
- H. Violations. The Town Manager or designee, code official or Town law enforcement officer may issue civil citations pursuant to Subsection 1 8 3(D) of this Code to enforce violations of this Section. After civil enforcement as set forth in Subsection 1 8 3(D) of this Code, any POST-certified law enforcement officer or the Town Prosecutor may issue criminal complaints pursuant to Subsection 1-8-2(A) to enforce this Section.
- I. Exemptions. The following uses and activities shall be exempt from Town noise level regulations:
 - 1. Noises resulting from air-conditioning equipment when such equipment is in proper operating condition.
 - 2. Noises resulting from lawn maintenance equipment operated during daylight hours when such equipment is functioning with all mufflers and standard noise-reducing equipment in use and in proper operating condition.
 - 3. Noises of safety signals, warning devices and emergency pressure relief valves.
 - 4. Noises resulting from an authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
 - 5. Noises resulting from emergency work.
 - 6. Church chimes or bells.
 - 7. Any noise created by any Town or Town contractor vehicles, equipment or facilities while being operated or utilized for official business.
 - 8. Noises resulting from a special event being held pursuant to a Town-issued special event permit.
 - 9. An un-amplified human voice.
 - 10. Noises resulting from an event being held by a school.

(16-10, Amended, 12/15/2016, and Restated)

Section 11-1-8 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 11-1-9 Offensive Premises

It is unlawful for any person to suffer, or permit any premises belonging to or occupied by him, or any cellar, privy, vault, pool, sewer or private drain therein to become nauseous, foul or offensive to the senses or prejudicial to the public health or comfort.

Section 11-1-10 Searchlights

It is unlawful for any person to operate within the town any incandescent or arc-type searchlight, beacon light or similar lighting device designed to and capable of projecting a beam of light into the sky for a distance in excess of one-half mile unless permission is obtained from the council. The provisions of this section shall not apply to emergency searchlights or beacons operated pursuant to public authority.

Section 11-1-11 Signs and Banners

It is unlawful for any person to place any banner or sign upon any streetlight pole, traffic signal pole or utility pole within the town without first obtaining an encroachment permit from the town manager and owner of the pole.

Section 11-1-12 Spitting

It is unlawful for any person to spit upon any of the public sidewalks or crosswalks in the town or upon any public path, by-way or highway, or in or on any public ground or park in the town or upon the floor or interior of any public building in the town.

Section 11-1-13 Water - Flow Upon Streets Prohibited

- A. 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 town.
- B. It is unlawful for any person to willfully or negligently permit or cause the escape or flow of irrigation water in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition to such traffic or to cause damage to the public streets of the town through the failure or neglect to properly operate or maintain any irrigation structure, delivery ditch or waste ditch in which said person has a vested right or interest or through the willful or negligent failure of said person to accept irrigation water after it has been ordered by him.

Section 11-1-14 Discharge of Firearms

- A. Except as provided in Subsection "C" below, no person shall fire, discharge or shoot any weapon within the corporate limits of the town.
- B. For the purposes of this section only, "weapon" shall mean any firearm or bow and arrow, including but not limited to, a pistol, revolver, rifle, shotgun, air gun, BB gun, pellet gun, dart gun, gas operated gun, crossbow or other similar gun or instrument.
- C. The provisions of Subsections "A" and "B" above shall not apply to the use of any gun or instrument by:
 - 1. A law enforcement officer or other duly authorized public official in performance of an official law enforcement duty.
 - 2. Any person at a properly licensed and supervised shooting range.
 - 3. Any person when such weapon is used only for the necessary protection of property, habitation or person in a manner authorized by the laws of the State of Arizona.
- D. For the purposes of this section only, "properly licensed and supervised shooting range" means a shooting range operated by a club affiliated with the National Rifle Association of America, The Amateur Trapshooting Association, The National Skeet Association or any other nationally recognized bow and arrow or firearm shooting organization, any agency of the federal government, the State of Arizona, Maricopa County, the Town of Fountain Hills or any public or private school.
- E. Any person who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this article shall, upon conviction thereof, be guilty of a Class 1 misdemeanor.
- F. Nothing in this section shall be interpreted to infringe upon a citizen's right to bear arms as guaranteed by the United States Constitution.

(98-07, Amended, 02/19/1998)

Section 11-1-15 Smoking Prohibited

It is unlawful for any person to smoke tobacco in any form in any building owned or directly leased by the town.

Section 11-1-16 Criminal Trespass

- A. Definitions. As used in this Section, unless the context clearly requires otherwise:
 - 1. "Entering or remaining unlawfully" means an act of a person who enters or remains on premises when such person's purpose for so entering or remaining is not licensed, authorized or otherwise privileged.
 - 2. "Entry" means the intrusion of any part of any instrument or any part of a person's body

inside the external boundaries of a structure or unit of real property.

3. "Fenced commercial yard" means a unit of real property surrounded completely by either fences, walls, buildings, or similar barriers or any combination thereof, and used primarily for business operations or where livestock, produce or other commercial items are located.
4. "Fenced residential yard" means a unit of real property immediately surrounding or adjacent to a residential structure and enclosed by a fence, wall, building or similar barrier, or any combination thereof.
5. "Nonresidential structure" means any structure other than a residential structure.
6. "Residential structure" means any structure, movable or immovable, permanent or temporary, adopted for both human residence and lodging whether occupied or not.
7. "Structure" means any building, object, vehicle, railroad car or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage.

B. A person commits criminal trespass by knowingly:

1. Entering or remaining unlawfully in or on a residential structure or a fenced residential yard.
2. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
3. Entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.
4. Entering or remaining unlawfully in or on any nonresidential structure or in any fenced commercial yard.
5. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.

C. Criminal Trespass is a class 1 misdemeanor.

D. In the event the defendant charged is a juvenile, the parents or other adult persons with whom the juvenile resides or who have custody over such juvenile shall be likewise cited and shall be subject to the fines provided herein.

E. The Town Manager is authorized to (1) offer a reward for the apprehension of parties who might be guilty of violation of this section and (2) solicit reward funds and other cooperation from the citizens and businesses within Fountain Hills.

(06-15, Added, 06/15/2006)

Section 11-1-17 Use of Town-owned Washes

It is unlawful for any person to enter upon or use any Town-owned wash, as such term is defined in Section 9-3-2 of this Code, in violation of the following provisions:

- A. It shall be unlawful for any person, other than Town personnel conducting Town business therein, to occupy or be present in Town-owned washes during any hours in which the washes are not open to the public. Washes are open to the public from dawn to dusk daily unless otherwise posted by the Town. A violation of this subsection shall constitute an act of criminal trespass, as defined by Section 11-1-16 of this Code.
- B. The following are prohibited in all Town-owned washes:
1. Committing any act in a Town-owned wash that endangers the health and safety of any person.
 2. Using any portion of any Town-owned wash for archery, firearms, sling shots, rockets, darts, rocks or other projectile devices.
 3. Dumping, unauthorized grading, or otherwise utilizing a Town-owned wash or any materials or vegetation therein, in an unauthorized or prohibited manner.
 4. Creating or maintaining open fires.
 5. Overnight camping.
 6. Pets, unless on a leash and under the constant control of a person and provided that any such person controlling a pet shall, at all times in a Town-owned wash (i) carry the necessary items to properly dispose of animal waste and (ii) immediately remove any animal waste from the Town-owned wash and dispose of same in a proper trash receptacle.
 7. Skateboards, roller blades, roller skates, bicycles or any (non-motorized) rolling vehicles, unless used in an area specifically designated for such use by the Town.
 8. Driving or riding, at any time, any automobile, truck, motorcycle, motor scooter, all-terrain vehicle, other motor vehicle, horse or other animal upon the grounds of any Town-owned wash.
 9. Consuming alcoholic beverages, spirituous liquors or malt beverages (beer), as defined in A.R.S. § 4-101, *et seq.*, as amended.
 10. Possessing a glass container, unless specifically authorized by the Town.
 11. Throwing, tossing or otherwise propelling any glass object, whether willfully and maliciously or carelessly and negligently, and causing such glass object to break in a Town-owned wash.
 12. Swimming, wading, bathing, fishing or boating in or on any water located within a Town-owned wash.
- C. The parents or adult persons with whom a juvenile resides shall be financially liable for consequences of the juvenile's infraction of this Section and/or any damage such Juvenile causes on or to Town-owned property.
- D. Penalties:

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1. A person who violates the provisions of this Section shall, upon conviction thereof, be guilty of a Class 1 Misdemeanor.
2. A person who violates the provisions of this Section may, upon conviction thereof, be temporarily or permanently banned from using any Town-owned wash.

(06-20, Added, 09/07/2006)

Chapter 12

TRAFFIC

Articles:

12-1	ADMINISTRATION
12-2	TRAFFIC CONTROL
12-3	PARKING
12-4	RESERVED
12-5	MOTORIZED SKATEBOARDS AND MOTORIZED PLAY VEHICLES

Article 12-1

ADMINISTRATION

Sections:

12-1-1 Administration

12-1-2 Definitions

Section 12-1-1 Administration

It shall be the duty of the town law enforcement agent to provide for the enforcement of the street traffic regulations of the town and all of the state vehicles laws applicable to street traffic in the town, to make arrests for traffic violations, to investigate accidents and to assist in the developing ways and means to improve traffic conditions and to carry out all duties specially imposed upon the town law enforcement agent by this chapter.

Section 12-1-2 Definitions

The following words, terms and phrases, when used in this Chapter, have the meanings ascribed to them in this Section.

- A. "Commercial Vehicle" means a vehicle or combination of vehicles used to transport passengers or property if the vehicle:
1. Has a gross vehicle weight rating of 10,000 pounds or more; or
 2. Transports passengers for hire and has a design capacity of seven or more passengers.
- B. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a street, including devices used exclusively upon stationary rails or tracks, except for a device propelled solely by human.

(17-02, Added, 06/01/2017)

Article 12-2

TRAFFIC CONTROL

Sections:

12-2-1	Directing Traffic
12-2-2	Traffic Control Devices; Speed Limits
12-2-3	Authority to Designate Crosswalks, Establish Safety Zones and Mark Traffic Lanes
12-2-4	Authority to Place and Obedience to Turning Markers
12-2-5	Authority to Place and Obedience to Restricted Turn Signs
12-2-6	Limitations on Turning Around
12-2-7	One-Way Streets and Alleys
12-2-8	Regulation of Traffic at Intersections
12-2-9	Drivers to Obey Signs
12-2-10	Processions
12-2-11	Operation of Vehicles on Vacant Lots
12-2-12	Commercial Vehicles Prohibited on Certain Streets
12-2-13	Penalties

Section 12-2-1 Directing Traffic

- A. The town law enforcement agent 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 town law enforcement agent in directing, traffic in the immediate vicinity.

Section 12-2-2 Traffic Control Devices; Speed Limits

- A. The town manager or his designee shall direct the placement and maintenance of traffic control devices, signs and signals when and as required under the traffic regulations of the town to make effective the provisions of said regulations, and may place and maintain such additional traffic control devices as he may deem necessary to regulate traffic under the traffic laws of the town or under state law or to guide or warn traffic. The authority of the town manager or his designee to place and maintain signs under this chapter shall not include authority to post signs setting speed limits on any part of a street or highway within the town different from the speed limits specified in A.R.S. Title 28, Article 6, Chapter 6 unless the council has first adopted an ordinance in conformance with the provisions of A.R.S. § 28-703 authorizing a change of speed limit on such part of a street or highway within the town.
- B. The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the traffic regulations of the town unless otherwise directed by the town law enforcement agent, subject to the exceptions granted in this chapter or by state law.
- C. Speed Limit List. Pursuant to this section and A.R.S. § 28-703, the town has determined on the basis of engineering and traffic investigation that the maximum speed permitted on certain streets within the town can be declared to be reasonable and safe at speeds in excess of 25 miles per hour. The following table sets forth the maximum speed limit for certain streets within the

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corporate limits of the town and the segments of said streets affected by the increased maximum safe and reasonable speed limits:

<u>Street</u>	<u>Segment</u>	<u>Speed Limit (MPH)</u>
All Other Roads		25
Avenue of the Fountains	Palisades Blvd. To La Montana Drive	30
Boulder Drive	Golden Eagle Blvd. to Blackbird Drive	30
Del Cambre Avenue	Grande Blvd. to Calaveras Avenue	25
Desert Canyon Drive	Sunridge Drive to Golden Eagle	35
Eagle Mountain Pkwy.	Shea Blvd. to Summer Hill Blvd.	35
Eagle Ridge Drive	West of Copperwynd Drive	35
El Lago Blvd.	Palisades Blvd. to Saguaro Blvd.	30
El Pueblo Blvd.	Fountain Hills Blvd. to Grande Blvd.	35
Fountain Hills Blvd.	Shea Blvd. to 300' north of Kingstree Blvd.	35
Fountain Hills Blvd.	300' north of Kingstree to Ironwood Drive	45
Fountain Hills Blvd.	Ironwood Drive northward to Palisades Blvd.	35
Fountain Hills Blvd.	Palisades Blvd. to north town limit	35
Glenbrook Blvd.	Bainbridge Avenue to Fountain Hills Blvd.	35
Golden Eagle Blvd.	Palisades Blvd. to (700' west of Edgewater Drive)	35
Grande Blvd.	Saguaro Blvd. to east town limit	30
Indian Wells Drive	Nicklaus Drive to 700' west of Saguaro Blvd.	20
Kingstree Blvd.	Fountain Hills Blvd. to Saguaro Blvd.	35
La Montana Drive	El Lago Blvd. to Parkview Avenue	30
Palisades Blvd.	Golden Eagle Blvd. to Saguaro Blvd.	35
Palisades Blvd.	Shea Blvd. to Golden Eagle Blvd.	45
Palomino Blvd.	Palisades Blvd. to Fountain Hills Blvd.	30

Saguaro Blvd.	Shea Blvd. to Fountain Hills Blvd.	35
Shea Blvd.	West town limit to 1200' west of Technology Blvd.	50
Shea Blvd.	1200' west of Technology Blvd. to east town limit.	45
Summer Hill Blvd.	Eagle Mountain Pkwy. to gate north of Miramonte Way	30
Sunridge Drive	Palisades Blvd. to Golden Eagle Blvd.	35
<u>Private Streets</u>		
Firerock Country Club Dr.	Shea Boulevard to Rock Ridge Trail	20

(02-14 Ordinance, Amended, 10/17/2002, Shea Blvd. change & added Firerock Country Club Drive; 01-01 Ordinance, Amended, 01/18/2001, Fountain Hills Blvd. (Kingstree to Ironwood); 99-31 Ordinance, Amended, 10/21/1999, Del Cambre Avenue Segment speed limit; 99-21 Ordinance, Amended, 08/05/1999; Council Action, Amended, 12/03/1998)

Section 12-2-3 Authority to Designate Crosswalks, Establish Safety Zones and Mark Traffic Lanes

The town manager or his designee is hereby authorized:

- A. To designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections 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 safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians.
- C. To mark lanes for traffic on street pavement at such places as he may deem advisable, consistent with the traffic laws of the town.

Section 12-2-4 Authority to Place and Obedience to Turning Markers

- A. The town manager or his designee is authorized to place markers, buttons or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law.
- B. When authorized markers, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications.

Section 12-2-5 Authority to Place and Obedience to Restricted Turn Signs

- A. The town manager or his designee is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left or U-turn and shall have placed proper signs at such intersections. The making of such turns may be prohibited 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.
- B. Whenever authorized signs are erected indicating that no right, left or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such sign.

Section 12-2-6 Limitations on Turning Around

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

Section 12-2-7 One-Way Streets and Alleys

- A. The town manager or his designee may designate any streets or alleys which are to be limited to one-way traffic.
- B. Whenever the town manager or his designee designates any one-way street or alley, he shall cause to be placed and maintained signs giving notice thereof, and no such regulation shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

Section 12-2-8 Regulation of Traffic at Intersections

The town manager or his designee shall designate through streets, intersections where stops are required, and intersections where vehicles shall yield the right-of-way.

Section 12-2-9 Drivers to Obey Signs

Whenever traffic signs are erected as provided in this chapter, every driver of a vehicle shall obey such signs unless directed to proceed by the town law enforcement agent or a traffic control signal. No driver shall drive upon or through any private property such as an oil station, vacant lot or similar property to avoid obedience to any regulation included in this chapter.

Section 12-2-10 Processions

- A. No procession or parade, except funeral processions, shall be held without first securing a permit from the town, and all such requests for permits shall state the time, place of formation, proposed

line of march, destination and such other regulations as the town may set forth therein.

- B. A funeral procession composed of a procession of vehicles shall be identified by such methods as may be determined and designated by the town.
- C. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated. This provision shall not apply at intersections where traffic is controlled by traffic control signals or the town law enforcement agent.
- D. Each driver in a funeral or other procession shall drive as near to the right hand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe.

Section 12-2-11 Operation of Vehicles on Vacant Lots

- A. No person shall operate a vehicle on or across or park on any portion of an unpaved or unstabilized vacant lot or area unless the property is dust-proofed pursuant to the Town Code or the Town Zoning Ordinance or the site has been issued a Maricopa County permit for the control of fugitive dust from dust generating operations.
- B. No person shall operate any vehicle, including an off-highway vehicle, an all-terrain vehicle, or an off-road recreational motor vehicle, on an unpaved surface that is not a public or private road, street or lawful easement and that is closed by (1) the landowner by rule or regulation of a federal agency, this state, a county or municipality or (2) proper posting if the land is private land.
- C. This section does not apply to the operation of vehicles used in the normal course of business or the normal course of government operations.
- D. A person who violates this section 12-2-11 is guilty of a Class 3 Misdemeanor. In addition to or in lieu of a fine pursuant to this section 12-2-11, a judge may order a person to (1) perform at least eight but not more than twenty-four hours of a community restitution course or (2) complete an approved safety course related to the off-highway operation of motor vehicles, or both.

(Ordinance 08-05, Amended, 03/06/2008)

Section 12-2-12 Commercial Vehicles Prohibited on Certain Streets

- A. No person shall operate any commercial vehicle at any time upon any town streets except those streets or parts of streets described as truck routes.
- B. In the event a pickup or delivery point is not located on a truck route but is located within the corporate limits of the town, then a person operating a commercial vehicle may leave an adopted truck route by the nearest route to make a delivery or pickup after which the vehicle must return immediately by the nearest route to an adopted truck route.
- C. The designated truck routes shall be:

1. The full length of Palisades Blvd.
 2. Technology Drive from 100 feet north of Saguaro Boulevard to Shea Boulevard.
 3. Saguaro Boulevard from Fountain Hills Boulevard south to 600 feet southwest of Firebrick Drive.
 4. Laser Drive from Technology Drive west to end of cul de sac east of Leo Drive.
 5. Grande Boulevard from the eastern town limits to Saguaro Boulevard.
 6. Fountain Hills Boulevard from Saguaro Boulevard to the northern town limits.
- D. Notwithstanding any of the provisions of this section, no person shall operate any commercial vehicle on any street within the town except upon designated through truck routes when such operation is not in connection with a delivery or pickup within the corporate limits of the town. Designated through truck routes shall be limited to the following:
1. The entire length of Shea Blvd.
 2. For through trucks entering or exiting via McDowell Mountain Road, Eagle Ridge Drive or Sunset Vista Drive any designated truck route may be used.
- E. The provisions of this section do not apply to:
1. Passenger buses.
 2. Any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility.
 3. Any vehicle operated for residential refuse collection.
 4. Fire engines and other emergency vehicles.
 5. Vehicles of other municipalities or political subdivisions.
- F. Special permits for over-height or over-weight vehicles as defined by the Arizona Department of Transportation Motor Vehicle Division General Order No. 17-4-201 through 208, may be acquired from the town engineer.
- (17-02, Amended, 06/01/2017; 02-13, Amended, 09/05/2002, Ordinance approved)

Section 12-2-13 Penalties

Violations of this article shall be punishable as set forth in Chapter 1, Article 1-8, Section 1-8-2, Subsection B, of this code.

