

Property of  
Flood Control District of MC Library  
Please Return to  
2801 W. Durango  
Phoenix, AZ 85009

NPDES PERMIT APPLICATION FOR DISCHARGES

FROM MSSSS  
MAY 16, 1992

APPENDIX A

**TEMPE**

1199.014

Public Works  
Department

June 16, 1992

Catesby W. Moore  
Environmental Program Manager  
Maricopa County Flood Control District  
2801 W. Durango Street  
Phoenix, AZ 85009

RE: City of Tempe NPDES MSSSS Permit Application

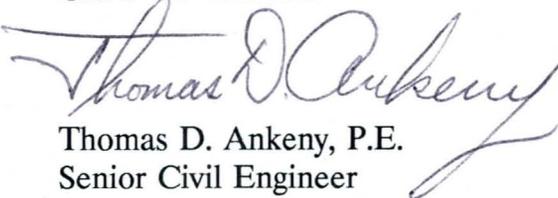
Dear Ms. Moore:

Enclosed please find the transmittal letter to Eugene Bromley, Region IX-EPA, and the text for our above referenced application. Also included, are Appendices A-E in two separate bound volumes. In addition, there are copies of maps that are 11 x 17. These are sequentially coincident with their appearance in the Appendices. Due to the difficulty of placing them in the document they were reproduced separately. This package does not contain the 1" = 200 scale maps which were included with the submittal to Region IX-EPA.

We would anticipate that the Flood Control District would be named as a co-permittee and perhaps as well the Salt River Valley Water User's Association. This information is for County Flood Control use. We are in the process of finalizing the overall land use percentages and obtaining projected flows. We hope to have this information by the middle of July. If you would like to see the 200 scale maps, please contact me.

Sincerely,

CITY OF TEMPE



Thomas D. Ankeny, P.E.  
Senior Civil Engineer

cc: Jim Jones  
Lee Quaas  
Howard Hargis

City of Tempe  
P.O. Box 5002  
31 East Fifth Street  
Tempe, AZ 85280  
602-350-8371



Public Works  
Department

May 14, 1992

NPDES Permits  
Water Management Division  
Permits Issuance Section (W-5-1)  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

ATTN: Eugene Bromley

RE: Part 1 of the NPDES Permit Application for Discharges from MSSSS for  
the City of Tempe, Arizona

Dear Mr. Bromley:

The documents submitted for the above referenced application include:

1-spiral bound narrative  
2-3 ring binders of appendices  
48-1" equals 200' Section Maps

The narrative and appendices contain some references to a Roll Map. Time constraints and computer problems have precluded its inclusion. It will be a 1" equals 2000' map of the storm drain macro drainage areas with the composite data for land use and retention displayed. The unprocessed information is contained in the Section Maps, which are included. The composite data map will be available within the month and will be submitted in this final form as part of the Part 2 Application.

The City of Tempe has approached the permitting program with the intent of developing a complete stormwater/storm drain data base. We are in the process of utilizing this highly accurate and complete set of data to formulate a management program for maintenance and operation. We believe that you will be able to discern that from the presentations included in this application. Being in an arid region, it has been advantageous to have had in operation a system of stormwater control and disposal (required on-site retention) for a number of years. This has been very effective and will be continued in the future.

Specific questions about the submittal can be best answered by Tom Ankeny, Senior Civil Engineer, here on our Tempe Engineering staff. Tom is the Project Manager for this NPDES Permit Application effort and can be reached at (602) 350-8239.

Sincerely,

CITY OF TEMPE

A handwritten signature in black ink, appearing to read "Lee Quaas", with a long horizontal flourish extending to the right.

Lee M. Quaas, P.E.  
City Engineer

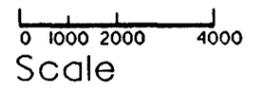
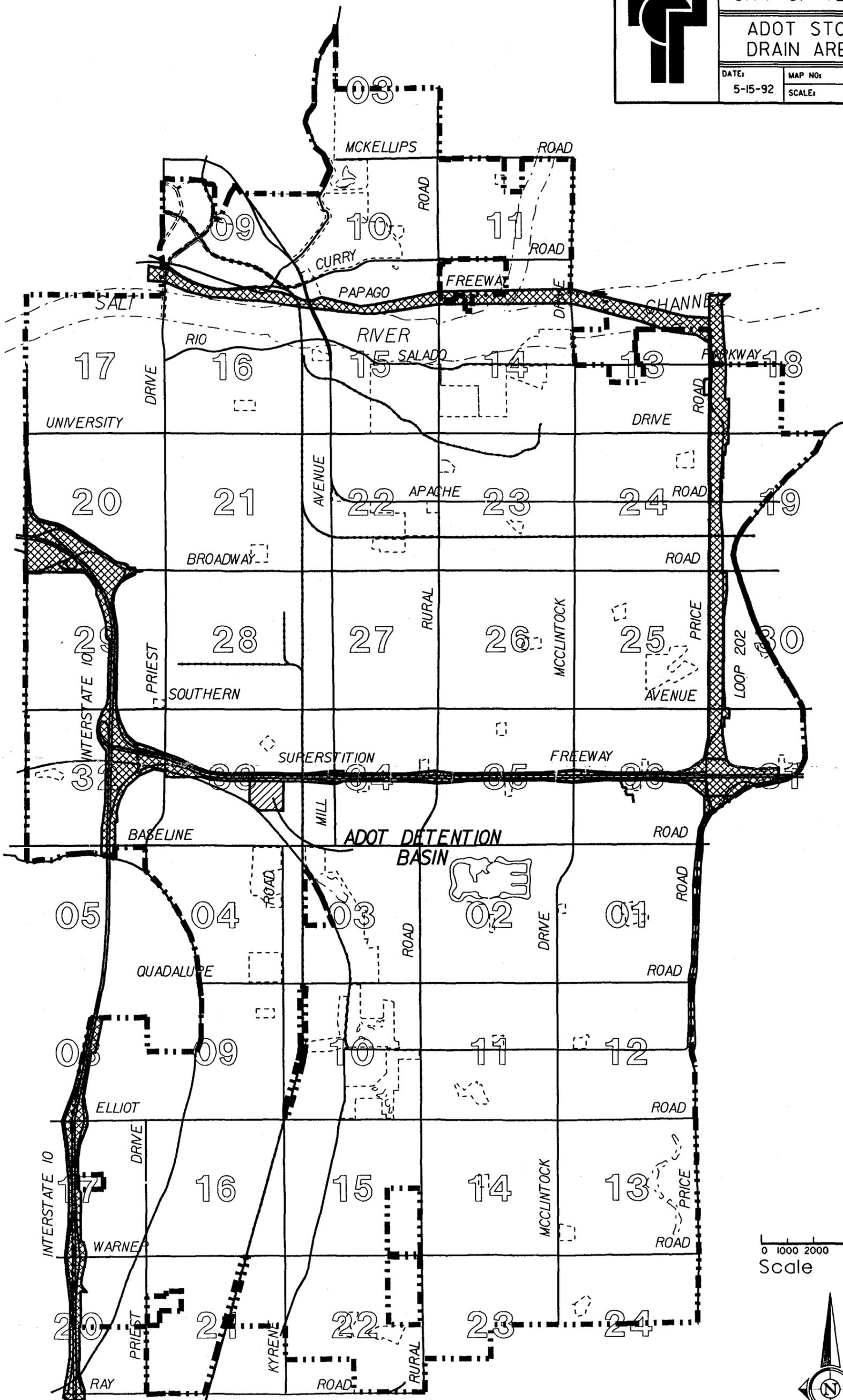


CITY OF TEMPE

ADOT STORM DRAIN AREAS

DATE:  
5-15-92

MAP NO:  
SCALE:





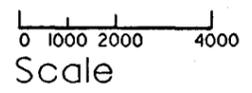
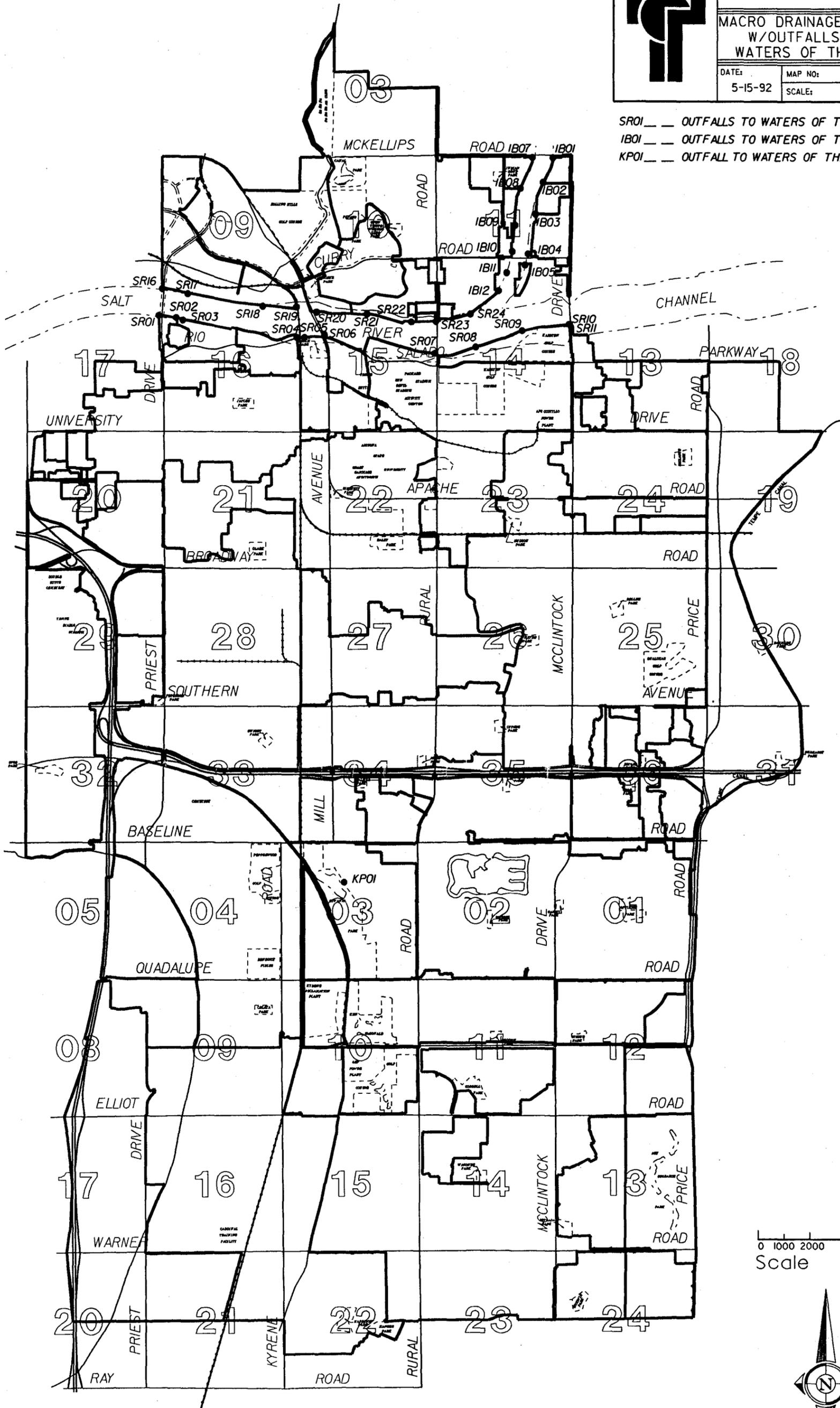
CITY OF TEMPE

MACRO DRAINAGE AREAS  
W/OUTFALLS TO  
WATERS OF THE US

DATE:  
5-15-92

MAP NO:  
SCALE:

SR01 \_ \_ \_ OUTFALLS TO WATERS OF THE U.S.  
IB01 \_ \_ \_ OUTFALLS TO WATERS OF THE U.S.  
KPO1 \_ \_ \_ OUTFALL TO WATERS OF THE U.S.



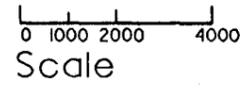
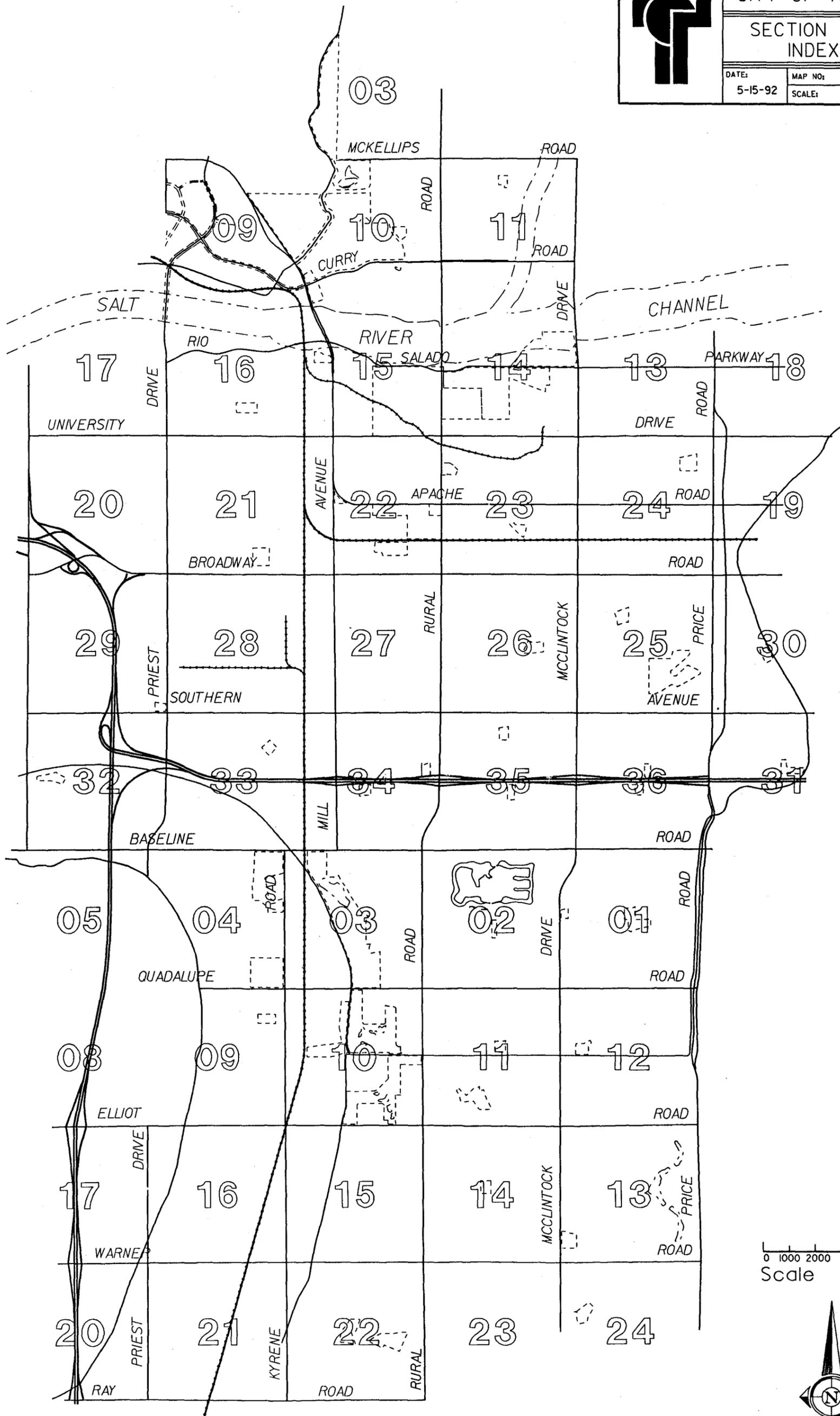