(12-02, Amended, 03/01/2012; 98-08, Added, 02/19/1998)

Article 12-3

PARKING

Sections:

- 12-3-1 Method of Parking**
- 12-3-2 Blocking Traffic**
- 12-3-3 Parking Adjacent to Schools**
- 12-3-4 Authority to Erect Signs Restricting Parking**
- 12-3-5 Parking Vehicles on Sidewalks**
- 12-3-6 Restricted Parking Areas for the Physically Disabled**
- 12-3-7 Stopping, Standing or Parking Prohibited in Specified Fire Lanes**
- 12-3-8 Stopping, Standing or Parking Vehicles on Streets or Right-of-Way for the Purpose of Sale**
- 12-3-9 Parking in Residential Areas**
- 12-3-10 Storage and Parking of Commercial Vehicles in Residential Districts**
- 12-3-11 Storage and Parking of Unoccupied, Non-Commercial Mobile Homes, Boats, Aircraft, Truck Campers, Camping Trailers, Travel Trailers, and Other Trailers**
- 12-3-12 Private Parking Areas - Generally**
- 12-3-13 Private Parking Areas - Consent; Notice to Public**
- 12-3-14 Permission Required to Remove Vehicles from Private Parking Areas**
- 12-3-15 Notice to Town Law Enforcement Agent and Sheriff**
- 12-3-16 Maximum Towing Charges; Twenty-Four Hour Vehicle Retrieval**
- 12-3-17 Owner's Liability for Parking Offenses**
- 12-3-18 Commencement of Proceedings for Violations**
- 12-3-19 Penalties**

Section 12-3-1 Method of Parking

Except as otherwise posted, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right hand wheels of such vehicle parallel to and within eighteen inches of the right hand curb.

(17-02, Repealed & Replaced, 06/01/2017)

Section 12-3-2 Blocking Traffic

- A. No person shall stop, stand or park any vehicle upon a street in the Town in such a manner or under such conditions as to leave available less than twenty feet of the width of the roadway for the free movement of vehicular traffic, except that a person may stop temporarily, in the actual loading or unloading of passengers, or when necessary, in the observance of traffic signs or signals of the Town law enforcement agent.
- B. No person shall park a vehicle within an alley or 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 blocking the alley to the free movement of vehicular traffic.

(17-02, Repealed & Replaced, 06/01/2017)

Section 12-3-3 Parking Adjacent to Schools

When signs are erected indicating no parking on that side of the street adjacent to any school property, no person shall park a vehicle in any such designated place for one hour before school opens until one hour after school closes on any school day.

(17-02, Repealed & Replaced, 06/08/2017)

Section 12-3-4 Authority to Erect Signs Restricting Parking

The Town Manager or his designee may have erected signs requiring parking at an angle to the curb, allowing parking on the left hand curb on one-way streets, notifying drivers that parking is prohibited and restricting parking in any way that may be necessary. When such signs have been erected, no person shall stop or stand a vehicle in disobedience to such parking restrictions.

(17-02, Repealed & Replaced, 06/01/2017)

Section 12-3-5 Parking Vehicles on Sidewalks

No person shall park any vehicle, whether in usable condition or not, nor shall an owner permit his vehicle to be parked upon any sidewalk in the Town.

(17-02, Repealed & Replaced, 06/01/2017)

Section 12-3-6 Restricted Parking Areas for the Physically Disabled

- A. No person shall park a vehicle in a parking space on either public or private property set aside and identified for use only by persons with physical disabilities, unless the vehicle has displayed thereon a distinguishing insignia or numbered plates bearing the international wheelchair symbol as provided in Arizona Revised Statutes, Title 28. The handicap card shall be placed on the dashboard so as to be visible.
- B. Subsection A of this section shall apply only to those parking spaces that are identified with standard signs or other markers, as approved by the Town.

(17-02, Repealed & Replaced, 06/01/2017)

Section 12-3-7 Stopping, Standing or Parking Prohibited in Specified Fire Lanes

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a Town law enforcement agent or traffic control device, either on public or private property, in any of the following places:

- A. Within fifteen feet of a fire hydrant.
- B. In any area designated as a fire lane.

(17-02, Repealed & Replaced, 06/01/2017)

Section 12-3-8 Stopping, Standing or Parking Vehicles on Streets or Right-of-Way for the Purpose of Sale

No person shall stop, stand or park any vehicle, wholly or partly, on any public street or right-of-way within the Town for the purpose of selling the vehicle.

(17-02, Repealed & Replaced, 06/01/2017; 04-13, Repealed, 10/07/2004, Previous title: Parking of Commercial Vehicles; 99-33, Amended, 11/04/1999)

Section 12-3-9 Parking in Residential Areas

- A. No person shall park or cause to be parked a vehicle on any portion of a residential property that is visible from a street or adjacent property unless such vehicle is parked upon a driveway designated as such on the approved site plan for the property and which is surfaced with asphaltic concrete, pavement bricks, cement concrete or other approved material designated in Section 7.03 of the Fountain Hills Zoning Ordinance. For the purposes of this subsection, a vehicle shall not be deemed visible if it is completely enclosed within a six foot high solid wall with view-obscuring gates.
- B. No person shall park or cause to be parked a vehicle on any residential lot for which a certificate of occupancy has not been issued.
- C. No person shall park or cause to be parked, whether on a driveway designated as such on the approved site plan for the property or on the public street within 1,000 feet of the property occupied by such person, a combined number of vehicles exceeding the number calculated as set forth in this Subsection 12-3-9(C). The maximum number of vehicles permitted to be parked outside of an enclosed garage in a single-family dwelling within a residentially zoned area shall be one for each 750 square feet of livable area of a residence, as specified in the Maricopa County Assessor's records. The total vehicle count shall not include vehicles completely enclosed within a six foot high solid wall with view-obscuring gates, delivery vehicles, or vehicles associated with guests visiting for less than 24 hours.
- D. The provisions of this section shall not apply to a model home parking lot permitted pursuant to a valid temporary use permit.

(17-02, Repealed & Replaced, 06/08/2017)

Section 12-3-10 Storage and Parking of Commercial Vehicles in Residential Districts

Except while loading, unloading, delivering, or making a service call at a residence, commercial vehicles shall be subject to the following restrictions:

- A. No person shall park or store a commercial vehicle on streets in residential districts or on any portion of a residential property that is visible from a street or adjacent property. For the purposes of this subsection, a commercial vehicle shall not be deemed visible if it is completely enclosed within a six foot high solid wall with view-obscuring gates.
- B. Notwithstanding the allowable parking described in Subsection 12-3-10(A) above, in no event shall a commercial vehicle over 22 feet in length be parked on streets in residential districts or on any portion of a residential property.

(17-02, Repealed & Replaced, 06/01/2017; 99-33, Amended, 11/04/1999; 98-08, Added, 02/19/1998)

Section 12-3-11 Storage and Parking of Unoccupied, Non-Commercial Mobile Homes, Boats, Aircraft, Truck Campers, Camping Trailers, Travel Trailers, and Other Trailers

- A. Unoccupied non-commercial motor homes, camping trailers, travel trailers, utility trailers and boats shall only be stored, parked, or located as follows:
1. When such vehicle is parked or stored within a residential area, said vehicle shall not be parked on a street, and when on a residential lot, tract or parcel, such vehicle must be parked on a hard surface parking pad and enclosed within a six foot high solid masonry, concrete, or earthen product wall that obscures views of the vehicle from any street or any adjacent lot, tract or parcel. Further, any access gates shall be constructed of view-obscuring materials to provide effective site screening.
 2. When such vehicle or trailer is in the process of being loaded or unloaded, such vehicles shall not be located on the street or on that portion of a lot that is in the front of the primary structure at anytime for more than two consecutive days in any seven-day time period.
 3. When a temporary visitor permit has been issued by the zoning administrator and said permit is displayed on the right side of the dashboard of such vehicle or in such location on the trailer as designated and approved by the zoning administrator. Temporary visitor permits may only be issued for parking upon a driveway designated as such on the approved site plan for the property and which is surfaced with asphaltic concrete, pavement bricks, cement concrete or other approved material designated in Section 7.03 of the Fountain Hills Zoning Ordinance.
 4. Such vehicles and trailers must not be located on a residentially zoned lot or parcel of land that does not have a residential structure.
 5. In all non-residential zoning districts, such vehicles must be located behind the rear of the principal building, except when such vehicles are for sale by a business with a valid Town business license.
- B. Occupied non-commercial motor homes, camping trailers, travel trailers, utility trailers and boats may only be parked in recreational vehicle parks.
- C. If storage or parking as required by this Section 12-3 is not feasible due to unusual physical characteristics of a property, the Town Manager or authorized designee may administratively allow for alternative parking or storage solutions. Any such administrative approval must be in writing and must include the specific parking or storage solution that is permitted, the duration of the permitted use, and any conditions of such approval. Administrative approvals under this subsection shall not run with the land and shall be applicable only to the person to whom the approval is granted.

(17-02, Repealed & Replaced, 06/01/2017; 06-14, Amended, 05/18/2006; 99-33, Added, 11/04/1999)

Section 12-3-12 Private Parking Areas - Generally

No person shall park a vehicle in any private parking area without the express or implied consent of the owner or person in lawful possession of such property.

(17-02, Repealed & Replaced, 06/01/2017; 12-02, Amended, 03/01/2012; 99-33, Added, 11/04/1999)

Section 12-3-13 Private Parking Areas - Consent; Notice to Public

- A. The owner or person in lawful possession of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking area unless such parking area is posted with signs as prescribed by this section which are clearly visible and readable at each entrance to the parking area and as required by the Town Engineer. The signs shall contain the following information:
1. Any restrictions on parking.
 2. That violator's vehicle will be towed away at violator's expense.
 3. The words "Contact Fountain Hills Law Enforcement at 480-837-8800" or current correct telephone number.
 4. The maximum cost to the violator, including storage fees and any other charges that could result from the disposition of his vehicle parked in violation of parking restrictions.
 5. A reference to this Section 12-3-14.
- B. No person shall tow or transport a vehicle from a private parking area unless the signs are posted as required by this section and contain all the information specified in subsection A of this section.

(17-02, Repealed & Replaced, 06/01/2017; 05-12, Added, 11/03/2005)

Section 12-3-14 Permission Required to Remove Vehicles from Private Parking Areas

No person shall tow or transport any vehicle from a private parking area without the permission of the owner or operator of the vehicle unless such person receives the express written permission from the owner or agent of the owner of the private parking area. The person towing or transporting the vehicle may not act as the agent of the owner.

(17-02, Added, 06/01/2017)

Section 12-3-15 Notice to Town Law Enforcement Agent and Sheriff

Any person towing or transporting any vehicle from a private parking area without the express permission of the vehicle owner, shall notify the Town Marshall/Law Enforcement Agent and the Fountain Hills office of the Maricopa County Sheriff immediately upon the taking of such action and provide the following information:

- A. The name and address of the owner of the vehicle, if known.
- B. The vehicle license number and description.
- C. The reason the vehicle was moved without the permission of the person parking such vehicle.
- D. The location where the vehicle was taken.

- E. The name, address and telephone number of the person or company that towed or transported the vehicle.

(17-02, Added, 06/01/2017)

Section 12-3-16 Maximum Towing Charges; Twenty-Four Hour Vehicle Retrieval

- A. The maximum rate and charge for towing, transporting and impounding a vehicle from private property without the permission of the owner or operator of the vehicle shall be seventy-five dollars.
- B. No person towing or transporting the vehicle from a private parking area shall charge any fee or amount in excess of the amount specified in this section.
- C. Any person towing or transporting a vehicle from the private parking area shall maintain personnel able and authorized to release any vehicle to its owner on a twenty-four hour basis, seven days a week.

(17-02, Added, 06/01/2017)

Section 12-3-17 Owner's Liability for Parking Offenses

The registered owner(s) of any vehicle that has been parked in violation of any of the provisions of this article or any other Town ordinance prohibiting or restricting parking shall be prima facie responsible for such violation and subject to penalty therefor.

(17-02, Added, 06/01/2017)

Section 12-3-18 Commencement of Proceedings for Violations

- A. An action to hear and determine an alleged violation of this article shall be commenced by issuance of a citation by a peace officer of the State of Arizona or the Town Manager or his authorized designee.
- B. The citation shall be in the form of deemed appropriate by the Town Manager.
- C. Service of any citation for violation of this Article may be accomplished, and will be deemed proper and complete, by any of the following methods:
 - 1. By having the defendant sign the citation with a promise to appear in court ten or more days after issuance of the citation.
 - 2. If the defendant refuses to sign the citation, by hand delivering a copy of the citation to the defendant.
 - 3. By affixing the citation to any vehicle owned by the defendant and the parking, location or abandonment of which constitute the offense charged in the citation.
 - 4. In the event service cannot be accomplished as set forth above, the defendant may be served by any means allowed by the Arizona Rules of Civil Procedure for the Superior Court.

(17-02, Added, 06/01/2017)

Section 12-3-19 Penalties

Unless otherwise specifically designated in this Article, violations of this Article shall be punishable as set forth in Chapter 1, Article 1-8, Section 1-8-3 of this Code. Each day that a violation continues shall be a separate offense punishable by imposition of a civil sanction not to exceed \$250.

(17-02, Added, 06/01/2017)

Article 12-4

RESERVED

Sections:

12-4-1 Reserved

12-4-2 Reserved

12-4-3 Reserved

12-4-4 Reserved

12-4-5 Reserved

12-4-6 Reserved

12-4-7 Reserved

Section 12-4-1 Reserved

Reserved

(17-02, Repealed, 06/01/2017)

Section 12-4-2 Reserved

Reserved

(17-02, Repealed, 06/01/2017; 00-28, Amended, 11/16/2000)

Section 12-4-3 Reserved

Reserved

(17-02, Repealed, 06/01/2017)

Section 12-4-4 Reserved

Reserved

(17-02, Repealed, 06/01/2017; 06-14, Amended, 05/18/2006)

Section 12-4-5 Reserved

Reserved

(17-02, Repealed, 06/01/2017)

Section 12-4-6 Reserved

Reserved

(17-02, Repealed, 06/01/2017; 12-02, Amended, 03/01/2012)

Section 12-4-7 Reserved

Reserved

(17-02, Repealed, 06/01/2017)

Article 12-5

MOTORIZED SKATEBOARDS AND MOTORIZED PLAY VEHICLES

Sections:

12-5-1	Definitions
12-5-2	Prohibitions
12-5-3	Public Nuisance
12-5-4	Disclosure Requirements
12-5-5	Violations
12-5-6	Repealed
12-5-7	Repealed
12-5-8	Repealed

Section 12-5-1 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:

- A. "Merchant" means any person required to obtain a business license pursuant to Section 8-1-1 of this Code.
- B. "Motorized play vehicle" means a coaster, scooter, any other alternatively fueled device (excluding battery operated toy carts designed for children under the age of eight (8) years to ride in or on) or other motorized vehicle that is self-propelled by a motor or engine and which is not otherwise defined in Arizona Revised Statutes, Title 28, as amended, as an "electric personal assistive mobility device", "moped", "motor-driven cycle", "motor vehicle", "motorized wheelchair" or "motorcycle".
- C. "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two (2) tandem wheels in contact with the ground and which is not otherwise defined in Arizona Revised Statutes, Title 28, as amended, as an "electric personal assistive mobility device", "moped", "motor driven cycle", "motor vehicle", "motorized wheelchair" or "motorcycle".
- D. "Multi use path" means an off-road hard surfaced path that may be separated from motorized vehicle traffic by an open space or barrier. A multi use path is used exclusively for pedestrians, and any human-powered vehicles or devices.

(05-15, Amended, 11/03/2005; 98-35, Added, 12/17/1998)

Section 12-5-2 Prohibitions

- A. No motorized skateboard or motorized play vehicle may be operated on any public property, sidewalk, roadway, crosswalk or any other part of a highway or on any bikeway, bicycle path or trail, equestrian trail or multi-use path.
- B. No motorized skateboard or motorized play vehicle may be operated on any private property or private roadway without the express written permission of the owner of the

property or roadway, the person entitled to immediate possession of the property, or the authorized agent of either.

- C. The parent, guardian, or legal custodian of any minor shall not authorize or knowingly permit such minor to violate any of the provisions of this section. If a sanction is imposed upon a minor who is found to be in violation of this section, the parents or legal guardian having custody or control of the minor shall be jointly and severally liable with the minor for payment of the sanction, whether or not the parents or guardian knew of, or anticipated, a violation of this section.

(05-15, Amended, 11/03/2005, Previous title: Application of Traffic Laws; 98-35, Added, 12/17/1998)

Section 12-5-3 Public Nuisance

It shall be public nuisance and a threat to public safety for any person to operate a motorized skateboard or motorized play vehicle on any private property or private roadway in violation of any of the following restrictions:

- A. No person shall operate a motorized skateboard or motorized play vehicle in a manner causing excessive, unnecessary, or offensive noise which disturbs the peace and quiet of any neighbor or neighborhood or which causes discomfort or annoyance to a reasonable person of normal sensitivity.
- B. No person shall operate a motorized skateboard or play vehicle at any time between sunset and sunrise.
- C. No child under the age of fourteen (14) years shall operate a motorized skateboard or motorized play vehicle.
- D. No person shall operate a motorized skateboard or motorized play vehicle at a speed greater than is reasonable and prudent under the circumstances then existing.
- E. The operator of a motorized skateboard or motorized play vehicle approaching a sidewalk, bicycle path, bicycle lane, or multi- use path in order to cross such, shall yield the right-of-way to all other users.
- F. No operator of a motorized skateboard or motorized play vehicle shall allow passengers when the motorized skateboard is in operation or motion.
- G. No person operating or riding upon a motorized skateboard or motorized play vehicle shall attach himself or herself or the motorized skateboard or motorized play vehicle in any manner to any other vehicle.
- H. No person shall operate a motorized skateboard or motorized play vehicle while carrying any package, bundle, or article which prevents the operator from keeping both hands upon the steering mechanism at all times.
- I. No person, other than the owner, shall operate a motorized skateboard or motorized play vehicle on private property or on a private roadway without the written permission of the property owner.

- J. No person shall operate a motorized skateboard or motorized play vehicle that has been mechanically or structurally altered from the original manufacturer's design.
- K. No person shall operate a motorized skateboard or motorized play vehicle except in compliance with all duties applicable to the driver of the vehicle by the laws of this state declaring rules of the road applicable to vehicles, or by the traffic laws of the town applicable to the driver of a vehicle except as to those provisions which by their nature can have no application provided, however that nothing contained in this subsection shall be construed to require the licensing or registration of motorized skateboards or motorized play vehicles, the licensing of motorized skateboard or motorized play vehicle operators, or the carrying of insurance covering accidents involving motorized skateboards or motorized play vehicles.

(05-15, Amended, 11/03/2005, Previous title: Responsibility of Parents, Guardians and Custodians; 98-35, Added, 12/17/1998)

Section 12-5-4 Disclosure Requirements

It is unlawful for a merchant to sell motorized skateboards or motorized play vehicles without making the disclosures required by this section. Any merchant who sells motorized skateboards or motorized play vehicles within the Town shall post, in a prominent place at each location where motorized skateboards or motorized play vehicles are on display, a notice to the effect that operation of motorized skateboards and motorized play vehicles is prohibited:

- A. On any public property, sidewalk, roadway, or any other part of a highway or on any bikeway, bicycle path or trail, equestrian trail, or multi-use path in the Town of Fountain Hills; and
- B. On any private property without the written permission of the owner of the property, the person entitled to immediate possession of the property, or the authorized agent of either.

(05-15, Amended, 11/03/2005, Previous title: Prohibited Operation; 02-04, Amended, 04/18/2002; 98-35, Added, 12/17/1998)

Section 12-5-5 Violations

- A. Any violation of or failure or refusal to do or perform any act required by Section 12-5-2, except subsection 12-5-2(B), of this Article constitutes a civil traffic violation. Civil traffic violations are subject to the provisions of Arizona Revised Statutes, Title 28, Chapter 6, Articles 20 and 21 and amendments thereto.
- B. Any violation of or failure or refusal to do or perform any act required by subsection 12-5-2(B) or Section 12-5-3 of this Article constitutes a civil offense. The municipal court of the town shall conduct a hearing and shall assess a sanction of \$100.00 for a first violation, \$200.00 for a second violation and \$500.00 for all subsequent violations. Each day a violation occurs shall constitute a separate event.

(05-15, Amended, 11/03/2005, Previous title: General Operating Restrictions; 98-35, Added, 12/17/1998)

Section 12-5-6 Repealed

(05-15, Repealed, 11/03/2005, Previous title: Operating Restrictions on Roadway; 98-35, Added, 12/17/1998)

Section 12-5-7 Repealed

(05-15, Repealed, 11/03/2005, Previous title: Required Safety Equipment; 02-04, Amended, 04/18/2002; 98-35, Added, 12/17/1998)

Section 12-5-8 Repealed

(05-15, Repealed, 11/03/2005, Previous title: Violations; 98-35, Added, 12/17/1998)

Chapter 13

CABLE COMMUNICATIONS

Articles:

13-1	TITLE
13-2	PURPOSE
13-3	DEFINITIONS
13-4	AUTHORITY TO GRANT LICENSE, LICENSE REQUIRED, NON-EXCLUSIVE LICENSE
13-5	APPLICATION PROCEDURES
13-6	STANDARDS FOR GRANTING OR DENYING LICENSE APPLICATIONS
13-7	LICENSE AGREEMENT
13-8	OPERATING REQUIREMENTS FOR CABLE COMMUNICATIONS SYSTEMS
13-9	FEES, BONDS, LETTERS OF CREDIT, LIQUIDATED DAMAGES AND APPEALS
13-10	TERMINATION - REVOCATION
13-11	RENEWAL
13-12	TRANSFERS AND CHANGE OF CONTROL
13-13	INDEMNITY-INSURANCE
13-14	ADMINISTRATION
13-15	GENERAL PROVISIONS
13-16	RIGHTS RESERVED TO THE COUNCIL

Article 13-1

TITLE

This chapter shall be entitled the Town of Fountain Hills Cable Communications Chapter.

Article 13-2

PURPOSE

It is the purpose of this chapter to provide for the regulation and control of cable television systems operating within the Town of Fountain Hills, Arizona, by the council, in the public interest; to authorize the council to grant one or more non-exclusive licenses to operate cable communications systems; to provide for the use of town streets, public utility easements, public rights of way and public places by licensee and compensation to the town for use of same; and to require that the provision of this chapter be applicable to all licenses granted by the council. It is the further purpose and intent of this chapter to facilitate the provision of high quality cable television service to the citizens of the town while minimizing disruptions of the public domain for system installation and maintenance.

Article 13-3

DEFINITIONS

For purposes of this chapter, the following words, abbreviations, and their derivations shall have the meanings given herein. Words not defined are given the meaning in Section 602 of the Cable Act, 47 U.S.C. Subsection 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must" or "shall" are mandatory and the word "may" is permissive.

"Access channel" shall mean one or more channels dedicated in whole or in part for local non-commercial programming which is set aside for educational use or governmental use without a charge by the licensee for channel usage and which is not originated by a cable company; provided that such access programming shall not include:

1. the retransmission of local television broadcast signals, or
2. programming produced by persons unaffiliated with the cable company under the provisions of Section 612 of the Cable Act.

"Applicant" means any person that applies for a license.

"Application" means a proposal to construct and/or operate a cable system within the town, transfer a license, renew a license or modify a license. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

"Basic cable service" or "basic service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq., as amended.

"Cablecasting" means a non-broadcast signal that originates within the facilities of the cable communications system.

"Cable service" means:

1. one way transmission to subscribers of:
 - a. video programming, or
 - b. other programming service, and
2. subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

"Cable television system" or "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the town.

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Such term does not include:

1. Facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses or crosses (above or through) any public right-of-way;
3. A facility of a common carrier that is subject, in whole or part, to the provision of Title II of the Communications Act of 1934, 47 U.S.C. Subsection 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers or
4. Any facility of any electric utility used solely for operating its electric utility systems. Furthermore, if there is a connection of any such exempt system to a licensed system such exemption shall cease.

"Change of service" means all requests by existing subscribers for modification to their cable service, such as additions or deletions of premium services, additional outlets, remote controls FM service, etc. Such terms shall not include, initial installation of basic cable service, total disconnection of basic cable service or service calls.

"Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and is capable of delivering a television channel.

"Complaint" is a subscriber or citizen issue, presented in verbal or written form, to the licensee or the town relating to any aspect of the licensee's performance under this chapter.

"Control of licensee or applicant" means the legal or practical ability to direct the affairs of the licensee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest. In the case of a limited partnership, a change in limited partner interests shall not constitute a change in control where the limited partners have no power to participate in the management of the partnership, and the general partner retains full power.

"Converter" is an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television set.

"Council" means the Town Council of the Town of Fountain Hills, Arizona, or such representative person or entity as may be designated initially or at some future date to act on cable television matters.

"Density" means the number of potential subscriber households per mile of cable system. Dwelling units shall be counted when they are within 250 feet of any portion of the cable distribution system including trunk and feeder cable lines.

"Dwelling unit" means any separate and distinct structure or part thereof which exists in finished form, occupied or capable of year-round occupation, and serves as a residence to one or more persons. Included in this definition, but not limited to are: all single family homes, each apartment unit, each condominium unit, patio homes, guest quarters and similar type structures.

"FCC" means the Federal Communications Commission or successor agency.

"Gross revenues" shall mean all cash, credits, property of any kind or nature, or other consideration, less

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related bad debts up to a maximum of one and one-half percent annually of such cash, credits and property, received directly or indirectly by a licensee, its affiliates, subsidiaries, parent and any person, firm or corporation in which a licensee has a financial interest or which has a financial interest in a licensee, arising from or attributable to the licensee's operation of its cable television system within the town, including, but not limited to:

1. Revenue from all charges for services provided to subscribers;
2. Revenue for all charges for the insertion of commercial advertising upon the cable system;
3. Revenue from all charges for the leased use of studios;
4. Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a subscriber to receive cable service;
5. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional users.
6. Revenue from all charges for the use of or lease of leased access channels or band width.
7. Revenue from the production or transmission over the cable system of video programming by licensee including programming produced by its mobile facilities.
8. Any other income derived from the cable system.

Gross revenues shall not include taxes collected by licensee on behalf of any governmental authority; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary services provided to licensee's employees and is required by this chapter or any license; and dividends or other distributions made in respect of any stock or securities, or value received by a licensee or any of its affiliates, subsidiaries or parent relating to licensee services or through cooperative advertising. Gross revenues shall not include cash, credit, property of any kind or nature or other consideration received by a licensee's affiliates, subsidiaries, parent or any person, firm or corporation ("affiliate") in which a licensee has a financial interest or which has financial interest in a licensee for any sales of advertising on the cable system, services to provide programming on the cable system, production services and/or telecommunication services which are cable services when such services are provided by an affiliate, which has all the following characteristics: the affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records) and a separate mission; it makes payments to licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than licensee in the same industry as licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of license fees on gross revenues. Nothing contained in this exclusion from gross revenues shall be interpreted to exclude from gross revenues such cash, credit, property of any kind or nature or other consideration which would be considered the licensee's gross revenues derived from the operation of the cable system under the Cable Act. Except for gross revenue from such sales of advertising on the cable system, services to provide programming on the cable system, production services or telecommunication services which are cable services received by such affiliate, this paragraph shall not exclude from gross revenues any source of gross revenues which an existing licensee itself is receiving at the time it is granted a license under this chapter, as revised April 6, 1995.

When a licensee (or an affiliate) holds one or more other cable television licenses in Maricopa County,

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Arizona and receives and allocates gross revenues from paragraphs 2, 6 and 7 under this definition, then gross revenues derived from paragraphs 2, 6 and 7 under this definition, shall be allocated pro rata to the town based on the ratio of the number of subscribers of licensee (or an affiliate), in the town to the number of subscribers of licensee (or an affiliate) in all the jurisdictions in Maricopa County, Arizona, in which licensee (or an affiliate) holds a cable license. If a licensee does not allocate its gross revenues derived from paragraphs 2, 6 and 7 under this definition from such other jurisdictions then the number of subscribers in such jurisdictions shall not be included in the total number of subscribers in all other jurisdictions.

"Interconnect" or "interconnect of facilities" is the connection of one or more channels of licensee's system with other cable systems by direct cable, microwave link, satellite or other appropriate methods.

"Leased channel" or "leased access channel" means any channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. Subsection 532, for commercial use by persons unaffiliated with the licensee.

"License" means the non-exclusive right and authority, granted by the council, as described in this chapter, to construct, maintain and operate a cable television system through use of the public streets or public places in the town. This term does not include any license or permit that may be required by the chapter or other laws, ordinances or regulations of the council for the privilege of transacting and carrying on a business within the town or for disturbing the surface of any street or public thoroughfare.

"Licensee" means the person granted a license agreement by the council and any lawful successor, transferee or assignee of said person.

"License agreement" means a contract entered into in accordance with the provisions of this chapter between the council and a licensee that sets forth the terms and conditions under which the license will be exercised.

"Malfunction" means an equipment or facility failure that results in the loss of a viewable signal on one or more channels. A "major malfunction" has occurred when five or more channels are affected.

"Outage" means an equipment or facility failure that results in a total loss of signal on all cable channels affecting three or more subscribers in a quarter section within any one hundred twenty minute period.

"Overbuild" means a cable system constructed to serve subscribers currently served by an existing cable system, including those parts of an existing system that will be constructed within six months pursuant to plans filed with the council.

"PEG access channel" or "PEG channel" means any channel set aside for educational use or governmental use without a charge by the licensee for channel usage.

"Person" means any individual, corporation, joint venture, association, syndicate, trust, partnership or any other business entity who holds or applies for a license from the council.

"Property of licensee" means all property owned, installed or used within the town by a licensee in the conduct of a cable television system business.

"School" means any public educational institution, which is accredited by a nationally recognized institution, including primary and secondary schools, colleges and universities.

"Service call" shall result when service problems occur relating to:

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1. Fewer than three complaints regarding total loss of signal on all channels within the same quarter section within one hundred twenty minutes,
2. A degraded signal or picture on one or more channels, or
3. Property damage by licensee employees or authorized contractors.

"Standard drop" means that cable connection which requires no more than two hundred fifty foot drop measured from the nearest point of subscribers home or place of business to the nearest active tap on the cable system, involving only one outlet and standard materials and does not involve a wallfish. In addition, a standard drop shall exclude custom installation work including specific subscriber requested work that requires nonstandard inventory or cable routing that requires construction methods exceeding reasonable underground or aerial work.

"Street" means the surface, the air space above the surface and the area below the surface of any public street, road, highway, path, sidewalk, alley, court, easement or other public right-of-way or public place now or hereafter held by the town, County of Maricopa or State of Arizona for the purpose of public travel or public utilities.

"Subscriber" means any individual or entity legally receiving, for any purpose, cable services of the licensee's cable television system including, but not limited to, the basic service, redistribution of television broadcast signals, radio signals, licensee's original cablecasting, community programming, government and education access channels and other services such as leased channels, data and facsimile distribution, premium and pay per view channels and police, fire and similar public service communication.

"Town" means the Town of Fountain Hills, a municipal corporation of the State of Arizona, in its present boundaries, and its future boundaries as increased or decreased by law.

"Town manager" means the Town Manager of Fountain Hills, Arizona, or his designee, as will be communicated to the licensee in writing, if and when such designation occurs.

"Two-way capability" means the incorporation in a cable system of all appropriate design and engineering characteristics so that two-way transmission, including addressability, over the system can be implemented with a minimum of expense.

Article 13-4

**AUTHORITY TO GRANT LICENSE, LICENSE REQUIRED, NON-EXCLUSIVE
LICENSE**

- A. Pursuant to A.R.S. §9-505, as amended, the council has the authority to issue non-exclusive licenses to construct, install, maintain and operate cable communication systems within the town, and to regulate those cable operations. The council's authority is also based in common law pursuant to the town's ownership of the fee simple title to the streets of the town as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use.
- B. No provision of this chapter shall be deemed or construed to require the granting of a license.
- C. No person shall construct, install or maintain a cable system within any street in the town, or within any other public property of the town, unless a license agreement authorizing such use of said streets or property is in full force and effect.
- D. Any person providing or maintaining a cable system in the town pursuant to a license granted by Maricopa County, Arizona, prior to the incorporation of the town, may continue to provide or maintain such system until such time as the town has granted its first license. If the person providing or maintaining a system does not receive one of the first town licenses, then the person shall have one hundred twenty days from the effective date of the first licenses to provide for the abandonment or removal of the system.
- E. Any license issued by the council shall be non-exclusive, and the council specifically reserves the right to grant such additional licenses for cable systems as the council deems appropriate.

Article 13-5

APPLICATION PROCEDURES

- A. Any person desiring to construct, install, maintain or operate a cable communication system within the town shall submit an application to the council. This application shall consist of executed application forms as prescribed and furnished by the town. Failure of any applicant to fully provide all information requested on the application forms will be sufficient cause for not considering the application. This application shall be filed with the town clerk.
- B. All applications filed with the town clerk remain the property of the town. Applications for a license may be submitted only in response to a request for proposals (RFP) issued by the council in compliance with the provisions of this chapter. Applications submitted pursuant to a request for proposals may be returned as non-responsive if they do not comply with all requirements of the request. The council reserves the right to issue a request for proposals at any time.
- C. Applications for consent to transfer a license or an interest in a license must conform to the requirements of Articles 13-9 and 13-12 of this chapter, while applications for renewal must conform to Articles 13-9 and 13-11.
- D. An application for modification of a license agreement must conform to Article 13-9 of this chapter and include, at a minimum, the following information:
 - 1. The specific modification requested;
 - 2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved;
 - 3. A statement as to whether the modification sought is pursuant to 47 U.S.C. Section 545, and, if so, a demonstration that the requested modification meets the legal standards of said section; and
 - 4. Any other information necessary for the council to make a determination.
- E. To be acceptable for filing, an application must be submitted with any required filing fee, be properly executed on the forms prescribed by the council, and contain the information required by any required application form, this chapter, and meet the requirements of any applicable request for proposals.

Article 13-6

STANDARDS FOR GRANTING OR DENYING LICENSE APPLICATIONS

- A. All applications received that are acceptable for filing shall be placed in a public file with the town clerk. The council shall publish notice of each application in a newspaper of general circulation within the proposed service area once a week for two consecutive weeks. The notice shall indicate the following:
 - 1. The proposed service, or changes in service, and/or
 - 2. Proposed changes in ownership; and
 - 3. Where the application may be viewed; and
 - 4. The due date for submission of any written comments; and
 - 5. The date and location of a public hearing on the proposed application.
- B. Notice of such hearing shall be published and held in accordance with the provision of A.R.S. §9-50, subsection B. All interested parties shall be afforded a reasonable opportunity to be heard.
- C. The council shall give full consideration to each application. The following factors may be deemed appropriate and shall be considered:
 - 1. The financial qualifications of the applicant and its ability to construct and operate the proposed system.
 - 2. The need for and quality of the service proposed, including rates to subscribers, whether or not rates are to be regulated.
 - 3. The technical, legal and character qualifications of the applicant, including applicant's willingness to abide by the limitations of this chapter.
 - 4. Technical and performance adequacy of the proposed system design, plant and equipment, including any specific knowledge or experience the council may have with the applicant.
 - 5. Where an applicant proposes to overbuild an existing cable system, the economic and technical feasibility of multiple cable systems, the impact on the existing licensee's system and the public interest, if the application were to be granted.
 - 6. All other factors which may affect the public interest.
- D. Thereafter, the council shall make a determination whether to approve or disapprove each application.

Article 13-7

LICENSE AGREEMENT

- A. Upon the approval of an application by the council, the applicant shall negotiate and execute a license agreement within sixty days. If the council and the grantee fail to agree on the terms of a license agreement within the sixty days of the date that the council's action approving the application, the approval shall expire without further action by the council. This time limit may be extended by the council for good cause. The license agreement shall incorporate all terms and provisions of this chapter wherein a requirement is placed upon the licensee, either expressed or implied by this chapter. The licensee shall expressly and specifically agree to accept the terms of and be bound by the terms of this chapter.
- B. A license agreement shall have the following characteristics:
1. It authorizes use of the public rights-of-way for installing cables, wires, lines and other facilities to operate a cable system, but does not expressly or implicitly authorize the licensee to provide service to, or install cable, wires, lines or any other equipment or facilities upon property without owner consent [except for compatible easements or rights-of-way pursuant to 47 U.S.C. Section 541(a)(2)], or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners. It also authorizes the licensee so to use, operate and provide similar facilities or properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the town; provided, however, that neither the licensee nor the third party shall be relieved of any regulation or obligations as to its use of such facilities in the streets.
 2. It is subject to the paramount right of use of the public rights-of-way by the council and the public for public purposes. The council reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.
 3. It is nonexclusive and will not expressly or implicitly preclude the issuance of other licenses to operate cable systems within the town.
 4. It conveys no property right to the licensee or right to renewal other than as may be required by state or federal law.
 5. It constitutes a contract between the licensee and the council once it is approved by the council and executed by both parties. A licensee contractually commits itself to comply with the terms, conditions and provisions of the license agreement and with all applicable laws, ordinances, codes, rules, regulations and orders.
 6. The term of the license agreement shall not exceed fifteen years commencing on its effective date.
 7. A licensee shall execute a hold harmless agreement as part of the license agreement which shall set forth the obligation of the licensee over and above the insurance requirements contained in the license and this chapter.
 8. A licensee shall be subject to all laws, rules and regulations of the State of Arizona and the United States Government.

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9. Any of the provisions of this chapter may be amended by the council at any time. This chapter and such amended provisions shall be applicable to all existing license agreements; provided, however, that this chapter and such amended provisions shall not be applicable to an existing agreement where it would contravene a contractual right of the licensee under the license agreement, nor pose additional contractual burdens on the licensee.
10. All notices and communications from a licensee to the council pursuant to this chapter or a license agreement shall be sent to the town manager unless the licensee is otherwise directed.
11. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the license agreement shall grant the right and privilege to the licensee to provide non-cable communications services. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the council shall retain all authority to regulate non-cable telecommunication services to the extent necessary to protect the public interest and to ensure compliance with all provisions of this chapter.

Article 13-8

OPERATING REQUIREMENTS FOR CABLE COMMUNICATIONS SYSTEMS

A licensee shall conform to the following minimum standards relative to the construction, operation and maintenance of a cable communications system in the town. It is not the intent of this article to prevent any licensee from providing more than the required minimum to meet the standards listed below.

A. Rights of Individuals, Subscribers and Users.

1. A cable system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, channels, studios and other services to all residents and other entities having a legitimate use of the system. A licensee shall not discriminate in terms of rates, terms of service or extension of service on the basis of age, race, creed, sex, religion, national origin or marital status. Nor shall a licensee fail to extend service to any part of the town on the basis of the income of the residents.
2. A licensee shall maintain a business office open during normal business hours with listed local or toll-free telephone numbers to allow reasonable access by subscribers and members of the public. Unless a waiver is granted by the council, said office shall be located within ten miles of the town's corporate limits. When the office is closed, an answering machine or similar device, capable of receiving service complaints and inquiries must be employed.
3. Licensee shall maintain a written record listing date of all complaints, identifying the subscriber or citizen, describing the nature of the complaint and when and what action has been taken by the licensee, if any, in response thereto; such record shall be kept at licensee's office and shall be available for inspection during regular business hours without further notice of demand of the town manager. A summary of such records must be retained for not less than one year. The licensee shall notify each subscriber at the time of initial subscription to service of the procedure to reporting and resolving complaints.
4. A licensee shall establish procedures for the investigation and resolution of all complaints including, but not limited to, those regarding the quality of service and equipment malfunction. A copy of such procedures shall be provided to the council upon request.
5. A licensee must provide each subscriber at the time cable service is installed, the following:
 - a. written instructions for placing a service call, filing a complaint or requesting an adjustment, including the phone number and address of licensee's office;
 - b. the telephone number of the town office responsible for administration of the cable license;
 - c. a schedule of rates and charges for all available services;
 - d. copies of the service contract, including disconnect and reconnect procedures and charges;
 - e. a subscriber handbook and upon request any other written policies applicable to subscribers.

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6. A licensee shall establish and conform to the following policy regarding refunds to subscribers and users:
 - a. If the licensee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the licensee shall provide such service or equipment within thirty days of the collection of the deposit or charge or it shall refund such deposit or charge within five days thereafter upon request of the subscriber. The subscriber must be advised of this right of refund at the time the order is placed.
 - b. If any subscriber or user terminates any monthly service during a period of time for which said subscriber or user has made an annual or other payment in advance, the appropriate pro rata portion of said payment shall be refunded by the licensee.
7. The following requirements shall apply to disconnections:
 - a. There shall be no charge for total disconnection of cable service unless such charge was disclosed at the time the subscriber ordered service. All cable communications equipment shall be removed within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed thirty days from the date of the request.
 - b. If any subscriber fails to pay a properly due monthly subscriber's fee or other charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effected until thirty days after the due date of the charges and shall include a prior written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper charges or fees, including the payment of any reconnection charge, the licensee shall promptly reinstate the service.
8. A licensee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to subscribers and the council of anticipated interruption. No prior notice shall be required for the performance of system maintenance work requiring a maximum of one hour between the hours of six a.m. and twelve midnight, and four hours between the hours of twelve midnight and six a.m.
9. A licensee shall at all times comply with the subscriber privacy provisions of 47 U.S.C. Section 551.
10. No equipment shall be installed by the licensee for subscriber service without first securing a service request from the owner or resident of any private property involved, except in public utility easements.
11. A licensee shall not originate or knowingly permit subliminal transmission at any time for any purpose whatsoever.
12. A licensee shall provide leased access channels as required under 47 U.S.C. Section 532. In the event that said federal provisions should cease to apply, the council reserves the right to promulgate other leased access requirements which shall apply, not to exceed those requirements specified in 47 U.S.C. Section 532.
13. A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, 47 U.S.C. Section 554, state statutes and local regulations, and as the same may be amended from time to time.