CITY OF TEMPE

SECTION MAP INDEX

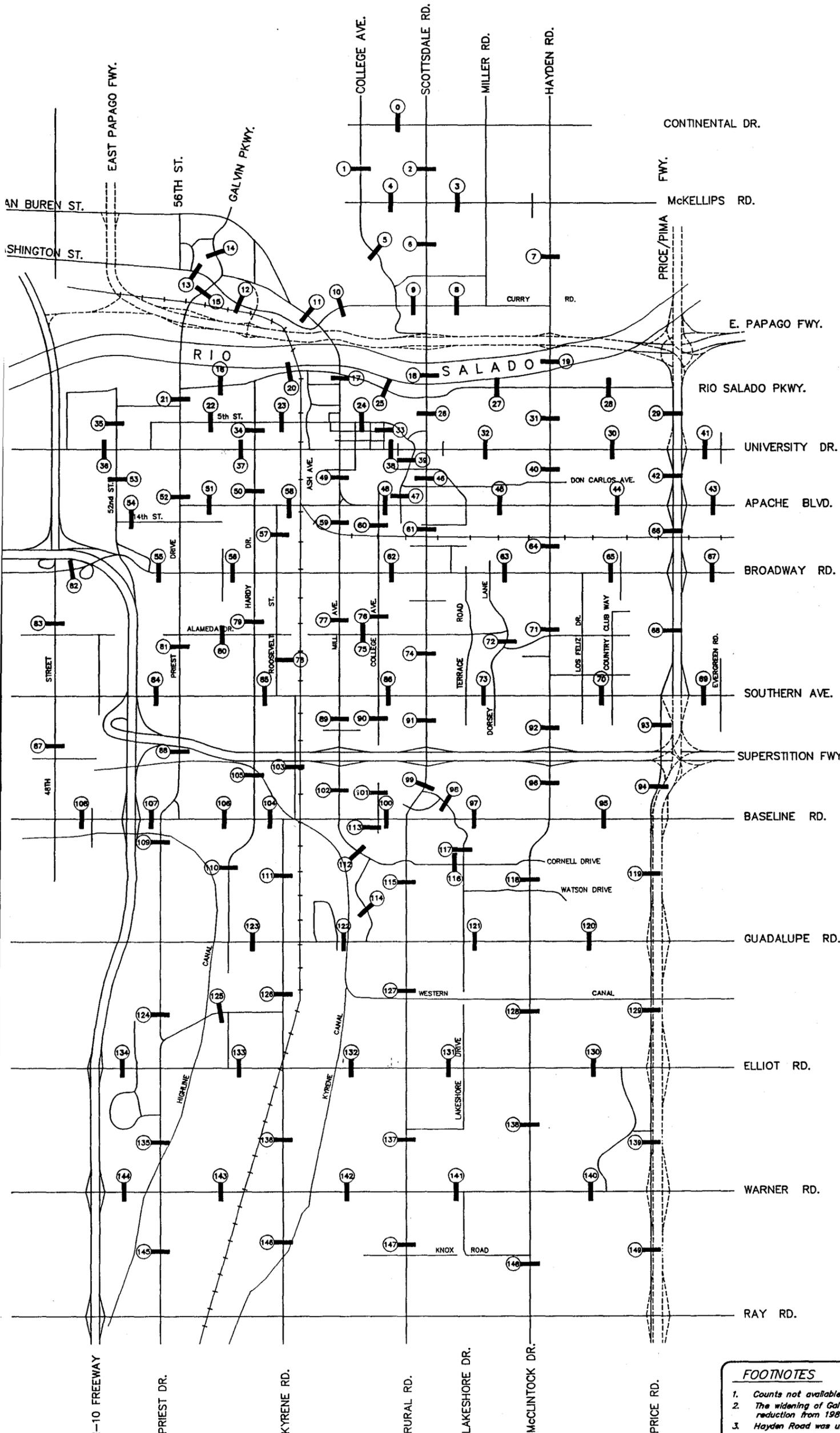
DATE:  
5-15-92

MAP NO:  
SCALE:



# CITY OF TEMPE

## TRAFFIC COUNTS MAP



0.	4,789	-	5,408
1.	14,390	17,549	17,678(2)
2.	39,344	36,033(4)	42,534(3)
3.	16,574(9)	23,900	-
4.	9,739	12,083	10,849
5.	10,825	12,985	13,824(2)
6.	38,242	37,996(4)	43,964(3)
7.	51,802	48,841	45,908
8.	17,334(4)	20,824	17,557
9.	24,558	22,422	22,890
10.	29,583	33,684	35,068
11.	20,903	27,027(6)	49,003
12.	20,515(4)	23,208(4)	-
13.	22,463(4)	32,075(4)	-
14.	16,743	7,948(8)	-
15.	22,571	19,325(4)	16,976
16.	7,181(9)	8,273	-
17.	25,773(4,9)	39,038	39,343
18.	36,757(4)	-	47,863
19.	53,653	50,520	-
20.	7,918(9)	(1)	-
21.	21,786	18,714(4)	21,649
22.	4,874	5,378	-
23.	5,677	6,849	7,597
24.	9,616	10,623	10,841
25.	9,804(9)	13,322	12,308
26.	39,648	38,237(4)	46,103
27.	4,499	4,688(5)	4,386
28.	5,334(4)	4,727(5)	8,124
29.	8,274(4,10)	6,983(4)	(1)
30.	42,995	37,302	37,754(4)
31.	50,328	48,388	(1)
32.	38,817	36,740	37,987
33.	4,623	5,620	7,118
34.	8,093	8,894	10,412
35.	5,207	-	-
36.	48,014	43,350	41,321
37.	39,724	38,190	35,774
38.	41,787	40,914	38,219
39.	8,090	8,444	-
40.	44,000	44,559	(1)
41.	36,732	37,186	(1)
42.	6,329(4,10)	13,858(4)	(1)
43.	30,378(4)	31,809(4)	(1)
44.	28,953(4)	29,082(4)	34,273
45.	29,917(4)	31,458(4)	36,266
46.	46,026	42,741(4)	46,217
47.	6,688	8,523	7,539
48.	31,570	31,952	36,346
49.	42,788	39,173	36,346
50.	10,336	11,412	13,641
51.	4,525	-	-
52.	25,874	29,149	28,471
53.	9,025	-	-
54.	4,392	-	-
55.	38,672(4)	46,440	50,025
56.	39,669(4)	42,849	43,624
57.	3,986	-	-
58.	9,764	-	-
59.	29,032	29,811	30,037
60.	6,452	6,685(7)	6,686
61.	53,042	52,344	52,834
62.	35,697	35,126	36,891
63.	36,642	36,838	36,242
64.	50,849	50,570	(1)
65.	29,536	29,972(4)	34,320
66.	13,109(10)	17,580(4)	(1)
67.	28,719	28,890(4)	(1)
68.	13,654(10)	19,876(4)	(1)
69.	33,368	32,246	29,249(4)
70.	30,698	29,120	27,525(4)
71.	47,071	46,679	(1)
72.	3,659	-	5,210
73.	32,631	31,388	31,400
74.	45,422	45,035	42,947
75.	1,557	-	-
76.	5,811	6,110(7)	8,120
77.	30,640	31,233	36,014
78.	6,945	-	-
79.	11,983	13,016	13,249
80.	4,869	-	-
81.	25,478	22,600	29,302
82.	26,131(4)	37,361	34,115
83.	30,119	31,206	28,019
84.	26,841	27,258	29,474
85.	34,634	31,812	32,104
86.	31,348	32,182	35,963
87.	22,695	23,155	23,568
88.	21,360	18,711	23,374
89.	39,180	37,102	38,653
90.	3,014	3,397	3,161
91.	49,296	47,448	45,924
92.	53,475	51,698	(1)
93.	25,610	23,140(4)	(1)
94.	23,173	21,619(4)	24,524
95.	23,619	23,299(4)	30,392
96.	48,404	47,323	42,790
97.	30,319	29,024(4)	38,530
98.	7,305	7,171	7,995
99.	50,039	48,004	43,698
100.	33,394	32,520(4)	36,412
101.	1,363	1,167	1,293
102.	23,457	23,051	26,587
103.	4,877	5,052	4,507
104.	40,869	40,223	40,001
105.	11,221	11,680	13,863
106.	40,575	37,955	-
107.	35,691	36,454	40,452
108.	40,378	39,083	37,750
109.	10,441	11,042	12,104
110.	7,171	7,477	8,703
111.	20,645	20,118	18,400
112.	7,526	7,219	8,507
113.	1,599	1,508	2,281
114.	4,747	-	-
115.	35,874	36,574	34,626
116.	2,435	-	-
117.	6,265	6,133	4,906
118.	39,121	39,190	28,561
119.	17,781	17,123(4)	24,487
120.	18,354	17,023(4)	23,468
121.	18,476	18,969(4)	23,324
122.	17,596	19,445	18,602
123.	10,159	11,328	14,033
124.	4,478	4,669	4,107
125.	3,296	-	-
126.	19,336	18,173	13,983
127.	30,386	29,970	24,909
128.	31,708	32,352	28,724
129.	15,332	15,317(4)	20,202
130.	21,290	20,582	16,126
131.	21,920	22,031	20,546
132.	22,828	19,122	12,786
133.	20,829	17,119	12,048
134.	24,498	21,328	16,030
135.	6,681	5,835	6,828
136.	11,229	10,225	6,433
137.	23,832	22,293	23,828
138.	26,282	24,279	20,257
139.	12,147	9,940	10,020
140.	21,697	21,253	18,041
141.	23,142	22,954	18,431
142.	22,328	20,902	13,872
143.	21,093	19,739	12,172
144.	20,679	20,056	15,907
145.	4,107	3,447	2,621
146.	10,435	9,581	5,509
147.	16,490	15,364	11,211
148.	21,649	18,880	7,444
149.	11,081	10,361	-

### FOOTNOTES

- Counts not available due to construction.
- The widening of Galvin Parkway to 4 lanes may have caused this reduction from 1986 volumes.
- Hayden Road was under construction when 1986 counts were taken.
- Construction in area when count was taken.
- Rio Salado Pkwy closed from Mill Ave. to Rural Rd. when count was taken.
- Count taken after opening of realigned Washington Street.
- The widening of Rural Road may have caused this reduction from 88 volumes.
- Count taken on 4/10/91, 1 week after opening of Priest Drive to Van Buren/Galvin Parkway.
- Reduction in volume due to S.R.P. water release in Salt River.
- Reduction in volume due to opening of Price/Pima Freeway (Southern Avenue to University Drive).

\* In case of volume discrepancies, refer to the Tempe average daily traffic counts, dated April 15, 1992.



**LEGEND:**

# ——— COUNT LOCATION AND NUMBER

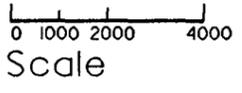
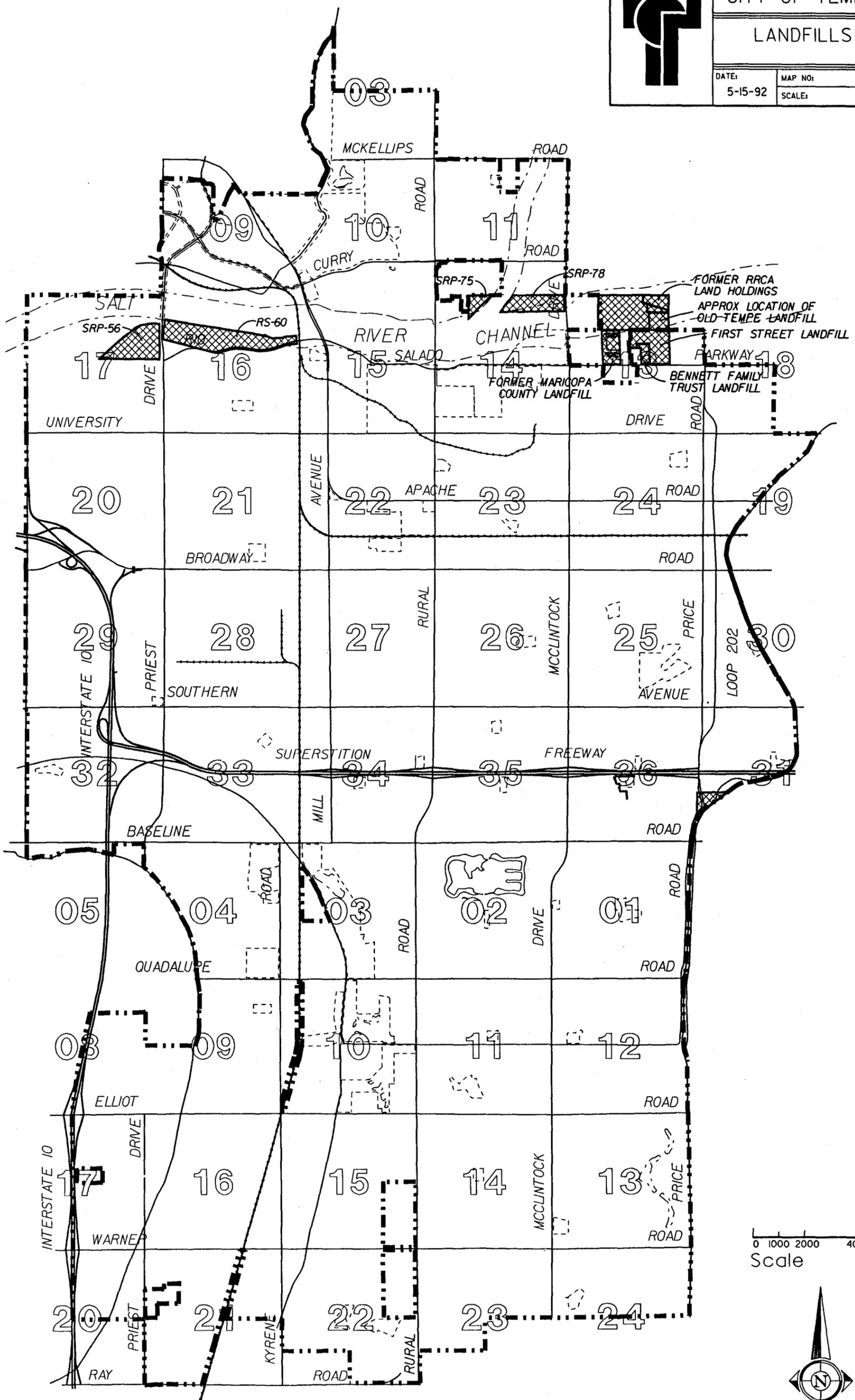