B. Cable System Construction Timetable.

1. A cable system shall be constructed in accordance with the provision of the license agreement.
2. It is the policy of the council to require construction of a cable system designed to serve subscribers in an area licensed by the council as rapidly and expeditiously as possible. The licensee shall immediately upon granting of the license agreement diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies and others as necessary to comply with the provision of this chapter and other federal, state and town laws, codes and resolutions. However, no construction shall begin until the notification requirements set forth elsewhere in this chapter are satisfied.
3. A cable system shall be constructed pursuant to a construction timetable specified in the license agreement.
4. Any delay beyond the terms of the timetable specified in the license agreement will be considered a violation of the terms of this chapter and the license agreement. Unless the licensee can establish that the delay was due to factors beyond its control, the licensee may be considered in default of the license agreement and the town manager may take whatever action the town manager is entitled to under this chapter and the license agreement.
5. The licensee shall not be considered in default of the applicable construction schedule if the council approves a modification of the schedule change in advance. In submitting a request for a construction schedule modification, the licensee must fully explain the reasons for the delay, in writing. The delay must be disapproved by the council if it is not reasonably justified, would have unreasonably discriminating results, or would unduly delay service to an area. Such a modification request shall be considered granted unless the licensee is notified by the council to the contrary in writing within forty-five days of the date on which the request was filed.
6. The council may require a licensee to report on construction progress and provide information showing specifically whether the construction schedule is being met and the reasons for the delay. The town manager shall determine the format to be used for the report and the frequency of reporting.
7. Where appropriate and reasonable, a licensee shall schedule construction activities to coordinate with any town construction on streets so as to avoid unnecessary inconvenience to the public.

C. Line Extension Policy.

Unless the license agreement provides otherwise, a licensee shall be required to extend its cable system pursuant to the following requirements:

1. Upon reasonable request for service by any person located within any area of the town that meets density requirements of paragraph 2 of this subsection, the licensee shall, within sixty days, furnish the requested service to such person, unless prevented from providing said service due to factors outside licensee's control, such as permit restrictions, private easement considerations, etc. If such service has not been implemented within ninety days of said request, the council may impose liquidated damages for each day thereafter.

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2. The licensee must extend and make cable television service available to every unserved dwelling unit within any area of the town reaching the minimum density of at least twenty-five dwelling units per mile of plant as measured from licensee's nearest activated trunk or feeder line, whether the existing plant is aerial or underground, except that the licensee shall not be required to install cable where another authorized licensee has already done so. Licensee shall complete line extensions to an area reaching a density of at least five homes within 1,056 feet of existing active cable plant, or where an area has more than five homes, at least one home per 211 street feet including the distance to existing active cable plant. Upon request, this density requirement may be modified by the council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable if licensee's compliance with said requirement would create a significant adverse impact on the capital costs of licensee's Fountain Hills cable system.
3. The licensee shall prevent unnecessary damage to streets and property by installing cables or conduits underground in new single family subdivisions at the same time and in the same trench as telephone, electric or similar services are installed. Given reasonable notice, the licensee shall install underground cable or conduit in all new subdivisions of five or more dwelling units within the service area at the same time and in the same trench as telephone, electric or similar services are installed. Cable need not be installed or activated until the new subdivision meets the criteria established for line extensions.
4. The licensee must extend and make cable television service available to any resident requesting connection within the licensee's authorized service area at the regular installation charge if the connection to the resident would require no more than a one hundred fifty foot drop line, and provided that paragraph 2 of this subsection is met.
5. With respect to requests for connection requiring a drop line in excess of one hundred fifty feet, the licensee must extend service to such residents at a one time charge not to exceed the actual costs incurred by the licensee for the distance exceeding one hundred fifty feet.

D. Construction and Technical Standards.

The following general requirements, which are not to be interpreted as imposing standards in excess of FCC imposed limits, apply to all licensees.

1. In those areas and portions of the service area where the transmission and distribution facilities of the telephone company and the electric company are underground or later placed underground, the licensee shall likewise install its transmission facilities underground.
2. In areas where facilities do not have to be underground, a licensee shall not erect any new poles along any street or public way of the town except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems and only then with the advance approval of the council.
3. All television signals transmitted on a cable system must include any closed captioning information for the hearing impaired. Antennas, supporting structures and outside plant used in the system must be designed to comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plant.

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4. The licensee must perform at its expense any proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the license agreement, and the FCC. The town manager may require periodic proof of performance tests to be performed at the expense of the licensee. Upon request, the licensee must provide the test results promptly to the town manager.
5. The licensee must advise the town manager when a proof of performance test is scheduled so that the town manager may have an observer present.
6. A licensee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another licensee, or individual or master antennas used for receiving television or other broadcast signals.

E. Maintenance Specifications

1. The licensee shall construct, install and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee's employees, the employees of the utility companies and all nearby property owners shall be a primary concern.
2. All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.
3. As between licensee and the town, the licensee shall be solely and completely responsible for the actions taken by any contractor or other agent employed to construct or install the licensee's facilities on streets as well as on public or private property.
4. The licensee shall give prior written notice, as set forth later in this article, of its intent to place underground facilities. Failure to provide such notice may subject a licensee to liquidated damages pursuant to Article 13-9 of this chapter or other enforcement sanctions.
5. In addition, the licensee shall comply with all other town, state and federal laws and regulations which may be applicable to its operations.
6. A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facility owned by the state, county, town or the gas, electric and telephone utilities, as well as pipeline companies or similar industries. The licensee shall respond to normal requests for location of its facilities within forty-eight hours. The licensee shall be a member of the One Call Notification Center, or comply with state underground law, for its service area.
7. In the event that licensee property, or the facilities and equipment of unauthorized cable communication providers, has been installed in a street or other dedicated public right-of-way without complying with the requirements of this chapter, or the license has been terminated, revoked or expired, or the use of any licensee property is discontinued for any reason for a continuous period of three months, licensee or any unauthorized cable communication provider, shall at its sole expense on the demand of the council remove promptly from the street all licensee or unauthorized cable communication provider property other than that which the council may permit to be abandoned in place. Upon such removal of subject

property, licensee or unauthorized cable communication provider shall promptly restore the street or other public places from which the subject property was removed to a condition as near as possible to its prior condition. Subject property no longer in service may be left in place with the approval of and in a manner prescribed by the council. Upon abandonment of said property in place, licensee or unauthorized cable communication provider shall deliver to the council an instrument transferring ownership of the subject abandoned property to the town. Any cost arising from compliance with this provision shall be borne by the licensee or unauthorized cable communication provider.

F. Use of Streets

1. A licensee must utilize, with the owner's permission, existing poles, conduits or such other facilities whenever possible. Underground street, sidewalk and driveway crossings not using existing conduits shall be bored unless specific council approval is received. A licensee may install its own poles only when approved by the council and subject to whatever reasonable terms the council requires.
2. All transmission lines and other equipment must be installed and located to minimize interference with the rights and reasonable convenience of public and private property owners. The council reserves the right to issue such reasonable rules and regulations concerning the installation and maintenance of cable systems in the public rights-of-way, as may be consistent with this chapter, state and federal law.
3. The licensee shall have at all times up-to-date route maps showing trunk and distribution lines. Licensee shall make all such maps available for review by the appropriate town personnel.
4. Suitable safety devices and practices as required by town, state and federal laws, ordinances, regulations and permits must be used during construction and maintenance of a cable system.
5. A licensee must remove, replace or modify at its own expense, any of its facilities within any public right-of-way when required to do so by the town manager to allow the town to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this article shall prevent licensee from seeking and obtaining reimbursement from sources other than the town.
6. On streets where electrical and telephone utility wiring are located underground, either at the time of initial construction or subsequently, the cable must also be located underground at the licensee's expense. Between a street or road and subscriber's residence, the cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone are aerial, licensee may install aerial cable except where a property owner requests underground installation and agrees to bear the additional cost over aerial installation.
7. A licensee must obtain any required permits before doing any excavation or causing disturbance to public thoroughfares or private property as a result of its construction or operations and must restore to their former condition such private property and public thoroughfares, the latter in a manner consistent with all applicable rules, regulations, resolutions or other town manager requirements relative to construction, repair or maintenance in public rights-of-way. If such restoration is not satisfactorily performed within a reasonable time in the opinion of the town manager, the town manager may, after prior notice to licensee, cause the repairs to be made at the expense of the licensee. The

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town manager may inspect ongoing construction and require a licensee to halt construction where the town manager finds the construction to be in non-compliance with the requirements of this chapter, the license agreement or a permit.

8. Prior to commencement of underground construction a licensee must have complied with the following requirements:
 - a. Have received a permit from the council for construction on public property or rights-of-way;
 - b. Have requested and received clearance from utilities in the area of construction;
 - c. Where new construction will be on private property or in public rights-of-way adjoining private property, have provided no less than seven days written notice by mail or hand delivered to all such property occupants. The notice shall include the name, address and toll-free phone number that the affected person may call for more information or to lodge a complaint.
9. At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than seventy-two hours advance notice. The direct expense of such temporary move must be paid by the permit holder, and the licensee may require payment in advance.

G. System Services and Capability

1. The following minimum requirements for facilities and services apply to licenses. The council may require that a licensee exceed these minimum requirements.
 - a. Except as provided in the license agreement, a cable system must have a minimum capacity of fifty-four video channels available for immediate or potential use. Two-way capability shall be designed into the system. Upon request, this minimum channel capacity may be modified by the council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable to comply with said requirement. A licensee shall have the burden of demonstrating, by clear and convincing evidence, that compliance with the minimum channel capacity would be commercially impracticable for its Fountain Hills cable system.
 - b. Standard installation and basic service to public buildings may be required without charge as set forth in the license agreement. Licensee may be required to make available, one service outlet to a conveniently accessible point in each school, police station, fire station and town hall or other facility or building located within the license area and used for public purposes as may be designated by the town manager. The installation charge to each occupant, if any, would not exceed licensee's direct cost (time and material). There may also be a minimum monthly service charge at the above locations.
 - c. A licensee must design its system to allow the council to interrupt audio portions of the cable service in an emergency to deliver information to subscribers.
 - d. A licensee must provide standby power for the headend so as to be able to operate some

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channels during a power outage for a minimum of six hours or as provided for in the license agreement.

2. The council may waive minimum requirements for licenses where the applicant demonstrates that such waiver is in the public interest.
3. The following requirements apply to access and community programming channels:
 - a. Applications for a license shall include proposals for the provision of educational and governmental access channel sufficient to meet community needs during the term of the license as determined by the council. A licensee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the licensee.
 - b. All access channel operations must conform to the following minimum requirements:
 - 1) Access channels shall be carried on the licensee's lowest priced service offering.
 - 2) The license may require a licensee or other entity to manage the access channels and to establish reasonable rules for the use of access channels consistent with the requirements of this chapter and the intended purpose of such channels.
 - 3) The use of any educational access channel shall be made available free of charge to schools and other qualified educational institutions for the transmission of local educational programming.
 - 4) The use of any local government access channels shall be made available free of charge to the council for the transmission of government related programming.
 - 5) The licensee shall submit to the council on an annual basis a plan for publicizing access programs and access use.
 - c. At the request of a licensee the council may promulgate rules under which channel capacity dedicated to access use may be used by the licensee when it is not being used for access purposes.
 - d. A license shall include a provision for the licensee to provide channel capacity for community programming on terms and conditions specified in the license agreement.

H. Interconnection

1. A licensee shall interconnect its cable system with other or all other systems located in the town, in nearby cities, or in the county upon the request of the council, where economically and technically feasible.
2. Upon receiving the request of the council to interconnect, a licensee shall initiate negotiations with the other affected systems in order that technical details be resolved and costs may be shared on an equitable basis.

I. Local Broadcast Channels

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Each cable system shall carry as part of the basic service local channels broadcast in its area as required and defined in current FCC regulations. In this regard, those parts of 47 C.F.R. Part 76 relating to carriage of local channel signals as existing, or as may be amended, shall apply and are incorporated herein by reference.

J. Technology Review

1. The town and licensee shall meet at periods not exceeding three years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors impacting cable television. As a result of these discussions, this license may be modified by the town and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.
2. If any of the following conditions occur, and upon written request of either licensee or town, the town manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:
 - a. Cable service similar to cable television service offered by licensee is provided by any entity using the streets and public ways, which is not subject to similar licensing requirements of the town.
 - b. The Cable Act is amended to allow licensee to provide intrastate or interstate telecommunication and any regional Bell operating company to provide cable service.
 - c. Any other significant event occurs, including but not limited to a final non-appealable order or judgement by a court of competent jurisdiction, which either licensee or town believes may impact the current terms and conditions of the license.

The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the council for proposed council action within ninety days of such written request, on how to amend the license to relieve town or the licensee from any commercial impracticability, which arises from the condition in question. This provision shall not require that the license be amended, however it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

Article 13-9

FEES, BONDS, LETTERS OF CREDIT, LIQUIDATED DAMAGES AND APPEALS

A. Application Fee

Each application for a license to be granted under the authority of this chapter shall be accompanied by a non-refundable filing fee in such amount as approved by the Council by resolution or as part of the Towns annual budget, by certified or cashier's check made payable to the town.

B. License Fee

1. In consideration of the fact the streets of the town will be used by a licensee in the operation of its cable system within the boundaries of the town and said streets are valuable properties acquired and maintained by the town at great expense to its taxpayers, and in consideration of the costs incurred by the town in regulating and administering each cable license, the licensee shall pay to the town up to five percent of the licensee's gross annual revenue, from all sources attributable to the operations of the licensee within the licensed area.
2. This payment shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be due and payable no later than thirty days after the relevant computation date. Each payment shall be accompanied by a financial report showing in detail the gross revenues of the licensee related to that quarter.
3. Except as provided in paragraph 8 of this subsection, the payment required pursuant to this article shall be in addition to any other tax or payment owed to the town pursuant to any other applicable ordinance or chapter of the town code, regulation or law of the County, State or federal government.
4. A license fee not received in full by the town within thirty days of its due date shall be deemed delinquent and subject to a late fee. The late fee for delinquent payment shall be five percent of the amount overdue plus interest at the rate of one and one-half percent per month, or parts thereof.
5. Where the licensee fee is based on gross revenues, the licensee shall file, with each license payment, a statement of the gross revenues for the period on which the fees are based. Such a licensee must file within three months of the end of its fiscal year a statement of gross revenues for the preceding year, which is either audited or certified as accurate by an officer of the licensee. Any payment of license fees to adjust for a shortfall in the quarterly payments for the preceding year must be made not later than the filing date for the audited annual statement of gross revenues. Adjustments for any overpayment will be credited to subsequent quarterly payments. Interest and late charges (as specified above) will not be imposed for any payment necessary as a result of the yearly adjustment if the payment to correct the shortfall does not exceed ten percent of the total payments made during the preceding year. In the event such payment exceeds ten percent, the licensee is liable for interest and late charges for the entire amount due.
6. The town manager shall have the right, upon reasonable notice, to inspect or audit during

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normal business hours a licensee's records showing the gross revenues and other relevant underlying data and information. Upon examination of such information, the town manager has the right to recompute any and all amounts paid under a license. Any additional amounts due the town as a result of an audit shall be paid by the licensee within thirty days following written notice to the licensee by the council, which shall include a copy of the inspection or audit report. In the event that an inspection or audit results in additional monies owed the town in excess of five percent of the total paid, the licensee shall bear the total cost of the audit, and late charges and interest on the additional amount due.

7. No acceptance by the council of any payment shall be construed as an accord that the amount paid is in fact the correct amount nor shall such acceptance of payment be construed as a release of any claim the council may have.
8. There shall be allowed as an offset against the license fee due under this article any amounts licensee paid to the town during the prior quarter in privilege license (sales) taxes; provided, however, that there shall be no offset to the extent that licensee made payments of privilege license (sales) taxes on any gross income (within the meaning of the privilege license [sales] tax ordinance) which is not included in gross revenues under this chapter. The license shall provide for suitable procedures and methods for audit of this offset.

C. Performance Bond

1. Within thirty days after the execution of the license agreement and prior to any construction work in the public right-of-way, the licensee shall file with the town manager a performance bond, or a letter of credit in a form acceptable to the town attorney, in the town's favor in the amount of fifty thousand dollars, or as specified in the license agreement. In the event that licensee fails to comply with any provision of this chapter or the license agreement, then there shall be recoverable jointly and severally from the principal and surety any and all damages or costs suffered by the town. These damages or costs shall include but not be limited to attorney's fees, cost of any action or proceeding and including the full amount of any compensation indemnification, cost of removal or abandonment of any property or other costs due and owing the town up to the full amount of such bond.
2. At such time as ninety-five percent of planned construction in the town is complete, as specified in license agreement, the council may, at licensee's request, reduce or eliminate the performance bond requirement.
3. The bond shall be issued by a surety company authorized to do business in the State of Arizona and shall be in a form approved by the town attorney, and contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty days after receipt by the council, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
4. The rights reserved by the council with respect to the bonds required are in addition to all other rights and remedies the council may have under this chapter, the license agreement or any other law.

D. Irrevocable Letter of Credit

1. Within thirty days after written notification of the award of license by the council, the selected applicant shall provide the town manager a letter of credit from a financial institution licensed to do business in Arizona in the amount of ten thousand dollars, or as specified in the license agreement, as security for the faithful performance by licensee of all provisions of this chapter and compliance with all orders, permits and directions of any department of the town.
2. The form and content of such letter shall be approved by the town attorney and contain the following endorsement:

"This letter of credit may not be canceled or allowed to lapse until thirty days after receipt by the town manager, by certified mail, return receipt request, of a written notice from the issuer of the letter of credit of its intent to cancel or not to renew."

In the event the letter of credit is insufficient to pay the town for any compensation, damages, penalties, costs or expenses owed it pursuant to this chapter or the license agreement, the licensee's performance bond may be drawn upon by the town manager for any amount due the town over and above the amount of the letter of credit.

3. Within fifteen days after written notice to licensee by the town manager that the town manager has withdrawn any amount from the letter of credit, licensee shall deposit or pay to the town manager a sum of money sufficient to restore such letter of credit to the original amount of ten thousand dollars, or as specified in the agreement.
4. If a licensee fails to pay the town: any compensation within the time fixed by this chapter or the license agreement; any taxes due; or any damages, costs or expenses which the town incurs by reason of any act or default of the licensee; or if the licensee fails to comply with any provision of the license agreement which failure the town manager determines can be remedied or partially cured by demand on the letter of credit, the town manager may, following ten days notice to the licensee, withdraw from the letter of credit the amount so claimed by the town manager if within such period the licensee has not remedied the matter. The town manager shall immediately notify licensee of any such withdrawal, the date and amount.
5. The rights reserved to the town manager with respect to the letter of credit are in addition to all other rights it may have under this chapter, the license agreement and any other law.
6. Failure to maintain the letter of credit as required shall constitute a violation of the provisions of this chapter.

E. Liquidated Damages

All license agreements shall contain provisions for liquidated damages, in amounts as mutually agreed upon between the town manager and the licensee, for the licensee's failure to comply with various requirements of this chapter and the license agreement as specified below. All references to notices throughout this subsection shall be by certified or registered mail, return receipt requested.

1. For failure to substantially complete construction or line extensions as required, unless the council specifically approves a delay caused by the occurrence of conditions beyond the

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licensee's control, the licensee shall pay five hundred dollars per day for each day, or part thereof, the deficiency continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.

2. For material failure to provide data, documents, reports and information in a timely manner as required, the licensee shall pay one hundred dollars per day, or part thereof, that each violation occurs or continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
3. For material failure to test, analyze and report on the performance of the system following a request from the town manager to do so, the licensee shall pay one hundred dollars per day for each day, or part thereof, that such noncompliance continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
4. Failure to substantially comply with the material provisions of Article 13-8 of this chapter, the licensee shall pay one thousand dollars per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
5. For substantial failure to remedy any other violation of the chapter or the license agreement within seven days of receipt of notice of each violation, the licensee shall pay three hundred dollars per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
6. For failure to substantially comply with reasonable orders of the town manager, the licensee shall pay fifty dollars per day for each day, or part thereof, that noncompliance continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
7. Liquidated damages will not be imposed by the town manager if the town manager finds that the failure of the licensee resulted from conditions beyond the licensee's control. Liquidated damages may be reduced or eliminated by the town manager if the town manager finds that the failure of the licensee resulted from excusable neglect. The licensee shall bear the burden of proof in establishing the existence of such conditions.
8. Prior to assessing any of the liquidated damages set forth in this article, the town manager shall give licensee seven days written notice of its intention to assess such damages. In said notice, the town manager shall set forth, at a minimum, the following:
 - a. amount to be assessed;
 - b. factual basis for such assessment; and
 - c. specific license provision alleged to have been violated.

Following receipt of notice set forth in this article, licensee shall have a seven day period during which time licensee and the town manager shall make reasonable efforts to resolve the dispute in question. Collection of liquidated damages by the town for any breach shall constitute the town's exclusive remedy for the period for which liquidated damages were

collected.

9. The imposition and collection of liquidated damages as set forth above shall not prevent the town manager from pursuing other remedies for other violations of either the article or the license agreement for which liquidated damages have not been imposed and collected.

F. Appeals

1. In the event that licensee contests the town manager's assessment of liquidated damages, or fails to respond to the above mentioned notices, within fourteen days the town manager shall convene an administrative hearing as specified in subparagraph a of this paragraph. Licensee may pay the fine, proceed with this hearing, or waive its rights to this administrative hearing and proceed directly to the public hearing before the council, as specified in subparagraph b of this paragraph.
 - a. This shall be an administrative hearing, and licensee shall be afforded procedural due process, including an opportunity to be heard and to present evidence. Within fourteen days after the conclusion of such administrative hearing, the town manager shall issue a determination. In that determination the town manager may:
 - 1) find that licensee is not in violation of this chapter or the license agreement;
 - 2) find that licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;
 - 3) find that licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit or performance bond provided for elsewhere in this chapter;
 - 4) find that licensee is in material violation of this chapter and the license agreement and recommend the council declare the licensee in violation and terminate the license agreement, provided the council may take such action only after a public hearing as set forth in subparagraph b of this subsection.
 - b. If a public hearing before the council is requested by licensee or is held pursuant to item 4 of subparagraph a of this paragraph, it shall be de novo and it shall convene within thirty days of the request thereof. Licensee shall be afforded full due procedural process, including without limitation, an opportunity to be heard and to present evidence. The council's decision, which shall include findings of fact and conclusions shall be made not later than thirty days after the conclusion of the hearing. In that decision, The council may:
 - 1) find that licensee is not in violation of this chapter or the license agreement;
 - 2) find that licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;
 - 3) find that licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit and/or performance bond provided for elsewhere in this chapter;

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- 4) find that licensee is in material violation of this chapter and the license agreement and declare the licensee in violation and revoke the license agreement pursuant to Article 13-10.

(09-08, Amended, 07/02/2009)

Article 13-10

TERMINATION - REVOCATION

A. Termination

The license shall terminate, upon the expiration of the term thereof, unless renewal is successfully applied for, per Article 13-11.

B. Revocation

1. If a licensee is in material violation of this chapter or in default of the terms of its license agreement, the town manager may make written demand that the licensee come into compliance with said requirements within a reasonable period of time, as specified in Article 13-9. If the licensee is unwilling or unable to do so, the town manager may recommend the revocation, alteration or suspension of the license to the council, specifying the reasons for such action.
2. A copy of any such recommendations shall be served by certified or registered mail, return receipt requested upon the licensee, and the licensee shall be given at least fourteen days notice prior to the date of a public hearing before the council to consider such action, and the licensee will be given an opportunity to present evidence and made argument at such meeting.
3. The council shall consider the recommendations, the response of the licensee, and hear from any other interested persons, and shall determine whether or not the licensee is in violation or default of its obligations and, if so, whether such failure was with just cause.
4. If the council finds that the failure by the licensee was with just cause, the council shall direct the licensee to comply within such time and manner and upon such terms and conditions as are reasonable.
5. If the council determines that the licensee's failure was without just cause, the council may declare the license revoked, altered or suspended. The council may provide a specified period of time for the licensee to come into compliance before the revocation takes effect.
6. A license may be revoked, altered or suspended by the council on the following grounds, among others, and taking into account any ameliorating circumstances:
 - a. Fails to comply with any material provision of this chapter or the license agreement.
 - b. Makes willful false or misleading statements in any application.
 - c. Engages in the practice of any fraud or deceit upon the town or subscribers.
 - d. Fails to abide by the privacy provision of this chapter.
 - e. Fails to make timely payment of any monies due the town pursuant to this chapter.
 - f. Unless otherwise provided in the license agreement, fails to commence construction in the license area within three months and to commence basic service within six months form the effective date of the license agreement.

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- g. Fails to file and maintain the bonds, insurance, records, failure to pay license fees or assessed property taxes.
- h. For repeated material failure to maintain service quality under the standards prescribed.
- i. Fails to restore service after forty-eight consecutive hours after notice to the licensee or interrupted service to the entire system, except when such interruption is beyond the control of the licensee.

C. System Disposal

In the event of termination or revocation of a license, the licensee involved shall offer to sell the cable system, at the fair market value, to a new licensee or applicant for a license. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow and other factors will be considered. Under no circumstances shall any valuation be made for any right or privilege granted by license. Should the licensee fail to negotiate a sale, as described above, the town may purchase the system at the fair market value for the purpose of leasing to a qualified operator until a buyer can be found, pursuant to the provisions of A.R.S. §9-509.

D. Continuity of Service

Licensee shall provide continuous service for the entire term of the license agreement to all subscribers and users in return for payment of the established rates, fees and charges. If licensee seeks to sell or transfer, or if the town revokes or fails to renew the license, licensee shall continue to operate the system as trustee for its successor in interest until an orderly and lawful change of operation is effected. This period of operation shall not exceed one hundred twenty days from the occurrence of any of the above events. Revenues accrued during that period of time shall be received by the operator. During such time, the cable system shall be operated under terms and conditions consistent with the most recent license agreement and this chapter.

Article 13-11

RENEWAL

- A. If a licensee decides to initiate a formal license renewal process in accordance with 47 U.S.C. Section 546, it must notify the council within thirty to thirty-six months prior to the license expiration date.
- B. In considering a renewal application, the council must consider whether:
 - 1. The licensee has substantially complied with the material terms of the existing license and applicable law;
 - 2. The quality of licensee's service, including signal quality, customer service complaint resolutions, billing practices (without regard to mix, quality or level of cable services) has been reasonable in light of community needs;
 - 3. The licensee has the financial, legal and technical ability to provide services, facilities and equipment set forth in its renewal proposal; and
 - 4. The licensee renewal proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
- C. If the council's assessment is that the license should not be renewed, the council may commence an administrative hearing in accordance with 47 U.S.C. Section 546.
- D. The provisions of 47 U.S.C. Section (a) - (g) notwithstanding, a licensee may submit an application for renewal in accordance with Section (h), which affords a cable operator the opportunity to submit a proposal for the renewal of a license at any time. The council may, after adequate public notice and comment, grant or deny such proposal.
- E. The renewal of a license does not become effective until any renewal fees have been paid by the licensee.

Article 13-12

TRANSFERS AND CHANGE OF CONTROL

- A. Licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of more than forty-nine percent of the cumulative ownership of the system without prior written authorization from the council. For the purposes of this article, a merger or consolidation shall be deemed a transfer or assignment. The town manager shall be promptly notified in writing, within sixty days of the effective date of any such sale, transfer, assignment, exchange or release which constitutes more than five percent of the cumulative ownership of the system. Nothing in this article shall be deemed to prohibit a pledge or hypothecation or mortgage or similar instrument transferring conditional ownership of the systems assets to a lender or creditor in the ordinary course of business, unless such interest shall exceed seventy-five percent of the original cost or the fair market value, whichever is higher.
- B. No Licensee shall sell, transfer, assign, exchange or release, or permit the sale transfer, assignment, exchange or release of more than ten percent of the cumulative ownership of the system, during the thirty-six month period commencing on final award to a licensee by the council, without expressed written consent of the council.

Article 13-13

INDEMNITY-INSURANCE

- A. The licensee shall at its sole cost and expense, indemnify, hold harmless and defend the town, its officials, boards, commissions, agents and employees by providing immediate defense with counsel approved by the council, against any and all claims, suits, causes of action, proceedings and judgments for damages arising out of construction, maintenance or operation of the cable communication system.
- B. The licensee, within thirty days after written notice of the granting of a license, shall provide the town with and maintain in full force throughout the term of the license agreement, insurance issued by a company duly authorized to do business in the State of Arizona, insuring with respect to the installation, construction, operation and maintenance of the system as follows:
 - 1. Comprehensive general and automobile liability coverage including, but not limited to, blanket contractual liability, completed operations liability, broad form property damage including but not limited to coverage for explosion, collapse, underground hazard and automobile non-ownership liability. This insurance shall be written in the following minimum amounts.
 - a. Comprehensive general liability: \$1,000,000 combined single limit, bodily injury and property damage
 - b. Comprehensive automobile liability: \$1,000,000 combined single limit, bodily injury and property damage
 - c. Excess umbrella liability, covering all the above mentioned hazards, in the minimum amount of \$4,000,000.
 - 2. Workers' compensation coverage as required by the laws and regulations of the State of Arizona.
 - 3. All insurance policies required herein shall include the town of Fountain Hills as a named insured party.
 - 4. Licensee shall be solely responsible for all premiums due and payable for insurance required herein. Licensee shall provide to the town a certified copy of the policies listed above.
 - 5. All insurance policies required herein shall be in a form approved by the town attorney and shall include a sixty day notice of cancellation or modifying endorsement.
- C. The provisions of subsection B of this article, in the discretion of the town, be satisfied by proof of self insurance.

Article 13-14

ADMINISTRATION

- A. Inspection of Records. The council reserves the right during the term of the license agreement and during normal business hours and upon the giving of reasonable notice to examine, audit, review and obtain copies of licensee's contracts, engineering plans, accounting, financial data and service records relating to the property and operations of the licensee and to all other records required to be kept pursuant to this chapter.
- B. Licensee Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the licensee for the conduct of its business shall be provided to the town manager, upon request of the town manager.
- C. Town Manager. The town manager or his designee shall have responsibility for the day-to-day administration of cable communication operations within the town as governed by this chapter and the applicable license agreements. The town manager shall be empowered to take all administrative actions on behalf of the council except those actions specified herein which are reserved to the council or another town office or officer.

Article 13-15

GENERAL PROVISIONS

- A. Non-Discrimination. Licensee shall not deny service, access or otherwise discriminate against subscribers, users or residents of the town. Licensee shall comply at all times with all applicable federal, state and town laws, rules and regulations, executive and administrative orders relating to non-discrimination and equal employment opportunities and requirements.
- B. Laws and Codes. Licensee shall comply fully with all applicable local, county, state and federal laws, codes, ordinances, rules and regulations.
- C. Cumulative Rights and Remedies. Except as specified herein, all rights and remedies of the town manager and the council in this chapter are cumulative and may be exercised singly or cumulatively at the discretion of the town manager or the council.

Article 13-16

RIGHTS RESERVED TO THE COUNCIL

Without limitation upon the rights which the council may otherwise have and subject to paragraph 9, subsection B of Article 13-7, the council does hereby expressly reserve the right to amend any article or provision of this chapter for any reason determined to be desirable by the council including, but not limited to:

- A. New developments in the state of technology of cable communications systems.
- B. Any changes in federal or state laws, rules or regulations.

Chapter 14

FLOOD DAMAGE PREVENTION

Articles:

14-1	STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS
14-2	DEFINITIONS
14-3	GENERAL PROVISIONS
14-4	ADMINISTRATION
14-5	PROVISIONS FOR FLOOD HAZARD REDUCTION
14-6	VARIANCE PROCEDURE
14-7	UNIFORM DRAINAGE REGULATION

Article 14-1

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

Sections:

- 14-1-1 Statutory Authorization**
- 14-1-2 Findings of Fact**
- 14-1-3 Statement of Purpose**
- 14-1-4 Methods of Reducing Flood Loses**

Section 14-1-1 Statutory Authorization

Pursuant to ARIZ. REV. STAT. § 48-3610, the Arizona State Legislature enabled the Town of Fountain Hills to assume the powers and duties for floodplain management and to adopt regulations in conformance with ARIZ. REV. STAT. § 48-3609 designed to promote the public health, safety and general welfare of its citizenry.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-1-2 Findings of Fact

- A. The floodplains within the Town of Fountain Hills are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage, also contribute to the flood loss.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-1-3 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 flooding by provisions designed to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.
- E. 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.

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- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize blight areas caused by flooding.
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- I. Participate in and maintain eligibility for flood insurance and disaster relief.
(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-1-4 Methods of Reducing Flood Loses

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 that 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 that may increase flood damage.
- E. Preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards in other areas.
(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Added, 09/15/2005)

Article 14-2

DEFINITIONS

Sections:

14-2-1 Definitions

Section 14-2-1 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.

ADWR. The Arizona Department of Water Resources.

Accessory structure. A structure that is on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this Chapter or a request for a variance.

Area of Shallow Flooding. A designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard. The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. These areas are designated as Zone A, AO, AH and A1-30 on the FIRM and other areas determined by the criteria adopted by the director of ADWR.

Base Flood. Shall have the same meaning as "One-Hundred Year Flood" as defined in this Chapter.

Basement. Any area of the building having its floor sub-grade (below ground level) on all sides.

Building. See structure.

Community. Any state, area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

Cumulative Substantial Damage. The cumulative total of all repairs of substantial damage to a repetitive loss structure. Such repairs shall not cumulatively increase the market value of the structure more than 49 percent of the market value during the life of the structure. This term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any repair of flood damage to historic structure, provided the repair will not preclude the structure's continued designation as a historic structure.

Cumulative Substantial Improvement. The cumulative total of (i) all improvements, modifications, or additions to existing buildings during the preceding 5 years and (ii) all reconstruction and repairs to damaged buildings during the preceding 5 years. When the improvements, modifications, additions, reconstruction or repairs equal or exceed the 50% substantial improvement threshold, the structure must be brought into compliance.

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Encroachment. The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Erosion. The process of the gradual wearing away of landmasses. This peril is not, per se, covered under the Program.

Existing Manufactured Home Park or Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, construction of streets and either final site grading or the pouring of concrete slabs) is completed before the effective date of the floodplain management regulations adopted by the community.

Expansion to an Existing Manufactured Home Park or Subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

FEMA. The Federal Emergency Management Agency.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from: (A) the overflow of flood waters; (B) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (C) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

Flood Insurance Rate Map (FIRM). The official map of a community, on which FEMA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study. The official report provided by FEMA that includes flood profiles, FIRM and the water surface elevation of the base flood.

Floodplain or Flood-Prone Area. Any land area susceptible to being inundated by water from any source.

Floodplain Administrator. The Town of Fountain Hills official designated by title to administer and enforce the floodplain management regulations.

Floodplain Board. The Town Council of the Town of Fountain Hills at such times as they are engaged in the enforcement of this Chapter.

Floodplain Management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain Management Regulations. This Chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other applications of police power that control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, that provide standards for preventing and reducing flood loss and damage.

Floodproofing. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Flood-Related Erosion. The collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as Regulatory Floodway.

Floodway Fringe. The area of the floodplain on either side of the Regulatory Floodway where encroachment may be permitted.

Functionally Dependent Use. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking or port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Governing Body. The Town Council of the Town of Fountain Hills.

Hardship. As related to Article 14-6 of this Chapter, means the exceptional difficulty that would result from a failure to grant the requested variance. The governing body requires that the variance be exceptional, unusual and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest Adjacent Grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. Any structure that is any of the following:

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- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior (Secretary) as meeting the requirements for individual listing on the National Register.
- B. Certified or preliminarily determined by the Secretary as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary.
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary; or
 - 2. Directly by the Secretary in states without approved programs.

Levee. 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.

Lowest Floor. 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.

Manufactured Home. 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 attached to the required utilities. The term Manufactured Home does not include a recreational vehicle.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

Market Value. The amount determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation that has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

Mean Sea Level. Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's FIRM are referenced.

New Construction. Structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent

improvements to such structures. For floodplain management purposes, “new construction” means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

Obstruction. Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

One-Hundred Year Flood. A flood having a one percent chance of being equaled or exceeded in any given year.

Person. An individual or the individual’s agent, a firm, a partnership, an association or corporation, or an agent of the aforementioned groups, or the state or its agencies or political subdivisions.

Recreational Vehicle. A vehicle that is:

- A. Built on a single chassis.
- B. 400 square feet or less when measured at the largest horizontal projection.
- C. Designed to be self-propelled or permanently towable by a light duty truck.
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulatory Flood Elevation. An elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be determined by the criteria developed by the director of ADWR for all other watercourses.

Regulatory Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Repetitive Loss Structure. A structure covered by a contract for flood insurance issued pursuant to the NFIA that has incurred flood-related damage on two occasions during any 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event. In addition to the current claim, the NFIP must have paid the previous qualifying claim.

Sheet Flow Area. Means Area of Shallow Flooding, as defined above.

Special Flood Hazard Area (SFHA). An area in the floodplain subject to a one percent or greater chance flooding in any given year. It is shown on a FIRM as Zone A, AO, A1-30, AE, A99 or AH.

Start of Construction. Includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. For construction, the actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. The Start of construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. A walled and roofed building, including a gas or liquid storage tank, which is principally aboveground, as well as a manufactured home.

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure, provided that the alteration would not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this Chapter that permits construction in a manner that would otherwise be prohibited by this Chapter.

Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in this Chapter is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Watercourse. A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Article 14-3

GENERAL PROVISIONS

Sections:

14-3-1	Lands to Which This Chapter Applies
14-3-2	Basis for Establishing the Areas of Special Flood Hazard
14-3-3	Compliance
14-3-4	Abrogation and Greater Restrictions
14-3-5	Interpretation
14-3-6	Disclaimer of Liability
14-3-7	Statutory Exemptions
14-3-8	Unlawful Acts
14-3-9	Declaration of Public Nuisance
14-3-10	Abatement of Violations
14-3-11	Severability

Section 14-3-1 Lands to Which This Chapter Applies

This chapter shall apply to all special flood hazard areas within the corporate limits of the Town of Fountain Hills.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Text did not change. Previous section title: Application of Chapter)

Section 14-3-2 Basis for Establishing the Areas of Special Flood Hazard

The area of special flood hazard identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study for the County of Maricopa, Arizona and Incorporated Areas" with accompanying FIRMs, dated July 19, 2001 and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this Chapter. The FIS 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. The floodplain board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the director of water resources. The FIS and FIRMs are on file at 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268 (Town Hall, Public Works Department, Engineering Division).

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-3-3 Compliance

All development of land, construction of residential, commercial or industrial structures, or future development within special flood hazard areas is subject to the terms of this Chapter and other applicable regulations.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-3-4 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 an ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-3-5 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.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Text did not change in the amendment.)

Section 14-3-6 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 occasion. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damage. This Chapter shall not create liability on the part of the Town of Fountain Hills, any officer or employee thereof, the State of Arizona or FEMA, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-3-7 Statutory Exemptions

In accordance with ARIZ. REV. STAT. § 48-3609(H), as amended, unless expressly provided, this and any regulations adopted pursuant to this article do not affect:

- A. Existing legal uses of property or the right to continuation of such legal use. However, if a legal nonconforming use of land or a building or structure is discontinued for twelve months, or destroyed to the extent of 50 percent of its value as determined by a competent appraiser, any further use shall comply with this Chapter and regulations of the Town of Fountain Hills.
- B. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or on the date that any regulation affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by 50 percent or more shall be either floodproofed or elevated to or above the regulatory flood elevation.
- C. Reasonable repair of structures constructed with the written authorization required by ARIZ. REV. STAT. § 48-3613, as amended.