CITY OF TEMPE

LANDFILLS

DATE: 5-15-92

MAP NO: SCALE:



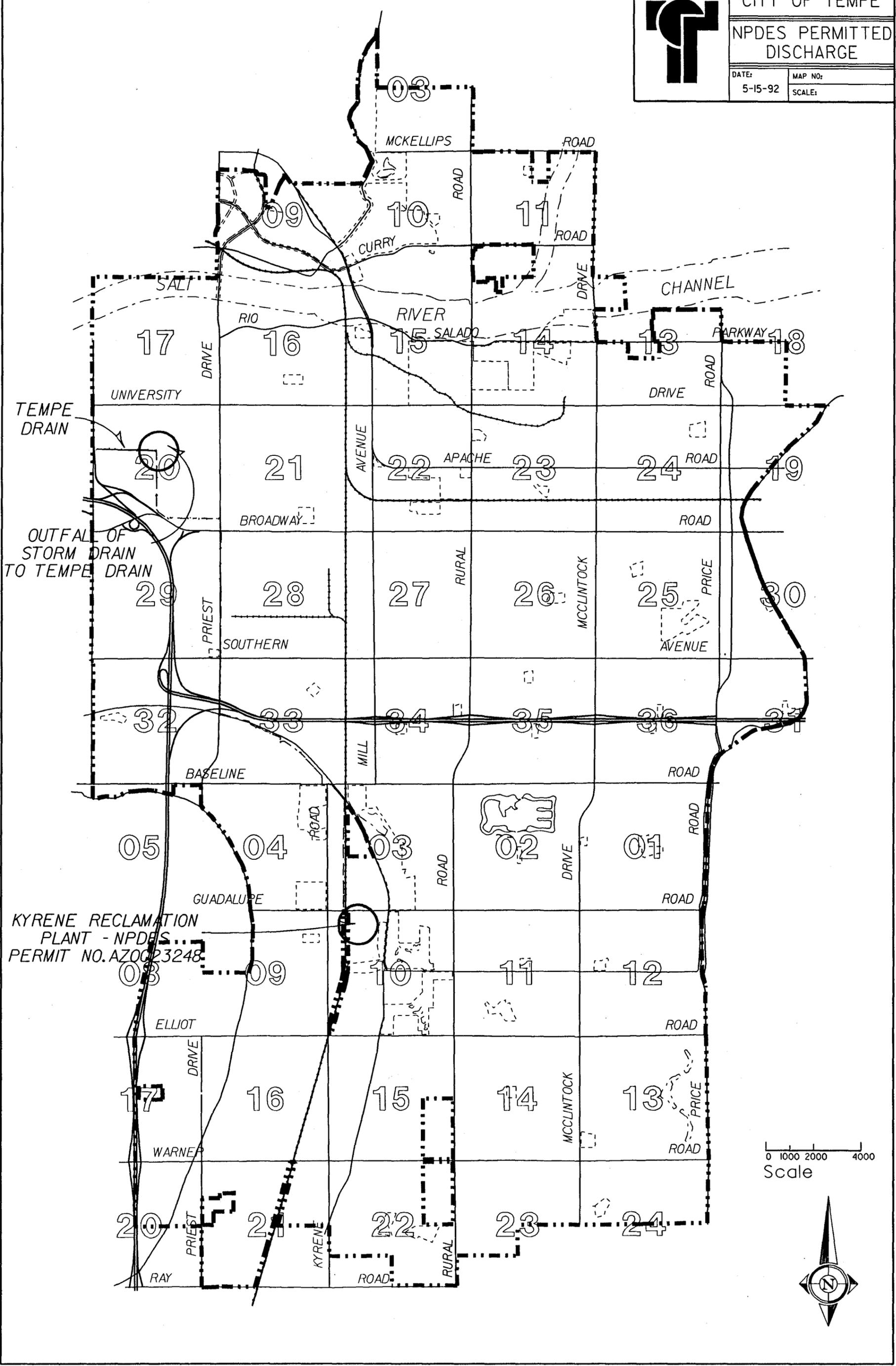


CITY OF TEMPE

NPDES PERMITTED DISCHARGE

DATE: 5-15-92

MAP NO: SCALE:



KYRENE RECLAMATION PLANT - NPDES PERMIT NO. AZ0023248

0 1000 2000 4000 Scale



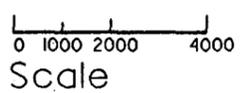
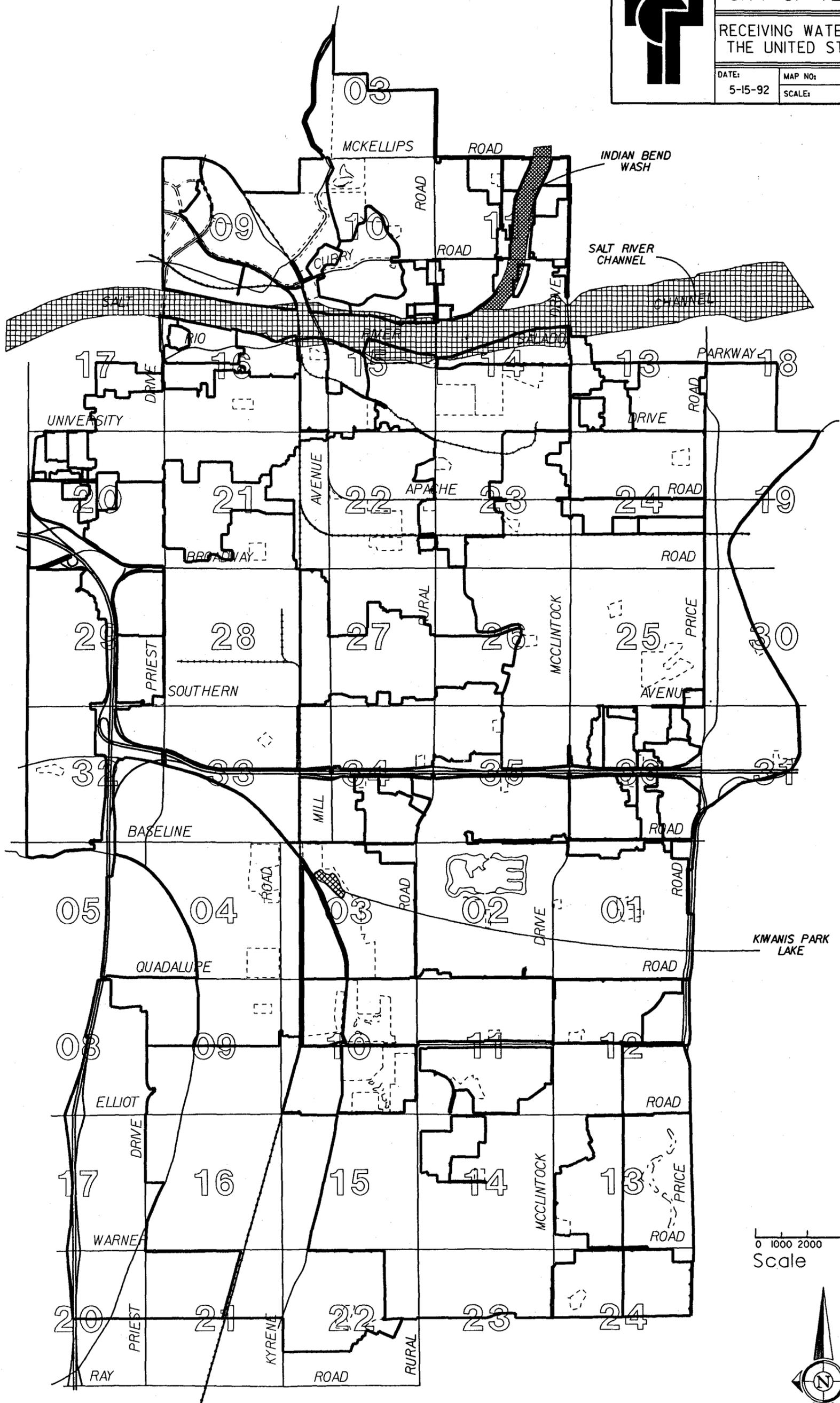


CITY OF TEMPE

RECEIVING WATERS OF THE UNITED STATES

DATE:  
5-15-92

MAP NO:  
SCALE:



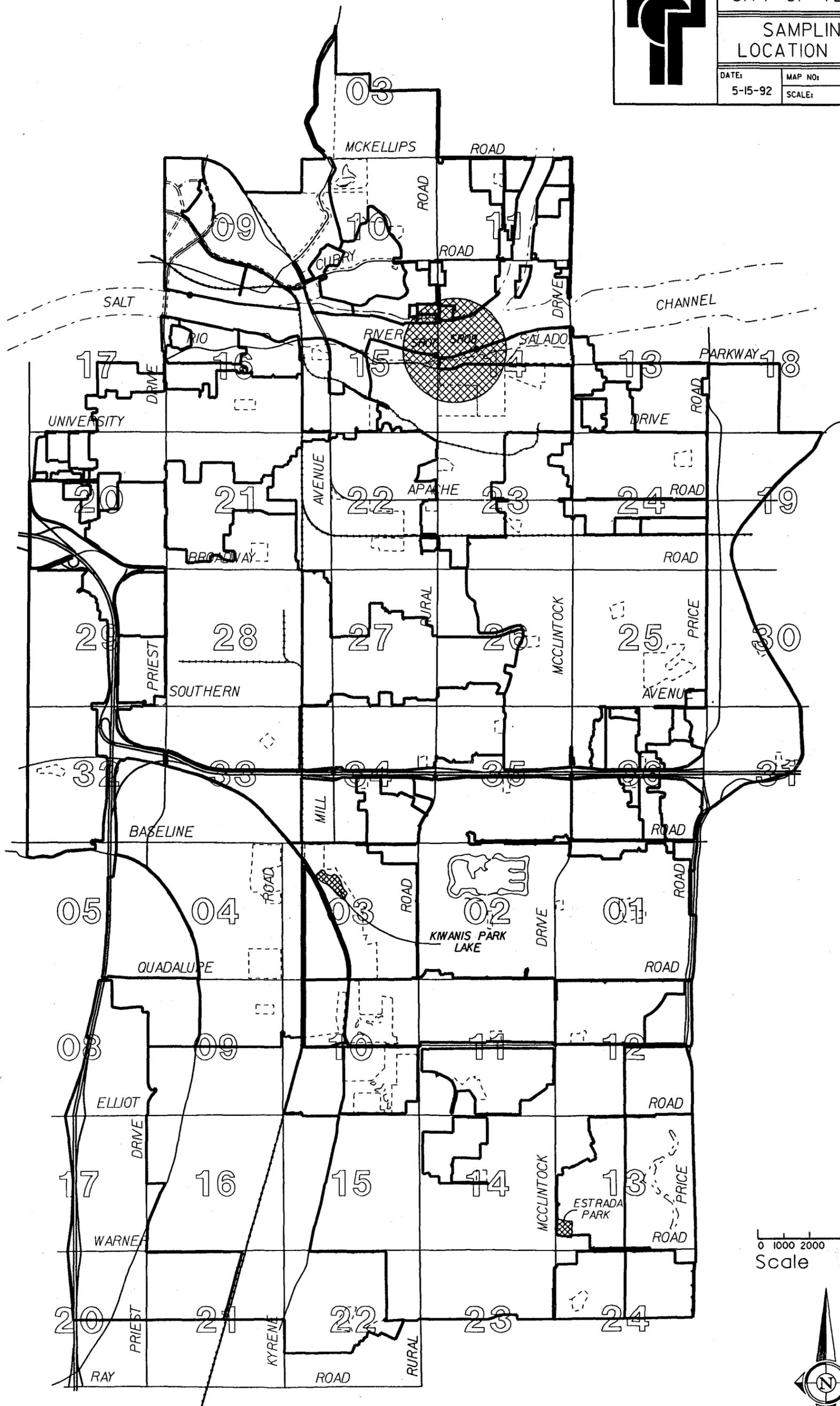


CITY OF TEMPE

SAMPLING  
LOCATION MAP

DATE:  
5-15-92

MAP NO:  
SCALE:



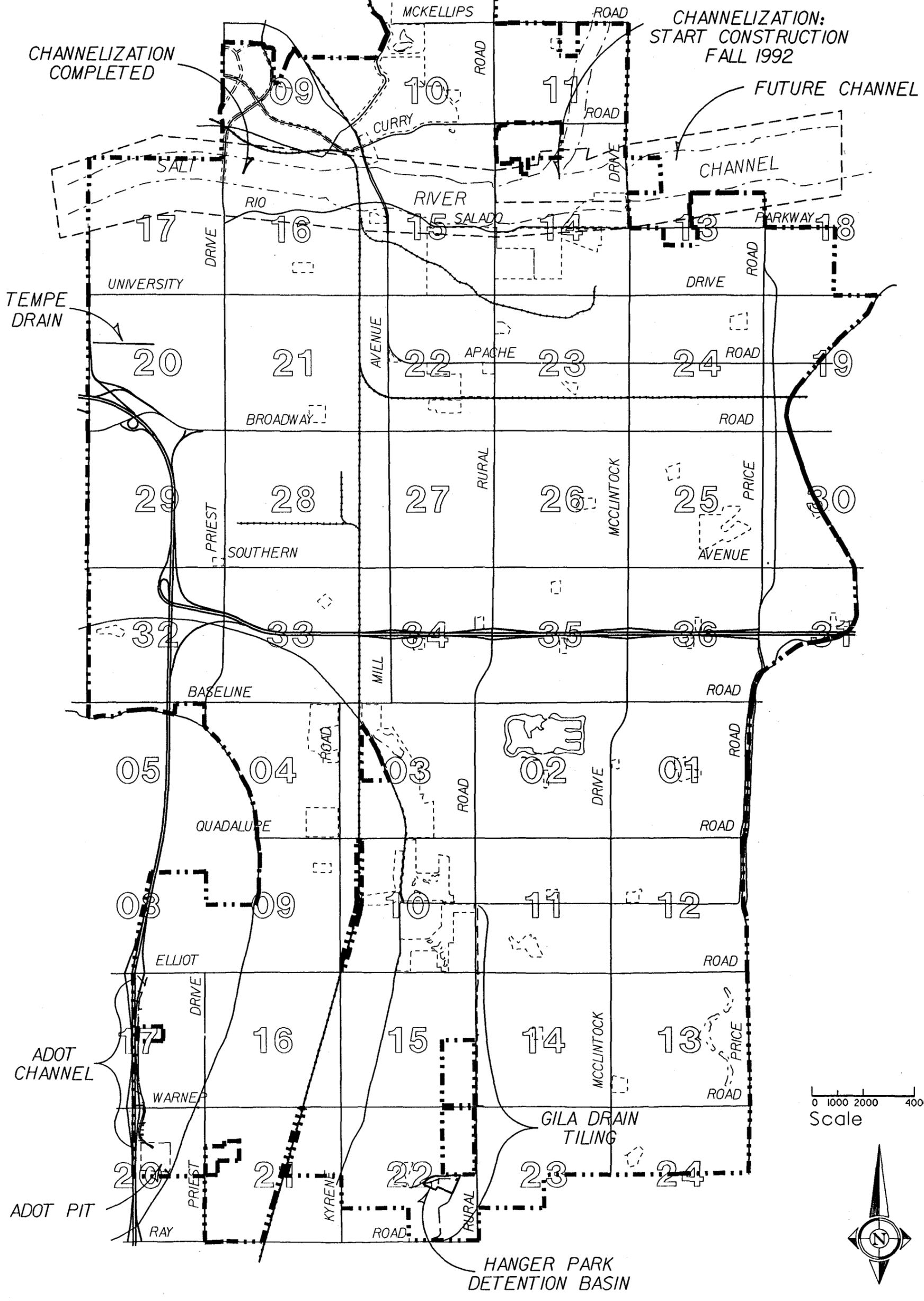


CITY OF TEMPE

FLOOD CONTROL PROJECTS

DATE: 5-15-92

MAP NO: SCALE:



Property of  
Flood Control District of MC Library  
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Phoenix, AZ 85009

**APPENDIX A**  
**LEGAL AUTHORITY**





## FORM OF GOVERNMENT

§ 9-284

### Ch. 2

Phoenix, provision of former charter (Laws 1885, No. 61, art. 18, § 7) exempting city from liability for personal injury resulting from negligence of its officers and agents was repealed. *Schultz v. City of Phoenix* (1916) 18 Ariz. 35, 156 P. 75.

### § 9-284. Effect of charter on inconsistent laws

A. When the charter has been framed, adopted and approved, and any of its provisions are in conflict with any law relating to cities containing a population of more than three thousand five hundred inhabitants in force at the time of the adoption and approval of the charter, the provisions of the charter shall prevail notwithstanding the conflict, and shall operate as a repeal or suspension of the law to the extent of conflict, and the law shall not thereafter be operative as to such conflict.

B. The charter shall be consistent with and subject to the state constitution, and not in conflict with the constitution and laws relating to the exercise of the initiative and referendum and other general laws of the state not relating to cities.

C. Notwithstanding any statute, the charter may authorize agreements setting wages and salaries which extend not more than two years beyond the term of the contracting council.

Amended by Laws 1981, Ch. 193, § 1.

#### Historical and Statutory Notes

##### Source:

Laws 1912, 1st S.S., Ch. 11, § 4.  
Civ.Code 1913, § 2036.

Rev.Code 1928, § 398.  
Code 1939, § 16-303.

#### Cross References

Bond issues and special assessments, referendum concerning, see Const. Art. 7, § 13.  
Canvassing votes and governor's proclamation, see § 19-126.  
Cities, towns and counties, initiative and referendum generally, see § 19-141 et seq.  
Filing of petitions and election, see § 19-121 et seq.  
Form of petitions for referendum or initiative, see §§ 19-101, 19-102.  
Initiative generally, see Const. Art. 4, pt. 1, §§ 1, 2; § 19-102.  
Purchase, sale, or lease of property by cities or towns, see § 9-401 et seq.  
Referendum generally, see Const. Art. 4, pt. 1, §§ 1, 2; § 19-101.  
Scope of initiative right of people, see Const. Art. 22, § 14.  
Suffrage and elections, generally, see Const. Art. 7.  
Veto powers of governor, generally, see Const. Art. 4, pt. 1, § 1; Const. Art. 5, § 7.

#### Law Review Commentaries

City sign ordinances, state requirements. 22 Ariz.L.Rev. p. 1179 (1980).  
City sign ordinances not enacted in accordance with state statutory requirements. Levitz v. State. 22 Ariz.L.Rev. 1179 (1980).  
Park lands, acquisition by cities through subdivision regulations. Law & Soc. Order, 1971, p. 578.

#### Library References

Municipal Corporations ¶48(2).  
WESTLAW Topic No. 268.  
C.J.S. Municipal Corporations § 95 et seq.

B. A copy of the charter, certified by the chief executive officer of the city, and authenticated by the seal of the city, together with a statement similarly certified and authenticated setting forth the submission of the charter to the electors and its ratification by them, shall, after approval of the charter by the governor, be made in duplicate, and one copy shall be filed in the office of the secretary of state and the other in the archives of the city, after being recorded in the office of the county recorder, and thereafter all courts shall take judicial notice of the charter.

C. The charter so ratified may be amended by amendments proposed and submitted by the legislative authority of the city to the qualified electors thereof, or by petition as provided in this article, at a general or special election, and ratified by a majority of the qualified electors voting thereon, and approved by the governor as provided in this article for the approval of the charter.

**Historical and Statutory Notes**

**Source:**

Laws 1912, 1st S.S., Ch. 11, § 1.  
Civ.Code 1913, § 2033.

Rev.Code 1928, § 396.  
Code 1939, § 16-301.

**Cross References**

Elections and voters, see Const. Art. 7, § 1 et seq.; § 9-821 et seq.  
Conduct of elections, see § 16-211 et seq.  
Qualifications of voters, see Const. Art. 7, § 2; § 16-101.  
Registration of voters, see § 16-101 et seq.

**Library References**

Municipal Corporations ¶48.  
WESTLAW Topic No. 268.  
C.J.S. Municipal Corporations § 90.

**Notes of Decisions**

In general 1  
Supersedure 2

Schultz v. City of Phoenix (1916) 18 Ariz. 35, 156 P. 75.

**2. Supersedure**

**1. In general**  
A charter city is sovereign in all of its municipal affairs where the power attempted to be exercised has been specifically or by implication granted in its charter. Mayor and Common Council of City of Prescott v. Randall (1948) 67 Ariz. 369, 196 P.2d 477.

A charter city, acting within its powers, is sovereign in all its municipal affairs. City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon (1948) 67 Ariz. 330, 195 P.2d 562.

The charter of a corporation is its constitution or organic law giving to it all the powers it possesses, unless other statutes are applicable to it, and the municipality's liabilities, or exemptions from liability, must be found therein.

In the case of McClintock v. City of Phoenix (1922) 24 Ariz. 155, 207 P. 611, the court said: "The city of Phoenix was first incorporated by a special act of the territorial Legislature in 1881, found at page 105 of the Laws of 1881. In article 13, subd. 1, § 1, thereof, the common council of the city was given power 'to erect purchase or hire necessary buildings for the use of the corporation.' In 1913 the city, acting under the authority of article 13 of the State Constitution, adopted a new charter which became its organic law and superseded the charter theretofore existing, as well as all amendments thereto."

Under Const. Art. 13, § 2, Civ.Code 1913, § 2033 et seq. (now § 9-281 et seq.), and preamble and § 1 of new charter of city of

does not stand out so as to make the lineup so suggestive that it was equivalent to a one-man show-up, as appellant contends. Even if the lineup was suggestive, the factors surrounding Mrs. Escalante's identification assure its reliability and the independent reliability of her in-court identification.

[6] Appellant's final contention is that the trial judge violated Rule 26.6(c), Arizona Rules of Criminal Procedure, and appellant's right to due process by conferring with the probation officer prior to sentencing and not notifying appellant or his attorney of the conference, allowing them to be present, or informing them afterwards of what occurred.

Rule 26.6 requires disclosure to the defendant of all pre-sentence reports. Subsection (c) lists the kinds of information which can be excised from the reports, but requires the court to inform the parties that there has been an excision. Appellant's position is that the conference was in essence part of the presentence report.

Understandably, appellant does not say what transpired at the conference. At the hearing on appellant's motion for post-conviction relief however, Judge Birdsall said "I can't pretend to remember at this point what we discussed, but I can assure you that if there was any new factual information that came to the Court, I would have told counsel about it." The current version of Rule 26.6 is based on the holding in *State v. Pierce*, 108 Ariz. 174, 494 P.2d 696 (1972). In a footnote in *Pierce* the court specified that the recommendations of the probation officer need not be disclosed. Since the sentencing judge assured that the probation officer gave him no new factual information, none of the possible conjectures of what was discussed at the conference falls within the disclosure requirements of Rule 26.6. There is no due process requirement that every conversation between the probation officer and the sentencing judge be open to the defendant.

[7] Appellant suggests that his harsh sentence indicates something significant

happened at this meeting. However, the length of the sentence is within the statutory limits and is supported by the presentence report which shows that appellant has a propensity for violence. While it may seem illogical to give appellant the burden of showing that something improper happened at this conference when the basis of his argument is that he does not know what happened, there is nothing to even raise a suspicion that the sentencing judge improperly failed to disclose information.

The judgment and sentence are affirmed.

RICHMOND, C. J., and HATHAWAY, J., concur.



121 Ariz. 65

STATE of Arizona, Appellee,

v.

Harlan L. JACOBSON, Appellant.

No. 1 CA-CR 3002.

Court of Appeals of Arizona,  
Division 1,  
Department A.

Sept. 26, 1978.

Rehearing Denied Nov. 15, 1978.

Review Denied Dec. 12, 1978.

Defendant was convicted before the Phoenix City Court for violations of city ordinance, and he appealed. The Superior Court, Maricopa County, Cause No. LCA-18395, Rufus C. Coulter, Jr., J., affirmed, and defendant appealed. The Court of Appeals, Haire, P. J., held that: (1) city ordinance regulating signs on operational motor vehicles did not exceed power of city; (2) city ordinance was not preempted by state law regulating motor vehicles, and (3) section of city ordinance providing that vehicle signs were exempt from regulation if, inter

does not stand out so as to make the lineup so suggestive that it was equivalent to a one-man show-up, as appellant contends. Even if the lineup was suggestive, the factors surrounding Mrs. Escalante's identification assure its reliability and the independent reliability of her in-court identification.

[6] Appellant's final contention is that the trial judge violated Rule 26.6(c), Arizona Rules of Criminal Procedure, and appellant's right to due process by conferring with the probation officer prior to sentencing and not notifying appellant or his attorney of the conference, allowing them to be present, or informing them afterwards of what occurred.

Rule 26.6 requires disclosure to the defendant of all pre-sentence reports. Subsection (c) lists the kinds of information which can be excised from the reports, but requires the court to inform the parties that there has been an excision. Appellant's position is that the conference was in essence part of the presentence report.

Understandably, appellant does not say what transpired at the conference. At the hearing on appellant's motion for post-conviction relief however, Judge Birdsall said "I can't pretend to remember at this point what we discussed, but I can assure you that if there was any new factual information that came to the Court, I would have told counsel about it." The current version of Rule 26.6 is based on the holding in *State v. Pierce*, 108 Ariz. 174, 494 P.2d 696 (1972). In a footnote in *Pierce* the court specified that the recommendations of the probation officer need not be disclosed. Since the sentencing judge assured that the probation officer gave him no new factual information, none of the possible conjectures of what was discussed at the conference falls within the disclosure requirements of Rule 26.6. There is no due process requirement that every conversation between the probation officer and the sentencing judge be open to the defendant.

[7] Appellant suggests that his harsh sentence indicates something significant

happened at this meeting. However, the length of the sentence is within the statutory limits and is supported by the presentence report which shows that appellant has a propensity for violence. While it may seem illogical to give appellant the burden of showing that something improper happened at this conference when the basis of his argument is that he does not know what happened, there is nothing to even raise a suspicion that the sentencing judge improperly failed to disclose information.

The judgment and sentence are affirmed.

RICHMOND, C. J., and HATHAWAY, J.,  
concur.



121 Ariz. 65

STATE of Arizona, Appellee,

v.

Harlan L. JACOBSON, Appellant.

No. 1 CA-CR 3002.

Court of Appeals of Arizona,  
Division 1,  
Department A.

Sept. 26, 1978.

Rehearing Denied Nov. 15, 1978.

Review Denied Dec. 12, 1978.

Defendant was convicted before the Phoenix City Court for violations of city ordinance, and he appealed. The Superior Court, Maricopa County, Cause No. LCA-18395, Rufus C. Coulter, Jr., J., affirmed, and defendant appealed. The Court of Appeals, Haire, P. J., held that: (1) city ordinance regulating signs on operational motor vehicles did not exceed power of city; (2) city ordinance was not preempted by state law regulating motor vehicles, and (3) section of city ordinance providing that vehicle signs were exempt from regulation if, inter

alia, the "primary purpose of such vehicle or equipment is not the display of signs" did not render the ordinance unconstitutionally vague.

Affirmed.

#### 1. Municipal Corporations ⇐642(4)

On appeal from defendant's conviction of violation of city ordinance, questions relating to sufficiency of evidence to sustain conviction were beyond scope of Court of Appeals' review. A.R.S. § 22-375.

#### 2. Municipal Corporations ⇐589

Municipal corporations have no inherent police power, and their powers must be delegated to them by the Constitution or laws of the State.

#### 3. Municipal Corporations ⇐57

A charter city may exercise all powers authorized by its charter, provided those powers are not inconsistent with State Constitution or general laws of State. A.R.S. Const. art. 13, § 2; A.R.S. § 9-284.

#### 4. Automobiles ⇐5(1)

City ordinance regulating signs on operational motor vehicles did not exceed power of city. A.R.S. §§ 9-462.01, 9-462-01[A][2].

#### 5. Municipal Corporations ⇐592(1)

For state legislation to preempt local legislation two conditions must concur: the subject must be of statewide concern, and state legislation must have appropriated the field.

#### 6. Municipal Corporations ⇐121

On appeal from defendant's conviction for violation of city ordinance, defendant would not be allowed to claim that the ordinance might be preempted if it were to be applied to other circumstances.

#### 7. Constitutional Law ⇐42(1)

Ordinarily, persons engaged in strictly commercial speech will not be allowed to assert that a legislative enactment might be unconstitutional if applied to the conduct of other persons.

#### 8. Automobiles ⇐9

City ordinance regulating signs on operational motor vehicles which had been parked on private streets was not preempted by state law regulating motor vehicles. A.R.S. §§ 28-626, 28-921 to 28-964.

#### 9. Statutes ⇐47

The essential test of vagueness is whether the legislative enactment may be understood by persons of common intelligence.

#### 10. Constitutional Law ⇐258(2)

Constitutional guarantees of due process dictate that State may not hold individual criminally responsible for conduct that the individual could not reasonably understand to be forbidden; laws creating new crimes should be very definite and easily understood by common men. U.S.C.A. Const. Amend. 14.

#### 11. Constitutional Law ⇐258(2)

Due process does not invalidate every statute that might have been drafted with greater precision; in resolving a vagueness challenge, courts may properly consider the difficulties encountered by legislative body in expressing certain concepts. U.S.C.A. Const. Amend. 14.

#### 12. Municipal Corporations ⇐594(2)

City ordinance providing that it was unlawful "to display, erect, relocate, or alter, except for copy changes, any sign without first obtaining a permit from the Building Official" was not rendered unconstitutional as result of alleged vagueness in another section of ordinance specifying who could apply for a sign permit.

#### 13. Automobiles ⇐7

Section of city ordinance providing that motor vehicle signs were exempt from regulation if, inter alia, the "primary purpose of such vehicle or equipment is not the display of signs" did not render the ordinance unconstitutionally vague.

#### 14. Municipal Corporations ⇐121

Where defendant's conduct fell within the clearly defined core of city ordinance, defendant had no standing to complain

about possible vagueness in more borderline cases.

Andrew Baumert, City Atty. by Harry Rubinoff, Asst. City Prosecutor, Phoenix, for appellee.

Theodore C. Jarvi, Scottsdale, for appellant.

#### OPINION

HAIRE, Presiding Judge.

The appellant was charged in Phoenix City Court with violations of §§ 29-10, 29-11, and 29-60 of the Phoenix Sign Ordinance No. G-1508 (Nov. 18, 1975), codified at ch. 29 of the Phoenix City Code. The charges related to the display of commercial sign boards mounted on appellant's vehicle, a Toyota pickup truck. Evidence produced in city court indicated that on various dates appellant had left his vehicle parked on private property adjacent to city streets without having obtained permits for the display of his commercial signs at those locations.

After finding appellant guilty of all charges, the city magistrate suspended the imposition of sentence and placed appellant on summary probation for a period of 180 days. Appellant appealed his conviction to the superior court pursuant to A.R.S. § 22-371. His conviction was affirmed.<sup>1</sup> Appellant has now appealed to this Court pursuant to A.R.S. § 22-375, and raises four questions for our consideration: (1) Does Ordinance G-1508 exceed the power of the City of Phoenix insofar as it attempts to regulate signs attached to operational motor vehicles? (2) Are the provisions of Ordinance G-1508 which regulate signs on operational motor vehicles preempted by the State motor vehicle laws? (3) Are the provisions of Ordinance G-1508 regulating signs on motor vehicles unconstitutionally vague? and (4) Did the trial court err in determining that appellant failed to meet

1. It was held in *State v. Anderson*, 9 Ariz.App. 42, 449 P.2d 59 (1969), that the superior court was without power to merely affirm the lower court's judgment. However, A.R.S. § 22-374

the conditions for an exemption from the ordinance's permit requirements?

[1] Appellant's right to appeal his conviction is found in A.R.S. § 22-375, which restricts our review to questions involving the validity of the challenged ordinance. *State v. Jean*, 98 Ariz. 375, 405 P.2d 808 (1965). Beyond the scope of our review are questions relating to the sufficiency of the evidence to sustain appellant's conviction. See *State v. Owens*, 114 Ariz. 565, 562 P.2d 738 (Ct.App.1977). Consequently, we will not consider appellant's fourth question.

Before considering the first three questions raised by appellant, we will briefly describe the regulatory scheme of Ordinance G-1508. Section 29-11 provides that:

"Except as provided in Section 29-3 of this ordinance, it shall be unlawful to display, erect, relocate, or alter, except for copy changes, any sign without first obtaining a permit from the Building Official."

"Sign" is defined in § 29-10 as:

"Any identification, description, illustration, symbol or device which is affixed directly or indirectly upon a building, vehicle, structure or land and which identifies or directs attention to a product, place, activity, person, institution, or business."

Sections 29-46 to 29-57 regulate the types of signs that may exist in the city's various zoning districts. Section 29-11(e) requires that the Building Official (Director of Building Safety) review each sign application to insure conformity with the sign ordinance. Section 29-60 declares violation of the sign ordinance a misdemeanor and makes each day that the offense continues a separate violation. A number of exceptions are made to the application of this ordinance in § 29-3. An exception relevant to the issues presented on this appeal is 29-3(a)(8) which states that the ordinance shall not apply to:

was subsequently amended to provide express sanction for an affirmance or reversal of the court of origin. Therefore, there is no impediment to our jurisdiction.

"Signs on a truck, bus, car, boat, trailer or other motorized vehicle and equipment provided all the following conditions are adhered to:

A. Primary purpose of such vehicle or equipment is not the display of signs.

B. Signs are painted upon or applied directly to an integral part of the vehicle or equipment.

C. Vehicle/equipment is in operating conditions, currently registered and licensed to operate on public streets when applicable, and actively used in the daily function of the business to which such signs relate.

D. Vehicles and equipment are not used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.

E. During periods of inactivity exceeding five work days such vehicle/equipment are not so parked or placed that the signs thereon are displayed to the public. Vehicles and equipment engaged in active construction projects and the on-premise storage of equipment and vehicles offered to the general public for rent or lease shall not be subjected to this condition."

#### I. DOES THE ORDINANCE EXCEED THE CITY'S POWERS?

[2, 3] It is a fundamental rule that municipal corporations have no inherent police power, and that their powers must be delegated to them by the constitution or laws of the state. E. g., *City of Scottsdale v. Superior Court*, 103 Ariz. 204, 439 P.2d 290 (1968). The city of Phoenix, as authorized by Ariz.Const. art. 13, § 2, has adopted a city charter as its organic law. As a "charter" city, Phoenix may exercise all the powers authorized by its charter, provided those powers are not inconsistent with the Arizona Constitution or the general laws of this state. See A.R.S. § 9-284; *Shaffer v. Allt*,

25 Ariz.App. 565, 567, 545 P.2d 76, 78 (1976); *Gardenhire v. State*, 26 Ariz. 14, 221 P. 228 (1923). Chapter 4, § 2(17) of the Phoenix Charter provides that the city council shall have the power "to regulate, license or prohibit the construction and use of billboards and signs." Subsection 2(70) of ch. 4 provides:

"The City of Phoenix shall have all the rights and powers granted or to be granted to charter cities, and to cities and towns incorporated under the provisions of Title 9, Arizona Revised Statutes." Within Title 9, A.R.S. § 9-462.01(A)(2) grants to the legislative body of any municipality the power to "[r]egulate signs and billboards".<sup>2</sup>

[4] The city's general power to regulate signs is thus established. However, appellant asks the more particular question: Is the city empowered to regulate signs on operational motor vehicles? Appellant contends that the sign ordinance, being an exercise of the city's zoning power, is limited to the traditional objects of zoning regulations—land, land use and buildings. He argues that the grant of authority to regulate signs and billboards in A.R.S. § 9-462.01 is part of a general grant of zoning power and does not include the regulation of signs on motor vehicles. We are unable to agree with this limitation on the city's power. First, we note that A.R.S. § 9-462.01 makes no distinction between signs affixed to land or buildings and signs placed on movable vehicles. Second, the power of the city of Phoenix to regulate signs is also conferred by ch. 4, § 2(17) of the city charter. This latter grant of authority is not even implicitly tied to the zoning power. Third, the regulation of signs is not invariably an exercise of zoning power, see *Railway Express Agency v. People of New York*, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533 (1949), even where the signs are firmly planted in the ground. See *City of Escondido v. Desert Outdoor Advertising, Inc.*, 8 Cal.3d 785, 505 P.2d 1012, 106 Cal.Rptr. 172,

proved the incorporation by reference in a city charter of powers granted to cities and towns in Title 9 of the Arizona Statutes.

2. In *City of Mesa v. Home Builders Association of Central Arizona, Inc.*, 111 Ariz. 29, 523 P.2d 57 (1974), the Supreme Court implicitly ap-

cert. denied, 414 U.S. 828, 94 S.Ct. 53, 38 L.Ed.2d 62 (1973). The subject ordinance, although similar in many ways to a zoning ordinance, is in many respects unlike traditional zoning regulations. Finally, we need not consider whether the city of Phoenix has the power to regulate the signs that may be displayed on vehicles using the public streets. Appellant was cited for sign violations after he had parked his sign-laden vehicle in full public view on private land for substantial periods of time.

## II. IS THE CITY'S ORDINANCE PRE-EMPTED BY STATE LAW REGULATING MOTOR VEHICLES?

[5] The precise issue presented is whether state statutes concerning motor vehicles have preempted the subject of the regulation of signs on motor vehicles which have been parked on private property. Appellant argues that Title 28 of the Arizona Revised Statutes, and particularly §§ 28-921 to 28-964 (which specify various types of equipment which are required or prohibited on motor vehicles), is such a complete and comprehensive scheme of motor vehicle regulation that municipalities may not enact ordinances regulating signs that may be placed on motor vehicles. Appellant directs our attention to A.R.S. § 28-626, which provides that "no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized by this chapter."

This Court has stated the rule regarding preemption:

"[B]oth a city and state may legislate on the same subject when that subject is of local concern or when, though the subject

3. Appellant makes a number of arguments based upon an expansive interpretation of the sign ordinance. For instance, appellant argues that the city might try to enforce the sign ordinance against persons driving their vehicles on the city streets. However, appellant's violation involved parking his vehicle on private property in such a manner that it functioned as a stationary sign. Indeed, on one occasion, appellant was seen driving to his chosen location in his sign-bearing Toyota, towing a Volkswagen. Appellant parked the Toyota and drove off in the Volkswagen.

is not of local concern, the charter or particular state legislation confers on the city express power to legislate thereon; but where the subject is of statewide concern, and the legislature has appropriated the field by enacting a statute pertaining thereto, that statute governs throughout the state, and local ordinances contrary thereto are invalid." *Phoenix Respirator & Ambulance Service, Inc. v. McWilliams*, 12 Ariz.App. 186, 188, 468 P.2d 951, 953 (1970).

See, e. g., *Clayton v. State*, 38 Ariz. 466, 300 P. 1010 (1931); *City of Tucson v. Tucson Sunshine Climate Club*, 64 Ariz. 1, 164 P.2d 598 (1945). Thus, for state legislation to preempt local legislation two conditions must concur: (1) the subject must be of statewide concern; and (2) the state legislation must have appropriated the field.

[6, 7] We need not decide whether the regulation of vehicle signs is a matter of statewide concern, since we conclude that the state has not appropriated the field of sign regulation presented by the facts of this case.<sup>3</sup>

[8] There is no direct conflict between the Phoenix sign ordinance and the state transportation code. We must then consider whether the state legislation has so completely occupied the field that it becomes the sole and exclusive law on the subject, leaving no room for any supplementary or additional local regulation. See *Pulcifer v. Alameda County*, 29 Cal.2d 258, 175 P.2d 1 (1946); *California Water & Telephone Co. v. Los Angeles County*, 253 Cal. App.2d 16, 61 Cal.Rptr. 618 (1967). As applied to the facts of this case, the field covered by the Phoenix sign ordinance has not been preempted by state legislation.

In our opinion, appellant should not be allowed to claim that the ordinance might be preempted if it were to be applied to other circumstances. The basis of the preemption issue is the constitutional allocation of power between various levels of government, and ordinarily persons engaged in strictly commercial speech will not be allowed to assert that a legislative enactment might be unconstitutional if applied to the conduct of other persons. See *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977).

The state has not regulated every type of object that may be placed on a motor vehicle. See A.R.S. § 28-921(B). Sections 28-921 to 28-964 are a legislative attempt to regulate items of equipment which are relevant to the safe operation of motor vehicles: headlights, for example. The only connection between the equipment regulated by §§ 28-921 to 28-964 and vehicle-mounted signs is the motor vehicle itself. The mere fact that state and local legislation touch upon a common element does not mean that one has preempted the other. For instance, in *Russo v. City of Tucson*, 20 Ariz.App. 401, 513 P.2d 690 (1973), the city of Tucson was permitted to impose an occupational tax on attorneys despite the fact that the state possessed the exclusive power to regulate and license persons entitled to practice law.

We also note that appellant's violation of the ordinance occurred while parked on private property, where the state's motor vehicle laws have limited application. See, e. g., A.R.S. §§ 28-621, 28-921.

We conclude that it was not the intent of the state legislature to appropriate the field of vehicle-mounted signs. See *City of Tucson v. Tucson Sunshine Climate Club*, 64 Ariz. 1, 7, 164 P.2d 598, 601 (1945).

### III. IS THE ORDINANCE UNCONSTITUTIONALLY VAGUE?

[9, 10] Appellant contends that Ordinance G-1508 violates his due process rights because the ordinance is so vague that men of common intelligence cannot understand what is proscribed. Appellant's vagueness attacks focus on two aspects of the sign ordinance: (1) the persons who are subject to criminal penalties; and (2) the circumstances under which one may qualify for an exemption from the ordinance's requirements. The essential test of vagueness is whether the legislative enactment may be understood by persons of common intelligence. *State v. Sanner Contracting Co.*, 109 Ariz. 522, 514 P.2d 443 (1973); *State v. Jacobs*, 119 Ariz. 30, 579 P.2d 68 (1978); see *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972).