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- D. Facilities constructed or installed pursuant to a Certificate of Environmental Compatibility issued pursuant to Arizona Revised Statutes, Title 40, Chapter 2, Article 6.2.

Before any authorized construction begins for the exceptions listed below, the responsible person must submit plans for the construction to the floodplain board for review and comment. In accordance with ARIZ. REV. STAT. § 48-3613, as amended, written authorization shall not be required, nor shall the floodplain board prohibit:

- A. The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse.
- B. The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by Arizona Revised Statutes, Title 45, Chapter 6.
- C. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the floodplain board pursuant to regulations adopted by the floodplain board under this article.
- D. Other construction upon determination by the floodplain board that written authorization is unnecessary.
- E. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under Arizona Revised Statutes, Title 48, Chapter 21, Article 1.
- F. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.
- G. The construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this Chapter. If a person is found to be in violation of this Section, the court shall require the violator to either comply with this Section if authorized by the floodplain board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation including reasonable costs and attorney fees.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-3-8 Unlawful Acts

- A. It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in any watercourse if it creates a hazard to life or property without securing the written

authorization of the floodplain board. Where the watercourse is a delineated floodplain, no development shall take place in the floodplain without written authorization of the floodplain board.

- B. 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. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a class one misdemeanor. Nothing herein shall prevent the Town of Fountain Hills from taking such lawful action as is necessary to prevent or remedy any violation.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Declaration of Public Nuisance)

Section 14-3-9 Declaration of Public Nuisance

Every new structure, building, fill, excavation or development located or maintained within any special flood hazard area after August 8, 1973, in violation of this Chapter is a public nuisance per se and may be abated, prevented or restrained by action of the Town of Fountain Hills.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Abatement of Violations)

Section 14-3-10 Abatement of Violations

Within 30 days of discovery of a violation of this Chapter, the floodplain administrator shall submit a report to the floodplain board which shall include all information available to the floodplain administrator which is pertinent to said violation. Within 30 days of receipt of this report, the floodplain board shall do one of the following:

- A. Take any necessary action to effect the abatement of such violation.
- B. Issue a variance to this Chapter in accordance with the provisions of Article 14-6 herein.
- C. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the floodplain administrator within 30 days of such order and he shall submit an amended report to the floodplain board within 20 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 14-6 herein.
- D. Submit to FEMA 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.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Unlawful Acts)

Section 14-3-11 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.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Added, 09/15/2005)

Article 14-4

ADMINISTRATION

Sections:

- 14-4-1 Establishment of Development Permit**
- 14-4-2 Designation of the Floodplain Administrator**
- 14-4-3 Duties and Responsibilities of the Floodplain Administrator**

Section 14-4-1 Establishment of Development Permit

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any special flood hazard area established in Section 14-3-2. 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 floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures.
- B. Proposed elevation in relation to mean sea level to which any non-residential 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 subsection 14-5-1(C)(3).
- D. Require base flood elevation data for subdivision proposals or other development greater than 50 lots or 5 acres, whichever is the lesser.
- E. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-4-2 Designation of the Floodplain Administrator

The Town Manager or authorized designee is hereby appointed to administer, implement and enforce this Chapter by granting or denying development permits in accordance with its provisions.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Duties and Responsibilities of the Floodplain Administrator)

Section 14-4-3 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.

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2. All other required state and federal permits have been obtained.
 3. The site is reasonably safe from flooding.
 4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this Chapter, “adversely affects” means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.
 5. The substantial improvement rules apply, including establishing a definition of market value determination and verifying that the estimated improvement or repair costs are less than 50 percent of the market value of the structure.
- B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 14-3-2, 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 14-5. Any such information shall be consistent with the requirements of FEMA and the director of water resources and shall be submitted to the Floodplain Board for adoption.
- C. Obtain and maintain for public inspection and make available the following:
1. The certified regulatory flood elevation required in subsections 14-5-1(C)(1) and 14-5-5.
 2. The Zone AO certification required in subsection 14-5-1(C)(2).
 3. The floodproofing certification required in subsection 14-5-1(C)(3).
 4. The certified opening elevation required in subsection 14-5-1(C)(4)(b).
 5. Permit records for repair of flood-related damage to structures on a cumulative basis over the life of the structure.
 6. The subdivision and other proposed development standards certification of elevation required by subsection 14-5-4(A)(2).
 7. The floodway encroachment certification required by subsection 14-5-7(A).
 8. Records of all variance actions, including justification for their issuance.
 9. The improvement and damage calculations required by subsection 14-4-3(A)(5).
- D. Whenever a watercourse is to be altered or relocated:
1. Notify adjacent communities and ADWR prior to such alteration or relocation of a watercourse, and submit evidence of such notification to FEMA through appropriate notification means.
 2. Require that the flood carrying capacity of the altered or relocated portion of said

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watercourse be maintained.

- E. Advise the Flood Control District of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of a 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 Town of Fountain Hills. Also, advise the district of Maricopa 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 Town of Fountain Hills.
- F. Make interpretations, where needed, as to the exact location of the boundaries of the special flood hazard areas (e.g., 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 Article 14-6.
- G. Take actions on violations of this Chapter as required in Section 14-3-10 herein.
- H. Notify FEMA of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.
- I. Within one hundred twenty days after completion of construction of any flood control protective works which changes the rate of flow during the base 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 ADWR.
- J. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify FEMA of the changes by submitting technical or scientific data in accordance with Volume 44, Code of the Federal Regulations, Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data. This is accomplished through the Letter of Map Revision process.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Added, 09/15/2005)

Article 14-5

PROVISIONS FOR FLOOD HAZARD REDUCTION

Sections:

14-5-1	Standards of Construction
14-5-2	Standards for Storage of Materials and Equipment
14-5-3	Standards for Utilities
14-5-4	Additional Standards for Development, Including Subdivisions
14-5-5	Standards for Manufactured Homes
14-5-6	Standards for Recreational Vehicles
14-5-7	Floodways
14-5-8	Flood Related Erosion-Prone Area

Section 14-5-1 Standards of Construction

In all special flood hazard areas, 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 resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All manufactured homes shall meet the anchoring standards of subsection 14-5-5(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.
3. All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
4. Require within Zones AH or AO adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

C. Elevation and Floodproofing

1. New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated at or above the regulatory flood elevation. Nonresidential structures may meet the standards in subsection 14-5-1(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

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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 and at least one foot higher than the depth number on the FIRM, or at least two feet if no depth number is specified on the FIRM. Nonresidential structures may meet the standards in subsection 14-5-1(C)(3). Upon completion of the structure a registered professional engineer shall certify to the Floodplain Administrator that the elevation of the structure meets this standard.
3. Non-residential construction shall either be elevated in conformance with subsection 14-5-1(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.
 - 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. All new construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed all of the following minimum criteria:
 - a. A minimum of two openings on different sides of each enclosed area that have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - 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. Manufactured homes shall meet the above applicable standards and also the standards in Section 14-5-5.
6. Accessory structures used solely for parking vehicles or for storage may be constructed such that the floor is below the regulatory flood elevation, provided the structure is designated and constructed in accordance with the following requirements:
 - a. Use of the accessory structure must be limited to parking of vehicles or storage.
 - b. The portions of the accessory structure located below the regulatory flood elevation must be built using flood resistant materials.

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- c. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement.
- d. Any machinery or equipment servicing the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation.
- e. The accessory structure must comply with floodway encroachment provisions in Section 14-5-7.
- f. The accessory structure must be designed to allow for the automatic entry and exit of flood waters in accordance with Section 14-5-1(C)(4)(a) or (b).

Detached garages, storage structures and other accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 14-5-1(C). Upon completion of the structure, certification by a registered professional engineer or surveyor that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-5-2 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.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-5-3 Standards for Utilities

- A. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.
- 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 regulatory floodway.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-5-4 Additional Standards for Development, Including Subdivisions

- A. All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), greater than 50 lots or 5 acres, whichever is the lesser, shall
 - 1. Identify the area of the special flood hazard area and the elevation of the base flood.

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2. Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.
 - B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
 - C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
 - D. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.
- (16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Standards for Subdivisions)

Section 14-5-5 Standards for Manufactured Homes

All manufactured homes that are placed or substantially improved 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 or above the regulatory flood elevation.
 - B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-5-6 Standards for Recreational Vehicles

All recreational vehicles placed on site will either:

- A. Be on site for fewer than 180 consecutive days, and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - B. Meet the permit requirements of Article 14-4 of this Chapter and the elevation and anchoring requirements for manufactured homes in Section 14-5-5 above.
- (16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Floodways)

Section 14-5-7 Floodways

Within special flood hazard areas designated as floodways, the following provisions apply:

- A. Encroachments, including fill, new construction, substantial improvements and other

development shall be prohibited, unless certification by a registered professional engineer or architect is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- B. In addition to the certification requirements in this Section 14-5-7, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Article 14-5.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Added, 09/15/2005)

Section 14-5-8 Flood Related Erosion-Prone Area

- A. The floodplain administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community.
- B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- C. If a proposed development is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvements shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Added, 09/15/2005)

Article 14-6

VARIANCE PROCEDURE

Sections:

- 14-6-1 Nature of Variances**
- 14-6-2 Conditions for Variances**
- 14-6-3 Appeal Board**

Section 14-6-1 Nature of Variances

A variance may only be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this Chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005, Previous section title: Appeal Board)

Section 14-6-2 Conditions for Variances

- A. 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 procedures of Articles 14-4 and 14-5 of this Chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. 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 this Chapter as a "Functionally Dependent Use".

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.
(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Amended, 09/15/2005)

Section 14-6-3 Appeal Board

- A. The Floodplain Board of the Town of Fountain Hills 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 including:
 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 availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage.
 6. The compatibility of the proposed use with existing and anticipated development.
 7. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
 8. The safety of access to the property in time of flood for ordinary and emergency vehicles.
 9. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
 10. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.
- D. Upon consideration of the factors set forth in subsection 14-6-2(C) and the 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.
- E. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

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1. The issuance of a variance to construct a structure below the base flood level may result in increased premium rates for flood insurance.
 2. Such construction below the base flood level increases risks to life and property.
 3. 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 state law. A copy of the notice shall be recorded in the office of the Maricopa County recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- F. The floodplain administrator shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its biennial report submitted to the FEMA.
(16-02, Amended, 06/02/2016, Deleted and replaced; 05-09, Added, 09/15/2005)

Article 14-7

UNIFORM DRAINAGE REGULATION

Sections:

14-7-1 Uniform Drainage Regulation

Section 14-7-1 Uniform Drainage Regulation

That certain document entitled "Drainage Policies and Standards for Maricopa County, Arizona", sponsored and distributed by the Flood Control District of Maricopa County, is hereby adopted by the Town of Fountain Hills and made a part of this Chapter the same as though said regulations were specifically set forth in full herein, and one paper copy and one electronic copy maintained in compliance with Ariz. Rev. Stat. § 44-7041 are on file in the office of the Town Clerk and open for public inspection during normal business hours.

(16-02, Amended, 06/02/2016, Deleted and replaced; 09-02, Amended, 02/05/2009; 05-09, Amended, 09/15/2005, text did not change)

Chapter 15

SUBDIVISIONS

Articles:

15-1 ADOPTION OF SUBDIVISION ORDINANCE

Fountain Hills Town Code

Article 15-1

ADOPTION OF SUBDIVISION ORDINANCE

That certain document known as the Subdivision Ordinance of the Town of Fountain Hills and any amendments thereto is hereby adopted and made by reference a part of the town code. At least three copies of said code and amendments shall be kept on file in the office of the town clerk.

Chapter 16

STREETS AND SIDEWALKS

Articles:

16-1 ENCROACHMENTS

Article 16-1

ENCROACHMENTS

Sections:

16-1-1	Definitions
16-1-2	Standards and Specifications
16-1-3	Permit Required
16-1-4	Exceptions to Permit Requirements
16-1-5	Application for Permit
16-1-6	Issuance of Permit
16-1-7	Traffic Control
16-1-8	Fees
16-1-9	Insurance; Holding Town Harmless
16-1-10	Term of Permit
16-1-11	Display
16-1-12	Supervision and Inspection of Work
16-1-13	Revocation of Permit
16-1-14	Manner of Giving Notice
16-1-15	Appeal
16-1-16	Emergency Work
16-1-17	Excavations and Newly Paved Streets
16-1-18	Backfill and Pavement Replacement Standards
16-1-19	Inspection
16-1-20	Compliance With Other Laws
16-1-21	Cost of Work
16-1-22	Article Not Applicable to Town Work
16-1-23	Liability of the Town

Section 16-1-1 Definitions

In this chapter unless the context otherwise requires:

- A. "ATSSA" means the American Traffic Safety Services Association.
- B. "Encroach" or "encroachment" means going over, upon or under or using any right-of-way or water course in such manner as to prevent, obstruct or interfere with its normal use, including but not limited to the performance of any of the following acts:
 - 1. Dig up, break, excavate, tunnel, undermine or in any manner break up or disturb the surface of any right-of-way or water course.
 - 2. Erect or maintain any flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, pipe, conduit, wire or other structure on, over or under the surface of any right-of-way or water course.
 - 3. Place or leave any rubbish, brush, earth or other material of any nature whatsoever in any right-of-way or water course.
 - 4. Construct, place, maintain on, over or under any right-of-way or water course any pipe,

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conduit, wire, cable or other fixture.

5. Move or caused to be moved over the surface of any right-of-way, or over any bridge, viaduct or other structure maintained by the Town any vehicle or combination of vehicles or other object of dimension or weight prohibited by law or having other characteristics capable of damaging such right-of-way, bridge, viaduct or other structure.
 6. Lighting or building a fire in any right-of-way or water course.
 7. Construct, place, plant or maintain any structure, embankment, excavation, tree or other object adjacent to a right-of-way or water course which causes or will cause an encroachment.
 8. Apply paint or other marking materials to any pavement located in any right-of-way.
- C. "MCSO" means the Maricopa County Sheriff's Office
- D. "MUTCD" means the Manual on Uniform Traffic Control Devices, most recent edition, as published by the Federal Highway Administration.
- E. "Permittee" means any person who proposes to do work or encroach upon a right-of-way or water course as herein defined and who has been issued a permit for such encroachment by the Town.
- F. "Public street" means the full width of the right-of-way of any road, street, highway, lane or pedestrian walkway used by or for the general public, whether or not the road, street, highway, alley, lane or pedestrian right-of-way has been improved or accepted for maintenance by the Town. "Public street" does not include streets and highways forming part of the state highway system.
- G. "Right-of-way" means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for, dedicated to or used by the general public or the Town for street, highway, alley or pedestrian walkway purposes.
- H. "Water course" means a channel for the carrying of storm water, including both natural and artificial water courses which have been by deed, conveyance, agreement, easement, dedication, usage or process of law dedicated to the Town or the general public for such purposes.
- I. "Urgent necessity" means damage to any pipe or conduit that poses an immediate threat to life, property, or loss of utility service, the repair of which may not be postponed until an encroachment permit is issued without injury to persons or substantial damage to property.

(13-02, Amended, 04/18/2013)

Section 16-1-2 Standards and Specifications

The Town Engineer may establish such standards and specifications necessary for the proper construction, use and maintenance of encroachments. Any work or use completed under a permit issued under provisions of this article shall conform to such standards and specifications. In instances where alteration or modification will be required, the Town Engineer may issue an advisement letter or a directive pertaining to standards and specifications required for a particular encroachment.

(13-02, Amended, 04/18/2013)

Section 16-1-3 Permit Required

- A. It is unlawful to encroach upon any right-of-way or water course as defined in Section 16-1-1 without first obtaining authorization pursuant to this Article. Any contractor, agency, utility, or any other person performing work within the right-of-way shall obtain an Encroachment Permit from the Town's Development Services Department prior to entering the right-of-way. An Encroachment Permit will not be issued prior to approval by the Town's Development Services Department of the required Traffic Control Plan set forth in subsection 16-1-7 below. The Traffic Control Plan shall be on-site and attached to the permit whenever activities are taking place in the right-of-way, and shall be produced upon request by Town staff or law enforcement.
- B. Any construction or work undertaken prior to applying for and securing the required permit shall be immediately terminated upon notification from the Town Engineer or his designee. The work shall not resume until such permit is obtained.

(13-02, Amended, 04/18/2013)

Section 16-1-4 Exceptions to Permit Requirements

- A. Mailboxes.
1. No permit is required for the placement of mailboxes in the right-of-way provided such mailbox conforms to the requirements of this subsection.
 2. All mailboxes shall be mounted not more than 36 inches above grade on a pedestal or base measuring no more than 24 inches in width and 24 inches in depth and shall otherwise meet the standards as authorized by the United States Postal Service when installed in the Town right-of-way.
 3. The owner of a mailbox installed pursuant to this subsection shall hold harmless the Town from any and all losses of any kind or description that may result from the mailbox being placed in the Town right-of-way.
 4. The mailbox shall be placed so as not to present a hazard to persons lawfully using the right-of-way. If, in the opinion of the Town Engineer, any such mailbox is potentially harmful to any public utility or other public improvement located in the right-of-way or constitutes a hazard to the public, the Town Engineer may order its removal.
- B. Landscaping.
1. No permit is required of any owner or tenant of a single family or two family residential structure abutting any right-of-way, and any contractor employed by such owner or tenant to conduct the following activities in that portion of the right-of-way abutting the property and lying between the property line and the curb or traveled portion of the right-of-way.
 - a. Plan shrubs, grass or other decorative plants.
 - b. Place decomposed granite or other, similar decorative rock materials.

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- c. Place decorative lighting.
 - d. Trench to a depth not exceeding 12 inches provided such trenching does not involve cutting any curb, sidewalk or pavement.
2. All landscaping placed in the right-of-way pursuant to this subsection shall be placed in such a manner as not to present a hazard to the public. If, in the opinion of the Town Engineer, any such landscaping is potentially harmful to any public utility or other public improvement located in the right-of-way or constitutes a hazard to the public, the Town Engineer may order its removal.
- C. No permit or fee is required in order to paint a house number on a curb.
 - D. No permit or fee under this article is required for work in any right-of-way in connection with the construction or reconstruction or alteration of any single family or two family residential structure, provided a building permit has been issued by the Town for such construction, reconstruction or alteration and the work in the right-of-way does not involve the cutting or construction of any curb, sidewalk or pavement.
 - E. No permit or fee is required for properly permitted participants of the Adopt-A-Street program.
 - F. The placement of traffic control markings on pavements and curbs by the Town and the marking of pavements, curbs, and sidewalks by utility companies, engineers and surveyors to indicate the location of underground utility lines and the monuments in connection with surveying, construction and maintenance work may be done without a permit; however, all other pavement, curb and sidewalk markings require a permit unless otherwise excepted by this article.
 - G. No permit is required for a continuing use or maintenance of encroachments lawfully installed by public utilities, for changes therein or thereto where such continuing use, maintenance, changes or additions require no excavation of the right-of-way.

(13-02, Amended, 04/18/2013)

Section 16-1-5 Application for Permit

- A. The Town Engineer shall prescribe and provide a regular form of application for use by Applicants for permits required by this article. The application shall include such information and details as the Town Engineer deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed encroachment. For encroachments in the right-of-way, the applicant shall submit a traffic control plan in accordance with Section 16-1-7 below.
- B. When required by the Town Engineer, the application shall be accompanied by maps, sketches, diagrams or similar exhibits. The accompanying materials shall be of the size and in the quantity prescribed by the Town Engineer and of sufficient clarity to illustrate the location, dimensions, nature and purpose of the proposed encroachment and its relation to existing and proposed facilities in the right-of-way or water course.
- C. The applicant shall enclose with, or attach to, the application the written order or consent to any work thereunder which may be required by law to be obtained. A permit shall not be issued until such order of consent is first obtained and evidence thereof is supplied to the Town.

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- D. No changes shall be made in the location, dimensions, character or duration of the encroachment as granted by the permit except upon written authorization of the Town Engineer.
- E. Before issuing an encroachment permit that will affect any water line trench or sewer line trench, the Town Engineer may require the applicant to obtain the approval of the Chaparral City Water Company and the Fountain Hills Sanitary District, respectively.
- F. The applicant shall submit documentation with the application describing any potential conflicts identified by Arizona Blue Stake to identify any potential conflicts.
- G. The applicant shall submit the signed permit application, proof of liability insurance, two copies of detailed drawings and traffic control plans, and a certificate of quantities detailing and dimensioning the items being placed in the right-of-way.
- H. A completion date will be indicated on the permit. The contractor shall notify the Town Engineer 48 hours prior to start of construction. The permit may place restrictions on the time of day that work can be performed.