The constitutional guarantees of due process dictate that a state may not hold an individual criminally responsible for conduct that the individual could not reasonably understand to be forbidden. *Rose v. Locke*, 423 U.S. 48, 96 S.Ct. 243, 46 L.Ed.2d 185 (1975). Laws creating new crimes should be very definite and easily understood by common men. *State v. Mender-son*, 57 Ariz. 103, 111 P.2d 622 (1941).

[11] Laws need not be drafted with mathematical certainty, however. *State v. Sanner Contracting Co.*, *supra*. Uncertainties lurk in most English words and phrases, *Robinson v. United States*, 324 U.S. 282, 65 S.Ct. 666, 89 L.Ed. 944 (1945), and due process does not invalidate every statute that might have been drafted with greater precision. See *Rose v. Locke*, *supra*. In resolving a vagueness challenge, courts may properly consider the difficulties encountered by a legislative body in expressing certain concepts. *State v. Cole*, 18 Ariz.App. 237, 501 P.2d 413 (1972).

[12] Appellant argues that the ordinance does not make clear upon whom criminal penalties will fall. He points to § 29-11(a) which states that:

"An application for a [sign] permit shall be made by the owner, tenant, or lessee of the property on which the sign is located, or his authorized agent, or a contractor licensed by the State of Arizona, or by a registered architect or engineer."

Appellant contends that any of these persons might be cited for a sign violation, and because of this the ordinance is vague. The quoted language, however, merely specifies who may apply for a sign permit. The initial paragraph of § 29-11 sets forth the act that will constitute a violation of the ordinance:

"It shall be unlawful to display, erect, relocate, or alter, except for copy changes, any sign without first obtaining a permit from the Building Official."

Thus, anyone committing such an act is subject to criminal sanction. We do not find this portion of the ordinance unconstitutionally vague.

[13] A more serious vagueness attack is leveled at § 29-3(a)(8), which provides that

vehicle signs are exempt from the ordinance if five conditions are met. Since all five conditions must be satisfied, vagueness in any one of them would be fatal to the ordinance. Appellant contends that the first condition, that the "[p]rimary purpose of such vehicle or equipment is not the display of signs", is vague.

The phrase "primary purpose" is not scientifically precise. Nevertheless, it has been held that there is no legal obscurity in the meaning of the words "primary" or "primarily". *Brennan v. Harrison County, Mississippi*, 505 F.2d 901, 903 (5th Cir. 1975). In various contexts "primarily" has been held to mean "of first importance," "principally," "essentially," or "fundamentally." See also Webster's Third New International Dictionary of the English Language (1969). "Primary purpose" has been defined as "that which is first in intention; which is fundamental." *Pacific Northwest Alloys, Inc. v. State*, 49 Wash.2d 702, 705, 306 P.2d 197, 199 (1957), quoting Black's Law Dictionary (4th ed. 1951).

One Arizona case has upheld the phrase "primary business" against the charge of vagueness. In *State v. Direct Sellers Association*, 108 Ariz. 165, 494 P.2d 361 (1972), the court considered the constitutionality of the Arizona statutes regulating home solicitation sales. Violations of these statutes were designated misdemeanors. There, as here, the statutes provided an exception from regulation if certain conditions were satisfied. One of the necessary conditions was that the seller's primary business be selling goods at a fixed location. The court rejected vagueness challenges to "primary business" and other phrases, recognizing that "[c]omplete specificity as to every word in an act, is impossible of attainment." 108 Ariz. at 169, 494 P.2d at 365.

Although situations may occur where it is difficult to determine whether the primary purpose of a vehicle is the display of a sign, this does not mean that the ordinance is unconstitutionally vague.

"The Constitution only requires that language convey a sufficiently definite warning as to proscribed conduct when measured by common understanding and

practices. That there will be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense [Citation omitted]." *State v. Cota*, 99 Ariz. 233, 236, 408 P.2d 23, 26 (1965).

[14] Finally, we need not consider whether there is some vagueness in the ordinance in the various hypothetical situations raised by appellant. Appellant's conduct falls within the clearly defined core of this ordinance, and he has no standing to complain about possible vagueness in more borderline cases. *Parker v. Levy*, 417 U.S. 733, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974); *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973); *State v. Hagen*, 27 Ariz.App. 722, 558 P.2d 750 (1976); *State v. Duran*, 118 Ariz. 239, 575 P.2d 1265 (Ct.App.1978).

Appellant's conviction and sentence are affirmed.

FROEB, C. J., and DONOFRIO, J., concur.



121 Ariz. 71

**Dorothy LOVE and Kenneth G. Shilling,  
as Co-Personal Representatives of the  
Estate of W. Kurt Kremers, Deceased,  
Plaintiffs/Appellants,**

v.

**FARMERS INSURANCE GROUP, a corporation,  
and Mid-Century Insurance, a  
corporation, Defendants/Appellees.**

**No. 2 CA-CIV 2941.**

Court of Appeals of Arizona,  
Division 2.

Sept. 28, 1978.

Rehearing Denied Nov. 1, 1978.

Review Denied Nov. 21, 1978.

Representatives of insured's estate  
sought a declaratory judgment that in-

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venile had been absent from school on the 6th, 7th, 8th, 9th and 20th of November, 1974.<sup>1</sup> The juvenile, who was represented by the deputy public defender, did not testify and no witnesses were called on his behalf. The juvenile now asserts that the state had the duty not only to prove he failed to attend school but also had the further duty to show he was absent without a valid excuse.

[3,4] We believe the state proved by a preponderance of the evidence that the juvenile violated the terms of his probation by failing to attend school. The burden of proof in such a case is by a preponderance of the evidence. *In Re Maricopa County Juvenile Action No. J-72918-5*, 111 Ariz. 135, 524 P.2d 1310 (1974); *In Re Maricopa County Juvenile Action No. J-66470*, 19 Ariz.App. 577, 509 P.2d 649 (1972).

After the state presented evidence of the juvenile's absence from school the juvenile contends the state had the final duty to prove such absence was without a valid excuse.

[5] We do not believe it was the duty of the state at this stage of the proceedings to present this type of defensive matter. This is not a *Brady v. State of Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) situation where the state is attempting to hide or hold back evidence. There is nothing in the record to indicate that the juvenile had any valid excuse for his absences from school nor is there any evidence that the state had knowledge of an excuse of any kind. The juvenile and his parents were present at the hearing, with counsel, and they elected not to present any defensive testimony.

The juvenile should not now be allowed to assert that the state failed to disprove his phantom excuse when such excuse was unknown to the state and was never presented to the court.

1. The petition alleges the absences occurred on or about the 6th, 7th, 8th, and 15th of November, 1974. For the purposes of this opinion we do not deem it material that the

In our opinion the state had no duty of proof beyond proving, by a preponderance of the evidence, that the juvenile had violated a specific term of probation. The judgment and disposition of the juvenile judge is hereby affirmed.

DONOFRIO, P. J., and FROEB  
concur.



25 Ariz.App. 565

John SHAFFER, Appellant,

v.

Thomas ALLT, as Mayor of the City of Yuma, the City Council of the City of Yuma, the City of Yuma, a Municipal Corporation, Appellees.

John SHAFFER, Appellant,

v.

ARIZONA STATE LIQUOR BOARD, and  
City of Yuma, a Municipal Corporation, Appellees.

No. 1 CA-CIV 2716, 1 CA-CIV 2777.

Court of Appeals of Arizona,  
Division 1,  
Department B.

Jan. 22, 1976.

Rehearing Denied March 2, 1976.

Review Denied March 30, 1976.

Resident taxpayer of city filed special action against mayor, counsel and challenging ordinance authorizing city purchase liquor license and also appeal from decision of the State Liquor Board approving transfer of license to city. In Superior Court, Yuma County, Cause Nos. C-33491 and C-33748, William W. Housh, J., dismissed complaint and affirmed decision of the Board. On appeal, actions against city and board were com-

November 11, 1974 date on the petition in error or that the November 20, 1974 was not covered.

venile had been absent from school on the 6th, 7th, 8th, 9th and 20th of November, 1974.<sup>1</sup> The juvenile, who was represented by the deputy public defender, did not testify and no witnesses were called on his behalf. The juvenile now asserts that the state had the duty not only to prove he failed to attend school but also had the further duty to show he was absent without a valid excuse.

[3,4] We believe the state proved by a preponderance of the evidence that the juvenile violated the terms of his probation by failing to attend school. The burden of proof in such a case is by a preponderance of the evidence. *In Re Maricopa County Juvenile Action No. J-72918-5*, 111 Ariz. 135, 524 P.2d 1310 (1974); *In Re Maricopa County Juvenile Action No. J-66470*, 19 Ariz.App. 577, 509 P.2d 649 (1972).

After the state presented evidence of the juvenile's absence from school the juvenile contends the state had the final duty to prove such absence was without a valid excuse.

[5] We do not believe it was the duty of the state at this stage of the proceedings to present this type of defensive matter. This is not a *Brady v. State of Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) situation where the state is attempting to hide or hold back evidence. There is nothing in the record to indicate that the juvenile had any valid excuse for his absences from school nor is there any evidence that the state had knowledge of an excuse of any kind. The juvenile and his parents were present at the hearing, with counsel, and they elected not to present any defensive testimony.

The juvenile should not now be allowed to assert that the state failed to disprove his phantom excuse when such excuse was unknown to the state and was never presented to the court.

1. The petition alleges the absences occurred on or about the 6th, 7th, 8th, and 15th of November, 1974. For the purposes of this opinion we do not deem it material that the

In our opinion the state had no duty of proof beyond proving, by a preponderance of the evidence, that the juvenile had violated a specific term of probation. The judgment and disposition of the juvenile judge is hereby affirmed.

DONOFRIO, P. J., and FROEB,  
concur.



25 Ariz.App. 565

John SHAFFER, Appellant,

v.

Thomas ALLT, as Mayor of the City of Yuma, the City Council of the City of Yuma, the City of Yuma, a Municipal Corporation, Appellees.

John SHAFFER, Appellant,

v.

ARIZONA STATE LIQUOR BOARD, and the City of Yuma, a Municipal Corporation, Appellees.

Nos. 1 CA-CIV 2716, 1 CA-CIV 2777.

Court of Appeals of Arizona,  
Division 1,  
Department B.

Jan. 22, 1976.

Rehearing Denied March 2, 1976.

Review Denied March 30, 1976.

Resident taxpayer of city filed special action against mayor, council and city challenging ordinance authorizing city purchase liquor license and also appeal from decision of the State Liquor Board approving transfer of license to city. In Superior Court, Yuma County, Cause Nos. C-33491 and C-33748, William W. Bours, J., dismissed complaint and affirmed decision of the Board. On appeal actions against city and board were con-

November 11, 1974 date on the petition in error or that the November 20, 1974 was not covered.

ated. The Court of Appeals, Jacobson, held that charter city could constitutionally engage in business of selling alcoholic beverages at city recreation complex; that the ordinance authorizing such business was not inconsistent with the Constitution, general law of state, or city charter and that State Liquor Board was authorized to issue the city a license.

Affirmed.

1. Municipal Corporations ⇨57

Charter city may exercise all powers authorized by its charter, insofar as those powers are consistent with State Constitution and do not conflict with state legislative enactments which have appropriated the field in an area of general statewide concern. A.R.S.Const. art. 13, §§ 2, 5; A.R.S. § 9-284[B].

2. Constitutional Law ⇨29

Constitutional article empowering municipal corporation to engage in any business which may be engaged in by a person, firm, or corporation by virtue of franchise from municipal corporation and constitutional article giving municipal corporations right to engage in industrial pursuit are not "self-executing," but a charter provision can supply the necessary legislation required to put the provisions into effect. A.R.S.Const. art. 2, § 34; art. 13, § 5.

3. Municipal Corporations ⇨57

Charter city, consistent with Constitution, could engage in business of selling alcoholic beverages at city recreation complex, regardless of whether state was empowered to grant, or need grant, a "franchise" to a private entity to engage in that activity. A.R.S.Const. art. 2, § 34; art. 13, § 5.

4. Municipal Corporations ⇨61

Municipal corporation, even in exercise of its proprietary powers, must exercise those powers for a public purpose.

5. Municipal Corporations ⇨860

Public funds may not be used for private gain. A.R.S.Const. art. 9, § 1.

6. Municipal Corporations ⇨111(2)

Ordinance authorizing, in effect, charter city to engage in selling alcoholic beverages at its recreation complex was not inconsistent with State Constitution on basis that it was not for a public purpose. A.R.S.Const. art. 9, § 1.

7. Municipal Corporations ⇨65

Home rule city deriving its powers from Constitution is independent of state legislature as to all subjects of strictly local municipal concern. A.R.S.Const. art. 2, § 34; art. 13, §§ 2, 5.

8. Municipal Corporations ⇨78

Charter city ordinance allowing city to purchase liquor license for its recreation complex was not inconsistent with any general law of state. A.R.S.Const. art. 2, § 34; art. 13, §§ 2, 5.

9. Municipal Corporations ⇨59

Municipalities have no implied powers except such as may be fairly implied from express powers.

10. Municipal Corporations ⇨59

Yuma city charter authorizing city to own and operate places of recreation and providing for acquisition of public facility to consist of baseball complex, golf course and multipurpose community center building and necessary and appropriate service and administrative facilities appurtenant thereto authorized purchase of liquor license by city for the complex. A.R.S. Const. art. 2, § 34; art. 13, §§ 2, 5.

11. Municipal Corporations ⇨57

Generally, when municipal corporation engages in business activities pursuant to its proprietary functions, it is subject to same rules and regulations which are imposed upon a private entity engaged in like business.

12. Intoxicating Liquors ⇨58, 110

Municipal corporation falls within definition of a "corporation" authorized by statute to apply for and hold a liquor license and State Liquor Board was authorized to issue license to city which was subject to regulation by that board to same

extent as private corporation dealing in spirituous liquors. A.R.S. §§ 4-101[12], 4-202[A], 10-102, 10-102[B].

Brandt & Engler, by Don B. Engler, Yuma, for appellant.

Douglas S. Stanley, City Atty., Yuma, for appellees Mayor and City Council of City of Yuma and City of Yuma.