(13-02, Amended, 04/18/2013)

Section 16-1-6 Issuance of Permit

- A. Applications for encroachment permits may be approved, conditionally approved or denied. When the Town Engineer finds that the application is in accordance with the requirements of this article, he shall issue a permit for the encroachment, attaching such conditions as are necessary for the health, safety and welfare of the public and for the protection of the Town. If the Town Engineer finds the application is in conflict with the provisions of this article, the permit shall be denied and the applicant given written reason for the denial. No permit is valid unless signed by the Town Engineer or his designee. Encroachment permits shall be issued only to the person making application therefore and may not be assigned to another person by the permittee. If any permittee assigns his permit to another, the permit shall be void. The contractor directly responsible for the trench backfill and pavement replacement shall obtain and sign for the permit. General contractors may not apply for permits on behalf of subcontractors.
- B. A permit to work in the right-of-way is not authorization to remove pavement, unless the street cut is specified in the permit. Street cuts made without prior approval are subject to having the entire street overlaid to a length specified by the Town Engineer at the contractor's expense.

(13-02, Amended, 04/18/2013)

Section 16-1-7 Traffic Control

- A. **Traffic Control Plans.** A Traffic Control Plan shall be submitted with each Encroachment Permit application for any activities in the Town's right-of-way. The level of detail of such plan shall be determined by the work being performed and proximity to traffic. The Traffic Control Plan must be computer generated and designed and drawn by a person that is currently certified as Traffic Control Supervisor by the ATSSA and shall be submitted at least three business days prior to the start of work. Traffic Control Plans shall be submitted directly to the Town, using the established procedure, by the individual or company providing the temporary traffic control services.

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- B. **Certified Persons.** Placement of temporary traffic control devices within the right-of-way shall be completed under the direct, on-site supervision of a person who is currently certified as Traffic Control Technician by the ATSSA. The Technician shall carry ATSSA-issued proof of certification on his/her person at all times when working within the right-of-way, and shall produce the certification, as well as state-issued photo identification, upon request by the Town staff or law enforcement.
- C. **Temporary Signing.** All temporary signing in place due to the requirements of a Traffic Control Plan shall be minimum of ASTM Type IV sheeting, a minimum of 36" x 36" (for Warning Series signs), and shall be mounted on spring type stands. All temporary speed limit reducing signs within the right-of-way of Shea Boulevard, Fountain Hills Boulevard, Palisades Boulevard and Saguaro Boulevard shall be a minimum of 36" x 48". All signing for projects considered to be Long-Term Stationary in nature by the MUTCD shall be post mounted.
- D. **Flaggers.** Any civilian flagger working within the Town's right-of-way shall hold current certification as a flagger by the ATSSA, or a pre-approved (by the Town) equivalent, and shall carry proof of certification at all times when working within the right-of-way. Certified flaggers may be required to provide proof of certification to the Town prior to working within the Town's right-of-way. Off duty P.O.S.T. certified law enforcement officers may be used in lieu of certified flaggers. Civilian flaggers shall not be permitted to control traffic at an intersection at any time; intersection traffic control shall only be conducted by MCSO Deputies.
- E. **Street Closures.** Requests for street closures (excluding special events as determined by the Town) shall be made a minimum of 30 days prior to the date needed. Requests shall be made in writing and shall include a Traffic Control Plan that meets the requirements of the MUTCD and the Town Engineer. Requests will be reviewed and approved based upon need and potential life/safety issues. If a road closure request is granted, the contract / Applicant will be held to the dates requested and approved by the Town. Should the contractor not complete its work in the agreed-upon time limits, a \$1,500.00 per day fine may be levied for each day the work is not completed and temporary signing remains within the right-of-way, which fine shall be separate from any penalties for violations of this Article. The contractor may be directed on the last day of authorized work to begin work to open the road. The Town reserves the option of taking the necessary steps to open the road should the need arise.
- F. **Off-Duty Law Enforcement Officer.** An uniformed law enforcement officer shall be present as required as part of an approved traffic control plan or as directed by the Town Engineer or designee. Only MCSO deputies regularly assigned to the Town of Fountain Hills District Seven shall be permitted to be utilized within the Town of Fountain Hills. If a Town of Fountain Hills District Seven MCSO Deputy is not available, only the Town Engineer or designee may authorize the use of a post-certified peace officer from another jurisdiction.

(13-02, Amended, 04/18/2013; 09-08, Amended, 07/02/2009)

Section 16-1-8 Fees

- A. Permit and inspection fees, in such amounts as approved by the Council by resolution or as part of the Town's annual budget, shall be charged and paid to the Town for each encroachment permit.
- B. If any construction or work is undertaken prior to applying for and securing the required permit and paying the appropriate fees therefor, the work shall be terminated until a permit is granted,

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and the fee shall be increased to one and one-half times the fees listed in the fee schedule adopted by the Council by resolution or as part of the Town's annual budget.

- C. Permit fees must be paid before the permit can be issued.
(13-02, Amended, 04/18/2013)

Section 16-1-9 Insurance; Holding Town Harmless

- A. The permittee shall be responsible for all liability imposed by law for personal injury or property damage arising out of or related to work performed by the permittee under the permit, or arising out of the failure on the permittee's part to perform his work under the permit. If any claim of such liability is made against the Town, its officers or employees, permittee shall defend, indemnify and hold them harmless from such claim, including claims alleging the negligence of the Town, its officers and employees.
- B. No applicant shall be entitled to an encroachment permit unless he shall have filed and maintained on file with the Town a certificate certifying that he or his company or business firm carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the state, insuring the applicant and the Town and its agents, against loss by reason of injuries to, or death of persons, or damages to property arising out of or related to work performed by the applicant, its agents or employees while performing any work under the permit. Such insurance shall be primary and provide comprehensive general liability coverage, including completed operations coverage, for all liability assumed by the applicant under subsection A of this section, and shall be provided by the permittee in the following minimum amounts: (1) for work in the right-of-way, \$2,000,000.00 combined single limit and (2) for work in a wash, \$500,000.00 combined single limit. The Town Engineer may require higher insurance coverage for any particular encroachment permit when he deems it appropriate.
- C. Failure by the applicant to provide the Town with such a certificate, and failure by the Town to demand the filing by permittee of such a certificate before such a permit is issued, shall not be deemed to waive the permittee's obligation to provide the insurance. Such insurance certificate shall remain in effect and be kept on file with the Town until all work to be performed by the permittee under the permit has been completed. Where an encroachment involves a permanent obstruction, such insurance certificate requirements shall remain in effect until such obstruction is removed. The insurance certificate shall provide that coverage shall not be canceled or expire without providing thirty days' written notice of such action to the Town.

(13-02, Amended, 04/18/2013)

Section 16-1-10 Term of Permit

The permittee shall begin the work authorized by a permit issued pursuant to this article within 90 days from date of issuance, unless a different period is stated in the permit. If the work is not so begun, the permit shall be void. The permittee shall complete the work authorized by the permit within the time specified in the permit. Where an encroachment involves a permanent obstruction, the requirements of this article shall remain in effect until the obstruction is removed.

(13-02, Amended, 04/18/2013)

Section 16-1-11 Display

The permittee shall keep the permit at the site of work or in the cab of a vehicle when movement on a public street is involved. A permit issued for a continued use or maintenance of an encroachment may be kept at the place of business of the permittee or otherwise safeguarded during its term. In all cases the permit must be shown to any authorized representative of the Town on demand.

(13-02, Amended, 04/18/2013)

Section 16-1-12 Supervision and Inspection of Work

The Town Engineer or authorized designee may make inspections necessary in connection with the permits issued under this article to ensure conformance to this article and the terms of the permit. All work done under such permits shall be to the satisfaction of the Town Engineer. The permittee shall notify the Town Engineer 24 hours prior to starting work under a permit and shall also notify the Town Engineer 24 hours prior to any backfill being placed in connection with work under the permit. If the permittee fails to give such notification, the Town Engineer may order the work re-excavated, at the permittee's expense, in order to permit appropriate inspection.

(13-02, Amended, 04/18/2013; 09-08, Amended, 07/02/2009)

Section 16-1-13 Revocation of Permit

- A. A right-of-way encroachment permit may be revoked by the Town when the right-of-way, or any portion thereof, occupied and used by the permittee is needed or required by the Town, and upon notice from the Town, the permittee shall promptly remove all property belonging to or controlled by him from the right-of-way.
- B. If at any time the Town Engineer finds, in writing, that the delay in the completion of the work authorized by the encroachment permit is due to lack of diligence on the part of the permittee, he may cancel the permit and restore the right-of-way or water course to its former condition. All costs and fees for any restoration plus an administrative fee in such amount as approved by the Council by resolution or as part of the Town's annual budget shall be charged to the permittee. If a permittee fails to pay any fees charged in connection with a permit under this article within 15 days of receipt of notice such payment is due, the Town Engineer may revoke all of the permittee's existing permits and may deny any further permits to the permittee until payment is received for all fees due. The determination of the Town Engineer shall be final.
- C. Unless specifically modified in the encroachment permit conditions, failure to perform the following shall constitute a lack of diligence on the part of the permittee:
 - 1. Stop the seep or flow of a liquid onto or upon a street within five days of receipt of notice from the Town.
 - 2. Provide and maintain required barricading and other necessary traffic control measures, as determined by the Town Engineer, for the entire period of the encroachment.
 - 3. Close or backfill an excavated area where no work is occurring for a period of three consecutive days. The Town Engineer may require the permittee to backfill daily, install plates or take other such actions the engineer deems necessary for traffic safety, access,

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circulation or proper drainage.

4. Provide a temporary pavement surface (cold patch) within three days after backfilling, adequately maintain the temporary pavement surface and install the permanent pavement surface within 30 days after backfilling.
5. Restore improved landscape areas within seven days after backfilling.
6. Restore native desert areas by plantings, spriggings and seeding within 60 days after backfilling.
7. Remove steel plates within three days after placement on roadways with a posted speed limit of 35 mph or higher. Remove steel plates within 20 days for any other roadway unless such steel plates are installed flush with the top of the surrounding asphalt.

D. Any permit holder that has been determined by the Town Engineer to have shown a lack of diligence, as set forth in subsection C of this section, shall be in violation of this Code and shall be subject to the penalties set forth in Article 18.

(13-02, Amended, 04/18/2013)

Section 16-1-14 Manner of Giving Notice

All notices required by this article to be given by the permittees to the Town shall be given at the office of the Town Engineer. Any notice to be given to a permittee shall be deemed to have been received by him three days after mailing by certified mail to the address shown on the permit, or when it has been referred to in or attached to any permit received by him.

(13-02, Amended, 04/18/2013)

Section 16-1-15 Appeal

Any person aggrieved by the action of the Town Engineer under this article may appeal such decision to the Town Manager. The aggrieved person shall file a notice of appeal, in writing, with the Town Manager within seven days after final action by the Town Engineer. The Town Manager may affirm, modify or reverse the action of the Town Engineer from which the appeal is taken. Any person aggrieved by the decision of the Town Manager may further appeal such decision to the Town Council. The aggrieved person shall file a notice of appeal, in writing, with the Town Clerk within seven days after final decision by the Town Manager. The Town Council may affirm, modify or reverse the action of the Town Manager for which the appeal is taken.

(13-02, Amended, 04/18/2013)

Section 16-1-16 Emergency Work

This article does not prevent any person from making excavations necessary for a preservation of life or property when an urgent necessity arises while the Town offices are closed. A person making an emergency use or encroachment on a public street shall apply for a permit related to the urgent necessity within one calendar day after the Town offices are open. All emergency work taking place within the pavement section requiring lane restrictions or closures shall meet the requirements of the MUTCD.

(13-02, Amended, 04/18/2013)

Section 16-1-17 Excavations and Newly Paved Streets

- A. No excavation shall be permitted in a newly paved, resurfaced or sealed public street for the following period following completion of such paving, resurfacing or sealing:
 - 1. Construction or reconstruction of a structural section, four years.
 - 2. Surfacing, resurfacing or sealing of an existing structural section, two years.
 - B. In the event of an emergency, the above periods may be waived by the Town Engineer.
 - C. Any person who causes excavation in violation of subsection A of this Section shall be subject to a base fee per excavation plus a fee per lineal foot of pavement replacement. The base fee per excavation and fee per lineal foot of pavement replacement described in this subsection shall be in such amounts as approved by the Council by resolution or as part of the Town's annual budget.
- (13-02, Amended, 04/18/2013)

Section 16-1-18 Backfill and Pavement Replacement Standards

- A. Pavement shall be removed such that the edge of the pavement cut is outside of the wheel path.
- B. Backfill shall be in accordance with Maricopa Association of Governments Standard Detail 200, or Town of Fountain Hills Detail FH 200-1 or as specified by the Town Engineer in the permit. Backfill shall begin immediately following completion and inspection of the utility work.
- C. Following completion of backfill, the trench shall be steel-plated or temporarily patched and the street opened to traffic. A permanent patch shall be placed within three working days.
- D. The final pavement replacement shall be flush with the existing edges of the trench. The grade from one end of the trench to the other shall be smooth and straight with no more than one-quarter of an inch plus or minus deviation, but not both, measured in the direction of traffic flow.
- E. Pavement replacement shall match the existing street. The permit may require an overlay if the existing pavement surface is less than one year old.
- F. Where concrete slurry is used for backfill it shall be one sack mix and paving may not begin until the moisture in the slurry has dissipated.

(13-02, Amended, 04/18/2013; 09-08, Amended, 07/02/2009)

Section 16-1-19 Inspection

All work must be inspected and approved by the Town Engineer. The applicant shall guarantee all permitted work against defects in materials and quality for two years from the date it is accepted by the Town Engineer.

(13-02, Amended, 04/18/2013)

Section 16-1-20 Compliance With Other Laws

A permittee shall keep himself adequately informed of all state and federal laws and local ordinances and regulations which in any manner affect the permit. The applicant shall at all times comply with and shall cause all his agents and employees to comply with all such laws, ordinances, regulations, decisions, court and similar authoritative orders.

(13-02, Amended, 04/18/2013)

Section 16-1-21 Cost of Work

All work authorized by an encroachment permit shall be done at the sole cost and expense of the permittee, and shall be done at such time and in such manner as to cause the least inconvenience to the traveling public and as directed by the Town Engineer.

(13-02, Amended, 04/18/2013)

Section 16-1-22 Article Not Applicable to Town Work

The provisions of this article shall not be applicable to any work done in any right-of-way or water course under the direction of competent Town authority by employees of the Town, or by any contractor of the Town performing work for and on behalf of the Town necessitating openings or excavations in streets.

(13-02, Amended, 04/18/2013)

Section 16-1-23 Liability of the Town

This article shall not be construed as imposing upon the Town or any official or employee thereof any liability or responsibility for damages to any person injured by performance of any work done pursuant to an encroachment permit issued hereunder; nor shall the Town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work done pursuant to such a permit.

(13-02, Added, 04/18/2013)

Chapter 17

ZONING

Articles:

17-1 ADOPTION OF ZONING CODE

Fountain Hills Town Code

Article 17-1

ADOPTION OF ZONING CODE

That certain document known as the Zoning Code of the Town of Fountain Hills adopted by Ordinance 90-7 and the amendments thereto is hereby adopted and made by reference a part of the town code. At least three copies of said code and amendments shall be kept on file in the office of the town clerk.

Chapter 18

ALARM SYSTEMS

Articles:

18-1	GENERALLY
18-2	ALARM BUSINESSES
18-3	ALARM USERS
18-4	REVIEW, HEARING AND MISCELLANEOUS

Article 18-1

GENERALLY

Sections:

18-1-1	Purpose
18-1-2	Definitions
18-1-3	Effective Date; Exceptions
18-1-4	Administration

Section 18-1-1 Purpose

Alarm systems of various types are used by private citizens, businesses and other commercial enterprises to alert police and fire departments to the occurrence of events requiring the response of public safety personnel. Alarms that are improperly installed, maintained or operated often cause false alarms which require the response of public safety personnel. The time spent by public safety personnel in responding to alarms, when no such response is actually required, is substantial, costly, wasteful and a detriment to the community at large. The purpose of this chapter is to regulate alarm business and alarm user conduct to reduce the waste of community public safety resources. This chapter is also for cost recovery purposes.

Section 18-1-2 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Activation" means setting off or triggering an alarm system, whether intentionally or unintentionally, but not placing an alarm system in a state of readiness, as upon the completion of installation or when arming the alarm.

"Act of God" means an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature, which cannot be prevented by reasonable care, skill or foresight and is recognized as being of such magnitude that it would have widespread effect.

"Agent" means any person, whether an employee, independent contractor or otherwise, who acts on behalf of an alarm business and installs, maintains, services, monitors or repairs any alarm system in or on any building, place or premises.

"Alarm business" means a business, all or a part of which sells, leases, installs, monitors, maintains, services, repairs, alters or responds to any alarm system, in or on any building, structure or facility within the town. A business which manufactures or sells alarm systems from a fixed location is not an alarm business if it does not engage in the activities indicated in this definition, or if it does not design any scheme for physical location and installation of an alarm system in a specific location and has no alarm agent visit the location where an alarm is to be installed.

"Alarm system" means any mechanical or electrical device, including but not limited to, those used for the detection of smoke, fire, hazardous materials or unauthorized entry into a building or other facility, or for alerting others of the occurrence of fire, or a medical emergency or the commission of an unlawful act

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within a building or other facility and which is designed to emit an outside audible alarm or to transmit a signal or message when actuated. Alarm systems include direct dial telephone devices, audible alarms and proprietor alarms. Alarm systems specifically exclude telephone call diverters and systems designed to report environmental and other occurrences that are not intended to alert, or cause others to alert, public safety personnel.

"Alarm user" means any person who purchases, leases, contracts for, otherwise obtains or uses an alarm system and includes proprietor alarms that are not leased from, owned by or maintained under a contract by an alarm business.

"Audible alarm" means a device designed to generate an outside audible sound when an alarm system has been activated.

"Automatic dialing device" means any electrical, electronic, mechanical or other device capable of being programmed to send a prerecorded voice message or any other signal, when activated, over a telephone line, radio or other communication system for the purpose of notifying, or causing to be notified, public safety personnel.

"Burglary alarm system" means an alarm system which signals an entry or attempted entry to the area protected by the system.

"Emergency medical alarm system" means a manually activated alarm system designed to signal a medical emergency and to summon medical assistance.

"Fire department" means the Fountain Hills Fire District or, in the event that the town shall provide its own fire service, that organization.

"License" means an alarm business license issued pursuant to this chapter.

"Monitored alarm system" means an alarm system that transmits signals to an alarm business or monitoring agency for the purpose of alerting public safety personnel.

"Monitoring agency" means any person or organization that is legally or contractually responsible for monitoring one or more alarm systems located in the town.

"Nonmonitored alarm system" means those alarms that are not monitored by a monitoring agency.

"Notice" means written notice, either delivered or mailed to the person to be notified at his last known address. Notice which is mailed shall be deemed given upon receipt or five working days after mailing, whichever occurs first.

"Permit" means an alarm user permit issued pursuant to this chapter.

"Permittee" means a person or organization which holds a permit.

"Police" means the town law enforcement agent or the Maricopa County Sheriff's Office.

"Primary alarm user" means the person or persons who contracts for the lease, purchase or rental of an alarm system; or who is responsible for the premises where an alarm system is located or who otherwise arranges for the installation or service of an alarm system.

"Proprietor alarm system" means any alarm system which is not leased or rented from, owned or

maintained under contract by an alarm business.

"Robbery alarm system" means an alarm system which is used to signal a robbery, attempted robbery or other crime in which a personal confrontation may be occurring, and which may include the use of a panic button activation device or alarm system duress feature.

"Town representative" means an employee or agent of the town, or an independent contractor acting on its behalf, who is responsible for the administration and enforcement of this chapter.

(06-14, Amended, 05/18/2006)

Section 18-1-3 Effective Date; Exceptions

- A. The effective date of this chapter shall be June 1, 1997. Any alarm business operating within the town pursuant to a valid town business license prior to this effective date which continues to operate as such after June 1, 1997, shall apply for a license under this chapter no later than July 1, 1997. Such alarm business shall be permitted to operate as if lawfully licensed under this chapter until such time as the application required by this subsection is granted or denied.
- B. The provisions of this chapter shall not apply to audible alarms installed in or used in motorized transportation, including, without limitation, motor vehicles and boats.