Bruce E. Babbitt, Atty. Gen., by James Michael Low, Asst. Atty. Gen., Phoenix, for appellee Arizona State Liquor Board.

James D. Webb, City Atty., by Enos P. Schaffer, Deputy City Atty., Tucson, amicus curiae.

#### OPINION

JACOBSON, Presiding Judge.

This appeal presents the question of whether the City of Yuma may engage in the business of selling alcoholic beverages at a city-owned recreation complex.

In December, 1973, the City Council of the City of Yuma adopted Ordinance No. 1344 authorizing the city to purchase an Arizona liquor license.<sup>1</sup> Appellant, John Shaffer, a resident taxpayer of Yuma, filed a Special Action against Thomas Allt as Mayor of the City of Yuma, the Yuma City Council, and the City of Yuma, contending that the ordinance was invalid as an excess of those defendants' legal authority and sought an injunction restraining defendants from taking action to purchase a liquor license during the pendency of the proceedings. After hearing argument on a motion to dismiss filed by the City, the Superior Court entered an order dismissing the complaint and gave judgment for the defendants.

1. That action of the City Council provided for:

"AN ORDINANCE OF THE CITY OF YUMA, ARIZONA PROVIDING FOR THE PURCHASE BY SUCH CITY OF A NUMBER SIX (6) ARIZONA STATE LIQUOR LICENSE, SUBJECT TO APPROVAL BY THE ARIZONA STATE LIQUOR DEPARTMENT OF APPLICATION NO. 465 TO BE AMENDED; SAID LIQUOR LI-

Following the defeat of his special action in Superior Court, Shaffer filed Special Action on the same grounds in the Supreme Court. That court declined to accept jurisdiction of the matter.

In addition to the proceedings described above, Shaffer appealed a decision of the Arizona State Liquor Board approving a transfer of a liquor license to the City of Yuma. The Superior Court affirmed the decision of the Board.

Pursuant to an order of this court, the actions on appeal against the City and the state liquor board have been consolidated. Appellant formulates two issues for decision. First, whether the City of Yuma has authority to hold a liquor license and engage in the selling of alcoholic beverages; and second, whether the Arizona State Liquor Board is statutorily authorized to transfer a liquor license to a municipal corporation.

Yuma is a charter city, organized in accordance with the constitutional grant, found in article 13, § 2 of the Arizona Constitution, of "home rule" to qualifying municipal corporations.

[1] Turning to the first issue presented, that is, the authority (power) of the city of Yuma to hold a liquor license and engage in the business of selling alcoholic beverages, we must start with the scope of the City's power as a charter city. As a charter city, Yuma may exercise all the powers authorized by its charter, insofar as those powers are consistent with the Arizona Constitution and do not conflict with state legislative enactments which have appropriated the field in an area of general statewide concern. See, A.R.S. § 9-284(B); *Gardenhire v. State*, 26 Ariz. 14,

CENSE TO BE USED BY SAID CITY, THROUGH ITS AGENT, AT THE YUMA CIVIC AND CONVENTION CENTER; AUTHORIZING AND DIRECTING THE ADVERTISING FOR SEALED PROPOSAL THEREFOR; UPON ACCEPTANCE THEREOF AUTHORIZING AND DIRECTING THE EXECUTION OF ALL NECESSARY CONTRACTS THEREFOR; AND DECLARING AN EMERGENCY."

221 P. 228 (1923); *Buntman v. City of Phoenix*, 32 Ariz. 18, 255 P. 490 (1927); *Dayton v. State*, 38 Ariz. 135, 297 P. 1037 (1931); *City of Tucson v. Walker*, 60 Ariz. 232, 135 P.2d 223 (1943); *Shropshire v. Peery*, 60 Ariz. 530, 141 P.2d 852 (1943); *City of Tucson v. Tucson Sunshine Climate Club*, 64 Ariz. 1, 164 P.2d 498 (1945); *Arizona Fence Contractors Ass'n v. City of Phoenix Advisory and Appeals Board*, 7 Ariz.App. 129, 436 P.2d 641 (1968).

Our inquiry then concerning whether the City of Yuma may engage in selling alcoholic beverages at its baseball, golf and civic center complex is a three-pronged one: (1) Is the selling of alcoholic beverages by a municipality consistent with the Arizona Constitution; (2) Are there state statutes which would prohibit a municipality from selling alcoholic beverages; and (3) Does the charter of the City of Yuma expressly grant or fairly imply a grant of power to engage in the sale of alcoholic beverages?

[2] Two provisions of the Arizona Constitution and cases construing these provisions bear upon the question of what types of business a municipal corporation may engage in. Article 13, § 5 of the Arizona Constitution provides:

"§ 5. Right of municipal corporation to engage in business or enterprise

"Section 5. Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said municipal corporation."

And, Article 2, § 34 of the Constitution states:

"§ 34. Industrial pursuits by state and municipal corporations

"Section 34. The State of Arizona and each municipal corporation within the State of Arizona shall have the right to engage in industrial pursuits. Added election Nov. 5, 1912, eff. Dec. 5, 1912."

While these provisions are not "self-executing", a charter provision can supply the necessary legislation required to put the provisions into effect. *Buntman v. City of Phoenix*, 32 Ariz. 18, 255 P. 490 (1927). The precise question of whether, reading these provisions together, a municipal corporation is limited in its business activities to those in which it could grant a franchise, was answered by the Arizona Supreme Court in *Crandall v. Town of Saford*, 47 Ariz. 402, 56 P.2d 660 (1936). The Court stated:

"It should be kept in mind that section 34, art. 2, approved by the people in November, 1912, amended the Constitution and that it enlarged the powers conferred by section 5 of article 13, *supra*. And while it is true that the Legislature has on three separate occasions, namely, chapter 11, Laws of the First Special Session of 1912, chapter 31, Session Laws of 1921, and chapter 77, Session Laws of 1933, enacted legislation providing that municipal corporations may engage in any business an individual may follow 'by virtue of a franchise from such municipal corporation,' yet in doing so it seems plain that it overlooked the fact that section 34, art. 2, gives municipalities the right to engage in industrial pursuits, without specifying any limitation whatever as to kind or character. Realizing this, it was held in effect in *City of Tombstone v. Macia*, 30 Ariz. 218, 245 P. 677, 682, 46 A.L.R. 828, that, following the adoption of section 34, *supra*, municipalities were no longer confined in engaging in business, to those particular enterprises for which a municipality might grant a franchise to an individual." (emphassis added) 47 Ariz. at 409, 56 P.2d at 662-63.

*Accord*, *City of Phoenix v. Wright*, 52 Ariz. 227, 80 P.2d 390 (1938); *City of Tucson v. Polar Water Co.*, 76 Ariz. 126, 259 P.2d 561 (1953).

[3-5] Thus it appears that the City of Yuma may, consistent with the Arizona Constitution, engage in the business of sell-

ing alcoholic beverages at the city recreation complex regardless of whether the city is empowered to grant, or need grant a "franchise" to a private entity to engage in that activity.<sup>2</sup> This answer does not end our constitutional inquiry, however. A municipal corporation, even in the exercise of its proprietary powers, must exercise those powers for a public purpose. *City of Tombstone v. Macia*, 30 Ariz. 218, 245 P. 677 (1926); *City of Glendale v. White*, 67 Ariz. 231, 194 P.2d 435 (1948); 3 Yokley Municipal Corporations, § 54 at 107 (1958). This is in accord with the fundamental principle that public funds may not be used for private gain. *City of Phoenix v. Michael*, 61 Ariz. 238, 148 P.2d 353 (1944). See, article 9, § 1 of the Arizona Constitution prohibiting the levying and collecting of taxes for other than public purposes.

Other than the strict prohibition against municipal activity for purely private gain, the concept of "public purpose" is not capable of rigid definition, but must be defined in accordance with the circumstances and the times. The Arizona Supreme Court has stated:

"The question of what is a public purpose is a changing question, changing to suit industrial inventions and developments and to meet new social conditions. Law is not a fixed and rigid system but develops, a living thing, as the industrial and social elements which form it make their impelling growth." *City of Tombstone v. Macia*, 30 Ariz. 218, 226, 245 P. 677, 680 (1926).

Appropriation of monies for a civic center has been acknowledged to be for a public purpose. *City of Phoenix v. Phoenix Civic Auditorium and Convention Center Ass'n.*, 99 Ariz. 270, 408 P.2d 818 (1965). The fact that a municipal corporation may make a profit from engaging in a proprietary activity does not negate the underlying

ing public purpose of the enterprise. *City of Tombstone v. Macia*, *supra*. The encouragement of immigration, new industries, and investment in the city is a valid public purpose for the exercise of a municipal corporation's proprietary powers. As was stated in *City of Tucson v. Tucson Sunshine Climate Club*, *supra*:

"The extent to which a municipality may desire to go in encouraging immigration, new industries and investment within its boundaries is something that its inhabitants should have the power to decide. The people of one city may be perfectly satisfied with conditions as they are, while those of another municipality may wish to make every effort to promote and expand the population, activities and business of the city. It is unquestionably a purely municipal affair." 64 Ariz. at 8, 164 P.2d at 602.

If, in the opinion of the citizens of the City of Yuma as expressed in their charter, the selling of alcoholic beverages at the recreation complex serves the convenience of the city's inhabitants as well as promotes the tourist industry with concomitant revenues to the city, this court will not substitute its judgment for that of the city's residents and their elected representatives. *City of Tucson v. Sims*, 39 Ariz. 168, 4 P.2d 673 (1931); *Sulphur Springs Val. Elect. Coop. v. City of Tombstone*, 99 Ariz. 110, 407 P.2d 76 (1965). As stated in *City of Glendale v. White*, *supra*:

"The question as to whether the performance of an act or the accomplishment of a specific purpose constitutes a 'public purpose,' and the method by which such action is to be performed or purpose accomplished, rests in the judgment of the city council, and the judicial branch will not assume to substitute its judgment for that of the governing body unless the latter's exercise of judgment or discretion 'is shown to have been un-

2. We do not reach the question of whether a lease by a municipal corporation to a private entity of space at a city-owned convention

center for the purpose of selling alcoholic beverages constitutes the granting of a "franchise".

questionably abused.' . . ." 67 Ariz. at 237, 194 P.2d at 439.

[6] We conclude that the ordinance authorizing, in effect, the City of Yuma to engage in the selling of alcoholic beverages at its recreation complex is not inconsistent with the Arizona Constitution.

[7] We now turn to a determination of whether Yuma's ordinance authorizing the purchase of a liquor license and thus engaging in the selling of alcoholic beverages is in conflict with state statutes. As previously indicated, the power of a charter city is subject to state regulation when the power sought to be exercised is "of statewide application and interest." *City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon*, 67 Ariz. 330, 335, 195 P.2d 562 (1948). However, "a home rule city deriving its power from the Constitution is independent of the state Legislature as to all subjects of strictly local municipal concern." *City of Tucson v. Tucson Sunshine Climate Club, supra*, 64 Ariz. at 8-9, 164 P.2d at 602. There is no doubt that in creating the Department of Liquor Licenses and Control (Title 4, A.R.S.), the legislature intended to exercise statewide control over traffic in intoxicating liquor. *Mayor and Common Council of the City of Prescott v. Randall*, 67 Ariz. 369, 196 P.2d 477 (1948). However, the power to control traffic in alcoholic beverages is not inconsistent with a decision of a city to engage in the selling of alcoholic beverages consistent with that state control. Such a decision, in our opinion, is a matter of "municipal concern" in which the state may not interfere.<sup>3</sup>

[8] We therefore hold that the Yuma ordinance allowing that city to purchase a liquor license is not inconsistent with any general law of the state.

[9] We now reach the third time of our inquiry: Does the Yuma charter contain authority for the enactment of the ordinance under consideration? We have pre-

viously discussed the constitutional and statutory limitations imposed upon charter cities. One additional limitation is present, that is, municipalities, be they charter or otherwise, have no implied powers, except such as may be fairly implied from expressed powers. *City of Scottsdale v. Superior Court*, 103 Ariz. 204, 439 P.2d 290 (1968); *Kendall v. Malcolm*, 98 Ariz. 329, 404 P.2d 414 (1965).

Since the City of Yuma admits that there is no specific charter provision expressly authorizing it to engage in the business of selling alcoholic beverages, it must point to a specific charter provision from which this power may be fairly implied. An implied power has been defined as one whose function it is to aid in carrying into effect a power expressly granted. *City of Flagstaff v. Associated Dairy Products Co.*, 75 Ariz. 254, 255 P.2d 191 (1953).

[10] Article III, § 5 of the Yuma City Charter authorizes the city "to . . . own and operate . . . places of recreation." Article III, § 72 of the charter further provides for "the acquisition, construction, maintenance and promotion of public facilities to consist of a baseball complex, an 18-hole golf course, and a multi-purpose community center building, and necessary and appropriate service and administrative facilities appurtenant thereto." (emphasis added) In our opinion, by virtue of § 72, the city council is vested with the discretion to determine what service facilities are "necessary and appropriate" to the described recreation complex. The limitation "necessary and appropriate" together with the description of the complex provides sufficient guidelines for the exercise of that discretion by the council.

As stated previously in this opinion, this court will not interfere with the council's reasonable exercise of that discretion, unless that discretion "is shown to have been unquestionably abused." *City of Glendale*

expressly prohibiting a municipality from engaging in the business of selling liquor.

3. We note that appellant has not pointed out to us, nor have we found, a state statute

in this state" so as to fall within the definition of a "domestic corporation" under that section.

12. We therefore hold that a municipal corporation falls within the definition of a "corporation" authorized to apply for and hold a liquor license under Title 4, A.R.S. As such, the State Liquor Board is authorized to issue the city a license and the city is subject to regulation by that Board to the same extent as a private corporation dealing in spirituous liquors.

Accordingly, we affirm the decision of the Superior Court dismissing appellant's complaint against the mayor, city council, and City of Yuma; and we affirm the Superior Court's affirmance of the decision of the Arizona State Liquor Board approving the transfer of a liquor license to the City of Yuma.

HAIRE, C. J., Division 1, and EUBANK, J., concurring.



25 Ariz.App. 572

STATE of Arizona, Appellee,

v.

Debra Lynn ROBERTS, Appellant.

No. 1 CA-CR 1154.

Court of Appeals of Arizona,

Division 1,

Department A.

Jan. 20, 1976.