Section 18-1-4 Administration

The administration of this chapter, including the duty of prescribing forms, is vested in the town law enforcement agent or authorized designee. License and permit applications made pursuant to this chapter shall be submitted to the town law enforcement agent or authorized designee, who shall have the authority to issue, deny or revoke a permit or license in accordance with the provisions of this chapter. The town law enforcement agent or authorized designee shall be responsible for review procedures, hearings or related activities provided for in this chapter.

(06-14, Amended, 05/18/2006)

Article 18-2

ALARM BUSINESSES

Sections:

18-2-1	License Required; Term; Fees
18-2-2	Application; Investigation
18-2-3	Issuance
18-2-4	Display of License
18-2-5	Equipment and Technical Standards
18-2-6	Responsibilities
18-2-7	Notification of Public Safety Agency; Response
18-2-8	Revocation; Appeals

Section 18-2-1 License Required; Term; Fees

- A. No person shall engage in the activities of an alarm business in the town without having first obtained a license as provided by this chapter.
- B. The license required by this section shall be in addition to any other licenses or permits required by the town, the county or the state in order to engage in business, and persons engaging in activities described in this chapter shall comply with all other ordinances and laws, including the town zoning laws, as may be required to be engaged in the business to be licensed. Failure of an applicant or licensee, as applicable, to meet the requirements of this subsection shall be grounds for denial or revocation of a license.
- C. Licenses issued pursuant to this article shall be for a period of one calendar year and shall be renewable annually, subject to any terms and conditions provided in this article.
- D. Fees for initial license application or renewal shall not be refundable, transferable or prorated. The initial annual license fee shall be prorated, by quarter, if applicable. Fees, in such amounts as approved by the Council by resolution or as part of the Town's annual budget, shall apply to alarm business licenses, and shall accompany initial applications or renewals.
- E. In the event that a state law is enacted, which provides for the licensing of the activities which are the subject of this section, and which expressly preempts the town from requiring a separate town license for the same activities, the town shall refund to any alarm business licensed under this section an amount representing that portion of the town license, if any, preempted by the state law. The amount of the refund shall be prorated as of the date of the issuance of the preempted state license and shall be determined by multiplying the remaining portion of the town license, expressed as a fraction of the current license year by the total fees paid pursuant to subsection D of this section. Sections 18-2-4 through 18-2-7 of this article shall remain in full force and effect, notwithstanding any preempting state licensing, except as any portion of those provisions may either be expressly or impliedly preempted by the state law.
- F. Upon request and the payment of a fee, in such amount as approved by the Council by resolution or as part of the Town's annual budget, the town law enforcement agent or authorized designee shall issue a duplicate license to a licensee whose license has been lost, stolen or destroyed.
- G. In addition to the current license fees due, all applicants for licenses under this chapter shall pay

such additional fees as would have been paid if the applicant had previously complied with its requirements. Fees shall be subject to accrual from the effective date of the chapter and may be collected from the applicant for a period of not more than four years.

(09-08, Amended, 07/02/2009; 06-14, Amended, 05/18/2006)

Section 18-2-2 Application; Investigation

- A. Application for an alarm business license, or a license renewal, shall be made to the town law enforcement agent or authorized designee, upon forms prepared and approved by the town, and contain the following information:
1. Name, business location, mailing address and telephone number of the alarm business.
 2. Names and addresses of any alarm agents employed by the alarm business, identifying which alarm agents, if any, are registered security guards.
 3. Copy of current, active C-12 contractor's license or an L67 low voltage communications license, issued by the state registrar of contractors. Applicants whose sole business activity under this chapter is the monitoring of alarm systems shall not be required to possess any state registrar of contractors licenses; however, such applicants shall provide proof of Underwriters Laboratories (UL) or Factory Mutual (FM) listing as a licensing requirement. Applicants whose business activities include both monitoring of alarm systems and alarm system installation and maintenance shall comply with all the licensing requirements of this section relating to those activities.
 4. Statement of all prior criminal convictions of the applicant, including alarm agents, except minor traffic offenses, for the five years immediately preceding application.
 5. A description of the applicant's previous experience in activities similar to those for which the license application is submitted.
 6. The name, address and telephone number of the local manager, or managing officer, if a partnership or sole proprietorship, or statutory agent if a corporation.
 7. Certificate of liability insurance, evidencing errors and omissions insurance and combined general comprehensive insurance in the minimum amount of one million dollars and must specifically cover alarm systems. The insurance carrier is required to notify the town if insurance lapses. It is the sole responsibility of the applicant to determine whether other types or greater amounts of insurance coverage are necessary to adequately protect its interests and those of the public. This insurance coverage shall remain in full force and effect throughout the term of the license.
 8. Additional information deemed by the town law enforcement agent or authorized designee to be reasonably necessary to fully and fairly evaluate the license application.
- B. All applicants for licenses under this article shall personally appear at the location designated by the town law enforcement agent or authorized designee, for the purpose of being fingerprinted. For the purposes of this subsection, "applicant" shall include all general partners, if the applicant is a partnership, the president, secretary and treasurer, if the applicant is a corporation, and all agents who perform services on behalf of the applicant

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within the town. Any applicant residing outside of Maricopa County, Arizona, shall appear at a local law enforcement agency or authorized fingerprinting facility within the jurisdiction of applicant's residence for such fingerprinting. The applicant shall transmit the fingerprints to the town law enforcement agent or authorized designee in an envelope specified for such purpose and provided by the town law enforcement agent or authorized designee at the time of application. The town law enforcement agent or authorized designee shall conduct a background investigation of the applicant within the period allowed for issuance of the license.

- C. The duty to provide the information required in subsections A and B of this section is continuing throughout the license term. The applicant shall notify the town law enforcement agent or authorized designee in writing within ten days of employing any agent who performs services on behalf of the applicant within the town.
- D. The town law enforcement agent or authorized designee shall have sixty days from the date of completion of all application materials and requirements to either issue or deny any license subject to this article. The issuance of any license shall be in no way construed as a waiver of any right of denial or revocation the town may have at the time of issuance or thereafter.

(06-14, Amended, 05/18/2006)

Section 18-2-3 Issuance

- A. The town law enforcement agent or authorized designee shall issue a license to an applicant or renew a license, if applicable, when the following conditions are fully satisfied:
 - 1. All application requirements have been met and the background investigation has been conducted.
 - 2. All application and license fees have been paid in full.
 - 3. No grounds for denial exist.
- B. The following reasons may constitute sufficient grounds for denial of license or denial of renewal of a license:
 - 1. The applicant has been previously convicted, in any jurisdiction, of a felony or a misdemeanor within the five-year period immediately preceding the filing of an original application or a request for renewal. For the purposes of this subsection, "applicant" shall include all general partners, if the applicant is a partnership, the president, secretary and treasurer, if the applicant is a corporation, and all agents who perform services on behalf of the applicant within the town. A certified copy of the records of any court of competent jurisdiction reflecting the fact and date of any relevant conviction shall be prima facie evidence of a conviction for purposes of this chapter.
 - 2. False or misleading information was given in any license application, request for renewal or was submitted in support of such application or request, or the applicant failed or refused to make full disclosure of all required information.
 - 3. The applicant is not a United States citizen or lawful permanent resident alien or an alien who is authorized to work by the United States Department of Justice Immigration and

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Naturalization Service.

4. The town law enforcement agent or authorized designee has reasonable grounds to believe that the licensee has shown a pattern of repeated noncompliance or disregard with the provisions of this chapter.
5. The applicant fails to meet the continuing disclosure requirements of subsection C of Section 18-2-2.

(06-14, Amended, 05/18/2006)

Section 18-2-4 Display of License

The license shall be kept and maintained at the central station or office of the alarm business and it shall be made available to town representatives, upon request, at any time during normal business hours.

Section 18-2-5 Equipment and Technical Standards

The following standards shall apply to alarm systems sold, installed or maintained by alarm businesses on or after the effective date of this chapter:

- A. All major components of alarm systems shall be Underwriters Laboratories (UL) or Factory Mutual (FM) approved, or in "approval pending" status.
- B. All alarm systems shall be installed using good workmanship and shall be designed to reduce false alarms.
- C. All alarm systems shall have a backup, rechargeable power supply.
- D. Motion detectors and photoelectric beam detectors may only be installed by agents or technicians who have been trained in the proper installation of such devices by the manufacturer or in a class organized for teaching alarm technologies.
- E. Burglar alarm systems must be designed to alert the user of possible system problems when the user tests or attempts to activate the alarm system.
- F. Audible burglar alarms shall be designed to emit audible sound no longer than ten minutes from the time the alarm is activated.
- G. Audible and monitored (transmitted) alarms shall be designed to have distinguishable alarms for burglary and fire.
- H. Ionization type detectors shall not be connected to a monitored alarm system.
- I. No alarm business shall place in service or monitor an alarm system that is known to be defective or contains defective components such as depleted batteries.
- J. Automatic dialing devices may not be programmed to any telephone number in the town government, including, without limitation, the police department or the fire department.

Section 18-2-6 Responsibilities

- A. Any alarm business which installs or replaces an alarm system shall have a valid C-12 contractor's license or L67 low voltage communications license, unless the installation or replacement is performed by the owner or a tenant of the premises where the installation is being made.
- B. Upon the completion of the installation of an alarm system, the alarm business shall inspect and test all equipment and take or cause to be taken corrective action necessary to prevent the occurrence of false alarms.
- C. Any alarm business, that has a service or maintenance agreement with an alarm user, shall provide repair service to the subject alarm system within twenty-four hours of being notified that the alarm system is in need of repair or service. Any alarm business that has a service or maintenance agreement with an alarm user shall be available for notification of a need for repair service or repair twenty-four hours a day, seven days a week.
- D. An alarm business shall provide an alarm user with a written report any time the alarm business performs any type of service, maintenance or inspection to the alarm system. The report shall describe the reasons for the service, maintenance or inspection, any problems diagnosed and any actions taken.
- E. An alarm business that installs an alarm system shall provide the primary alarm user with complete instruction, including specific written operating instructions, or a videotape presentation of the same, that provides reasonable guidelines to aid the user in correctly using the alarm system installed by the alarm business.
- F. The alarm business shall provide the primary alarm user with a method of prearranging burglar or fire alarm system tests.
- G. Alarm businesses that provide monitoring, maintenance, repair or service to the alarm user shall maintain the following records, as applicable, for inspection by the town for two years from the time the service is performed:
 - 1. The name and address of the owner or occupant of the premises, the name and telephone number of the user, a primary and at least two alternative persons responsible for responding to the premises when the alarm is activated.
 - 2. Documentation certifying that each alarm user for which an installation has been completed has received the instruction required by subsection E of this section.
 - 3. A record of all activities and action taken to correct false alarms and events.
- H. An alarm business which leases, monitors or services an alarm system with an audible sounding device shall conspicuously place on the outside of the premises a sign or decal identifying the name of the alarm business and the telephone number to call when the alarm has been activated. The telephone number shown shall be updated as necessary to reflect accurate, current information.

Section 18-2-7 Notification of Public Safety Agency; Response

- A. When an alarm business receives an alarm notification, it shall call back the premises from which the alarm signal was activated and verify activation with an authorized user, prior to notifying public safety dispatch, except when the type of alarm activated might make verification inappropriate (fire or panic alarm). When the fire department or police department is notified of an alarm condition by an alarm business, the following information shall be provided:
 - 1. The name and address of the alarm user.
 - 2. The type of alarm.
 - 3. The area protected by the alarm.
 - 4. The estimated time of arrival of the alarm user or agent if requested.
- B. The responsible alarm business shall deactivate any audible alarm within ten minutes of notification of its activation.
- C. When requested to do so by the police department, an alarm business shall arrange for the alarm user's responsible party representative to go to the premises of an activated alarm system within twenty minutes of the activation of the alarm to be available to assist the fire or police department in determining the reason for the activation and securing the premises.
- D. An alarm user or alarm agent shall respond to the scene of an alarm activation as expeditiously as safety permits, but without unnecessary or unreasonable delay.
- E. The alarm business or alarm agent shall cause alarm sounding devices to be disconnected from the alarm system prior to repairing or testing of system equipment, except when the sounding devices are being repaired or tested.
- F. The alarm user shall, and an alarm business may, notify the town, in writing, when an alarm business has ceased to lease, rent, maintain, service or monitor the alarm system and that the service has been terminated, or is being provided by another alarm business. The alarm user shall identify any alarm business which is providing replacement services.

Section 18-2-8 Revocation; Appeals

- A. The town law enforcement agent or authorized designee shall initiate license revocation proceedings when there are reasonable grounds to believe that any of the conditions of paragraphs 1 through 5 of subsection B of Section 18-2-3 exist.
- B. Any person aggrieved by any decision with respect to either the denial of or refusal to issue a license, or the renewal of a license, or revocation of a license, which is the subject of this chapter, shall be entitled to appeal to the town council. All notices of appeal under this chapter shall be filed with the town law enforcement agent or authorized designee.

(06-14, Amended, 05/18/2006)

Article 18-3

ALARM USERS

Sections:

18-3-1 Service Charges

18-3-2 Remedies

Section 18-3-1 Service Charges

- A. Public safety alarm response service charges ("service charges") shall be assessed against alarm users in such amounts per activation as approved by the Council by resolution or as part of the Town's annual budget, except as otherwise provided herein, for each calendar year.
- B. No service charges shall be assessed pursuant to subsection A of this section for alarm activations which occur within the first thirty days of the following:
 - 1. Installation of a new alarm system; or
 - 2. New occupants moving into a residence with an existing alarm system.
- C. No service charges shall be assessed for an alarm activation that results in the preparation of a report by the police department, or the fire department, in response to the activation.
- D. All service charges shall become due and payable when a statement of charges is mailed to the customer and, except when specific arrangements are made in advance, shall become delinquent 21 days after being mailed. A late charge in such amount as approved by the Council by resolution or as part of the Town's annual budget shall be assessed for delinquent payments.
- E. Records of service charges assessed against any alarm user, or premises, shall be deemed confidential and may only be disclosed to the alarm user, an alarm business presently having some responsibility for the alarm system that is the subject of the permit and town representatives, including members of the police and fire departments, acting in their official capacity.

(09-08, Amended, 07/02/2009)

Section 18-3-2 Remedies

All remedies prescribed by this chapter are cumulative and supplemental and the use of one or more remedies by the town shall not bar the use of any other remedy for the purpose of enforcing this chapter. This chapter shall not be construed to limit the right of the town to sue in a court of competent jurisdiction for appropriate relief, either legal or equitable, for the nonpayment of assessment fees, and to recover attorneys fees and costs for bringing such actions, as may be provided by law.

Article 18-4

REVIEW, HEARING AND MISCELLANEOUS

Sections:

- 18-4-1 Service Charge Review**
- 18-4-2 Hearing; Notice**
- 18-4-3 Decision of Hearing Officer; Notice**
- 18-4-4 Offenses; Penalty**
- 18-4-5 Liability of the Town Limited**

Section 18-4-1 Service Charge Review

An alarm user may file a written request for a service charge review by the town law enforcement agent or authorized designee. The request for service charge review must be received by the town law enforcement agent or authorized designee not later than the delinquent date for the payment of the assessment for which the review is being sought. Requests received after the delinquent date shall be deemed untimely and the rights of service charge review and hearing shall be deemed waived as to those assessments.

- A. The service charge review request shall include a statement of the reason or reasons that the alarm user believes justify reduction or waiver of the service charge. The alarm user shall describe, if applicable, what actions have been taken to discover and eliminate such alarm activations in the future.
- B. Grounds for alarm service charge reduction or waiver are an act of God, a power outage not caused by the alarm user or a valid alarm activation, where a report is prepared by the police department or the fire department.
- C. An alarm user may present evidence that a series of concurrent alarm activations were caused by a "common cause," which could not have been reasonably corrected before subsequent activations occurred, in which case, the activations shall be counted as a single activation. This provision shall only apply to commonly caused activations occurring within a forty-eight hour period, commencing with the first commonly caused activation, provided that the responsible alarm business has documented, to the town law enforcement agent or authorized designee, the action taken to rectify the cause and there are no additional activations of the alarm system from the documented cause within thirty days from the documented cause.
- D. The alarm user shall be notified, in writing, of the findings of the reviewer. In the event that good cause for relief has been shown, the service charge will be reduced or waived. In the event that good cause for relief is not shown, the alarm user will be advised that the service charge or service charges, as applicable, are due and payable on receipt of the notice.

(06-14, Amended, 05/18/2006)

Section 18-4-2 Hearing; Notice

- A. Any party aggrieved by the decision resulting from a service charge review may request a hearing on the service charge by filing a written request for a hearing within ten days of receipt of decision of the reviewer. The request shall be filed, in writing, with the town law enforcement

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agent or authorized designee.

- B. The request for hearing shall include a statement of the reason or reasons that the alarm user believes justify reduction or waiver of the service charge. The alarm user shall describe, if applicable, what actions have been taken to discover and eliminate such alarm activations in the future.
- C. The request for hearing an appeal shall be accompanied by a filing fee for each service charge being appealed, in such amount as approved by the Council by resolution or as part of the Town's annual budget. Filing fees shall be refunded to the alarm user if the service charge to which the filing fee relates is waived or reduced as a result of the hearing. If the service charge is not waived or reduced as a result of the hearing, the filing fee will be applied against the service charge or any service charge balance of the alarm user.
- D. The town magistrate shall be hearing officer for the purposes of this chapter. A hearing shall be set no later than thirty calendar days from the date on which the notice of appeal is filed.
- E. The hearing shall be informal and shall proceed as determined by the hearing officer, who shall have the authority to determine length of the hearing, the manner of presenting evidence and the order of evidence. No formal rules of evidence shall be required in conducting the hearing. Both the alarm user or the town shall be entitled to be represented by counsel at the hearing.
- F. The alarm user may present witnesses and written evidence in support of his or her position, subject to any limitation imposed by the hearing officer.
- G. A member of the town staff may attend the hearing to assist the hearing officer in understanding the status of the account in question and to explain the service charge. Additional evidence and witnesses may be offered by the town, subject to any limitation imposed by the hearing officer, in support of the service charge or related matters.

(09-08, Amended, 07/02/2009; 06-14, Amended, 05/18/2006)

Section 18-4-3 Decision of Hearing Officer; Notice

- A. The decision of the hearing officer shall be based upon the evidence presented and shall be rendered within ten days of the completion of the hearing. The hearing officer may either affirm or deny the service charge and shall give the alarm user written notice of the decision.
- B. In the event that the hearing officer finds that there are no grounds justifying relief from the service charge, it shall be due and payable, less any filing fee which has been paid as a condition of the request for hearing, within ten days of the notice of the decision of the hearing officer. The hearing officer shall have the authority, however, to waive all or part of a service charge that has been affirmed, if an alarm user voluntarily agrees to attend appropriate training, or undertake appropriate alarm system maintenance or repairs. The hearing officer may require documentation of any of these required actions.
- C. In the event that the hearing officer finds that grounds exist justifying relief from the service charge, the alarm user shall not be responsible for payment. Any filing fees paid as a condition of the hearing shall be returned by the town, unless the alarm user owes other sums to the town, whether from alarm service charges or otherwise, in which case the town may retain the fees and apply them against the amount owing.

Section 18-4-4 Offenses; Penalty

- A. It shall be unlawful for any person to engage in, represent themselves to be, or operate as, an alarm agent without first applying for and receiving a license in accordance with the provisions of this chapter.
- B. Any violation of subsection A of Section 18-2-1 or subsection A of this section shall be a class one misdemeanor, punishable by up to six months in the county jail, or a fine in the amount of twenty-five hundred dollars, or both. When the violation does not consist of a discrete act or acts but is, in fact, continuing in nature, each day such violation continues shall constitute a separate offense.
- C. The revocation of a license or permit, or pending revocation proceedings, shall not be a defense to prosecution under this chapter.

Section 18-4-5 Liability of the Town Limited

The police department shall take every reasonable precaution to assure that alarm notifications received are given appropriate attention and are acted upon with dispatch. Nevertheless, the town shall not be liable for any failure or neglect to respond appropriately upon receipt of an alarm notification, for any failure to discover, after reasonable diligence, a criminal background of an applicant for an alarm license, or the failure or neglect of any person with a license issued pursuant to this chapter or with a franchise in connection with the installation and operation of equipment, the transmission of alarm signals or the relaying of such signals and messages. In the event the town finds it necessary to order the revocation of an alarm license, the town shall incur no liability by such action.