Defendant was convicted before the Superior Court of Maricopa County, Cause No. Cr-83893, Marilyn A. Riddel, J., of possession of narcotic drugs and she appealed. The Court of Appeals, Donofrio, P. J., held that error in recalling jury after return of guilty verdict and discovery that verdict form had mistakenly denominated drug in question, heroin, as "dangerous" rather than "narcotic" was harmless where

all facts in case dealt with possession of heroin, there was no arguable issue presented that substance possessed by defendant was not heroin, jury had been given only two forms of verdict and form returned by them found defendant guilty of possessing heroin.

Affirmed.

#### 1. Criminal Law ⚡890

Error in verdict form which had been submitted to jury in prosecution for possession of a narcotic drug, to wit, heroin, and which mistakenly denominated drug in question as "dangerous" rather than "narcotic" could have been amended by trial judge after jury returned guilty verdict. 17 A.R.S. Rules of Criminal Procedure, rule 24.4; A.R.S. § 36-1002.

#### 2. Criminal Law ⚡889

Once discharged, jury cannot be recalled days later to reconsider case and to correct an error in their verdict.

#### 3. Criminal Law ⚡1175

Error in recalling jury after return of guilty verdict in prosecution for possession of a narcotic drug, to wit, heroin, and discovery that verdict form had mistakenly denominated drug in question as "dangerous" rather than "narcotic" was harmless where all facts in case dealt with possession of heroin, there was no arguable issue that substance possessed by defendant was not heroin, jury had been given only two forms of verdict and form returned by them found defendant guilty of possessing heroin. A.R.S. § 36-1002; 17 A.R.S. Rules of Criminal Procedure, rules 21.3, 24.4; A.R.S.Const. art. 6, § 27.

#### 4. Criminal Law ⚡1134(2)

To determine whether guilty verdict is sufficient, reviewing court not only looks to information but also to trial itself and particular issues involved.

#### 5. Criminal Law ⚡881(2)

To be sufficient, guilty verdict must respond substantially to all material issues raised in case.

*v. White, supra*, 67 Ariz. at 237, 194 P.2d at 439. See also, *City of Tucson v. Sims, supra*. This court cannot say that a facility serving alcoholic beverages may not reasonably be considered a "necessary and appropriate service facility appurtenant" to a recreation complex which includes an 18-hole golf course. As was stated in *City of Tombstone v. Macia, supra*:

"Municipal corporations are not limited to provide for the material necessities of their citizens. Under legislative authority they may minister to their comfort, health, pleasure, or education." 30 Ariz. at 227, 245 P. at 681.

It follows that the authorization to purchase a liquor license flows from the authority to provide bar facilities at the recreation complex. Accordingly, we find Yuma City Ordinance No. 1344, authorizing the purchase of a liquor license to be valid under the Charter of the City of Yuma.

There remains to be answered appellant's final contention regarding the authority of the Arizona Liquor Board to issue a liquor license to a municipal corporation.

Appellant's argument is that in order to qualify as a spirituous liquor licensee under A.R.S. § 4-201(A), the licensee must either be a bona fide resident of the state, a partnership, each of the partners being bona fide residents of the state, or a corporation, and if a corporation, "it shall be a domestic corporation or a foreign corporation which has qualified to do business in this state." The appellant then cites A.R.S. § 10-102 (1956), which provides in part as follows:

"A. Corporations are either public or private.

\* \* \* \* \*

"B. Corporations are either domestic or foreign.

1. A domestic corporation is a corporation organized under the laws of this state.

2. A foreign corporation includes every other corporation."

[11] Appellant then argues since A.R.S. § 10-102 distinguishes in section A, between public and private corporations, an Arizona municipal corporation cannot be a foreign corporation under subsection B of that statute, subsection B must only apply to definitions of private corporations. He then argues that since A.R.S. § 4-202(A) refers to "domestic or foreign corporations" this section likewise applies only to private corporations and therefore a municipal corporation cannot be a licensee. We believe this argument to be illogical.

First, A.R.S. § 4-201(A) (1974) provides:

"A person desiring a license to sell or deal in spirituous liquors shall make application therefor to the board . . . ."

"Person" is defined by A.R.S. § 4-101(12) to include a "partnership, association, company or corporation, as well as a natural person." If appellant's argument is correct that a municipal corporation does not fall within the definition of "corporation", then a municipal corporation would not fall within the definition of a "person" required to have a license to "sell or deal in spirituous liquors" and therefore could engage in that business without a license from the state. Such a construction is contrary to the obvious legislative intent to place the selling of spirituous liquors under control of the State Liquor Board regardless of the vendor. Moreover, it is contrary to the general rule that when a municipal corporation engages in business activities pursuant to its proprietary function, it is subject to the same rules and regulations which are imposed upon a private entity engaged in a like business. *Sumid v. City of Prescott*, 27 Ariz. 111, 230 P. 1103 (1924).

Second, and more importantly, we do not consider the definitions contained in A.R.S. § 10-102(B) to apply solely to private corporations. In our opinion, a municipal corporation is "organized under the law

## PART I

### CHARTER\*

#### ARTICLE I. POWERS OF THE CITY

##### Sec. 1.01. Name and powers of the city.

The municipal corporation now existing and known as the "City of Tempe" shall remain and continue to be a body politic and corporate under the name of the "City of Tempe" with all powers, functions, rights, privileges and immunities possible under the Constitution and general laws of Arizona as fully as though they were specifically enumerated in this Charter, and all of the powers, functions, rights, privileges and immunities granted or to be granted to charter cities and to cities and towns incorporated under the provisions of Title 9, Arizona Revised Statutes, not in conflict herewith. The enumeration of the powers, functions, rights, privileges and immunities made in this Charter shall never be construed to preclude, by implication, or otherwise, the city from doing any and all things not inhibited by the constitution and laws of Arizona.

(5-14-74)

##### Sec. 1.02. Construction.

The powers of the city under this Charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this article.

##### Sec. 1.03. Intergovernmental relations.

The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation by contract, or otherwise, with any one or more states, political subdivisions thereof, school districts, or any board, commission or agency of any of them, or with the United States or any department or agency thereof.

##### Sec. 1.04. Authority of mayor during emergency.

During times of great danger, threatened or actual civil insurrection, riot, extraordinary local emergency or natural disaster which causes or threatens to cause loss of or jeopardizes life or property, the mayor shall assume control over and govern city government and all of its branches and shall be responsible for the suppression of disorders and the restoration of normal peaceful conditions. To accomplish the aforementioned responsibilities, the mayor is empowered to rule by proclamation. Any person violating any of the provisions of any proclamation issued by the mayor during such time of great danger, threatened or actual civil insurrection, riot, extraordinary local emergency or natural disaster, shall be guilty of a misdemeanor punishable as set forth in section 1-7 of the Tempe City Code.

(5-14-68)

#### ARTICLE II. CITY COUNCIL

##### Sec. 2.01. Composition, eligibility, terms and elections.

(a) *Composition.* There shall be a city council consisting of a mayor and six (6) other councilmen elected from the city at large by the qualified electors of the city.

(b) *Eligibility.* Only qualified electors of the city shall be eligible to hold the office of mayor or councilman. Each council candidate must have been a resident of the city or an annexed area for at least two (2) years immediately preceding his election.

(c) *Term of councilmen.* The term of office of councilmen shall commence at the first regular meeting of the city council in July following their

\*Editor's note—The Charter of the City of Tempe, adopted by special election, Oct. 19, 1964. Except for the use of a uniform system of capitalization, the Charter has been set out herein as adopted.

Chapter 12

**DRAINAGE AND FLOOD CONTROL\***

- Art. I. In General, §§ 12-1-12-15
- Art. II. Floodplain Management, §§ 12-16-12-35
- Art. III. Salt River Flood Channel, §§ 12-36-12-55
- Art. IV. Storm Water Retention, §§ 12-56-12-100
  - Div. 1. Generally, §§ 12-56-12-70
  - Div. 2. Administration, §§ 12-71-12-85
  - Div. 3. Standards and Specifications, §§ 12-86-12-100
- Art. V. Storm Water System Extension Policy, §§ 12-101-12-105

**ARTICLE I. IN GENERAL**

Secs. 12-1-12-15. Reserved.

**ARTICLE II. FLOODPLAIN  
MANAGEMENT†**

**Sec. 12-16. Purpose.**

(a) The flood hazard areas of Tempe are subject to periodic inundation which can 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 are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(c) It is the purpose of this article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;

†Editor's note—Ordinance No. 87.25, adopted Sept. 10, 1987, Ch. 12, Art. II, floodplain management, in its entirety to read as herein set out. The substantive provisions of former Art. II, §§ 12-16-12-22, were derived from Code 1967, §§ 15-1-15-7; and Ord. No. 828.3, §§ I-VI, adopted Sept. 27, 1984.

\*Cross references—Buildings and building regulations, Ch. 8; planning and development, Ch. 25.

State law reference—Authority to provide for floodplain regulations, A.R.S. §§ 45-2349, 45-2350.

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- (2) To minimize expenditure of public money for costly flood-control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, and streets and bridges, located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
- (9) To maintain eligibility for state disaster relief.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-17. Methods of reducing flood losses.**

In order to accomplish its purposes, this article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property

## Chapter 12

### DRAINAGE AND FLOOD CONTROL\*

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- Art. II. Floodplain Management, §§ 12-16-12-35
- Art. III. Salt River Flood Channel, §§ 12-36-12-55
- Art. IV. Storm Water Retention, §§ 12-56-12-100
  - Div. 1. Generally, §§ 12-56-12-70
  - Div. 2. Administration, §§ 12-71-12-85
  - Div. 3. Standards and Specifications, §§ 12-86-12-100
- Art. V. Storm Water System Extension Policy, §§ 12-101-12-105

#### ARTICLE I. IN GENERAL

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(b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(c) It is the purpose of this article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

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State law reference—Authority to provide for floodplain regulations, A.R.S. §§ 45-2349, 45-2350.

Supp. No. 5

- (2) To minimize expenditure of public money for costly flood-control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, and streets and bridges, located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
- (9) To maintain eligibility for state disaster relief.

(Ord. No. 87.25, 9-10-87)

##### Sec. 12-17. Methods of reducing flood losses.

In order to accomplish its purposes, this article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property

due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Controlling filling, grading, dredging and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Ord. No. 87.25, 9-10-87)

#### Sec. 12-18. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application:

*Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this article.

*Area of shallow flooding* means a designated AO Zone on the flood insurance rate map (FIRM). The base flood depths range from one (1) to three (3) feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.

*Base flood* means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building supporting foundation system.

*Critical feature* means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.

*Development* means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

*Financial assistance* means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance, other than general or special revenue sharing or formula grants made to states.

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of flood water; the unusual and rapid accumulation or runoff of surface waters from any source; and/or the collapse or subsidence of land along the shore of a body of water as a result of an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

*Flood boundary floodway map* means the official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

*Flood insurance rate map (FIRM)* means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*Flood insurance study* means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the flood boundary floodway map, and the water surface elevation of the base flood.

*Floodplain or flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

*Floodplain administrator* means the city engineer of the City of Tempe who is hereby author-

ized by the floodplain board to administer the provisions of this article.

*Floodplain board* means the city council of the City of Tempe at such times as they are engaged in the enforcement of this article.

*Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood-control works and floodplain management regulations.

*Floodplain management regulations* means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances and erosion control ordinances) and other applications of police power. The term describes such state or local regulations in any combination thereof which provide standards for the purpose of flood damage prevention and reduction.

*Flood proofing* means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Flood protection system* means those physical structural works for which funds have been authorized, appropriated and expended, and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

*Flood-related erosion* means the collapse or subsidence of land along a body of water as a result of an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the 100-year flood without cumulatively increasing the water surface elevation.

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*Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Levee* means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*Levee system* means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a

community's flood insurance rate map are referenced.

*New construction* means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.

*Person* means an individual or his agent, a firm, partnership, association or corporation or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

*Program* means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

*Program deficiency* means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the NFIP standards.

*Regulatory flood-elevation* means an elevation one (1) foot above the base flood elevation indicated on the FIRM. For example, buildings in Zone "AO (one (1) foot depth)" are required to have the lowest floor two (2) feet higher than the highest adjacent grade.

*Remedy a violation* means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

*Riverine* means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*Special flood hazard area* means an area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH.

*Start of construction* includes substantial improvement, and means the date the building per-

mit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure.

*Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*Substantial improvement* means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either before the improvement or repair is started; or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

*Variance* means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

*Violation* means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-19. Compliance and jurisdiction of this article.**

(a) This article shall apply to all areas of special flood hazards within the corporate limits of Tempe. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(b) Within a delineated floodplain, the department of building safety shall not issue a building permit until receipt of notification from the floodplain administrator that all plans have been reviewed and approved for conformance with this article.

(c) Within a delineated floodplain, the department of building safety shall not issue a certificate of occupancy until receipt of notification from the floodplain administrator that all construction has been completed in conformance with this article.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-20. Basis for establishing the areas of special flood hazard.**

The area of special flood hazard identified by the Federal Insurance Administration (FIA) in a scientific and engineering report entitled "The Flood Insurance Study for Maricopa County and Incorporated areas", with an accompanying flood insurance rate map, is hereby adopted by reference and declared to be a part of this article. The flood insurance study is on file at the City of Tempe Engineering Office. The flood insurance study is the minimum area of applicability of this article and may be supplemented by studies for other areas which allow implementation of this article and which are recommended to the floodplain board by the floodplain administrator.

(Ord. No. 87.25, 9-10-87)

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**Sec. 12-21. Abrogation and greater restrictions.**

This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-22. Interpretation.**

In the interpretation and application of this article, all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-23. Warning and disclaimer of liability.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City of Tempe, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-24. Statutory exemptions.**

(a) In accordance with Arizona Revised Statutes, Section 48-3609, nothing in this article shall:

- (1) Affect existing uses of property or the right to continuation of the use under conditions which existed on the effective date of this article.
- (2) Affect repair or alteration of property for the purposes for which such property was used on the effective date of this article; providing such repair or alteration does not

exceed fifty (50) percent of the value of the property prior to the repair or alteration; and provided the repair or alteration does not decrease the carrying capacity of the watercourse.

- (3) Affect or apply to facilities constructed or installed pursuant to a certificate or environmental compatibility issued under the authority of Title 40, Chapter 2, Article 6.2.

(b) In accordance with Arizona Revised Statutes, Section 48-3613, written authorization shall not be required, nor shall the floodplain board prohibit:

- (1) The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting a watercourse.
- (2) The construction of structures on banks of a creek, stream, river, wash, arroyo or other watercourse to prevent erosion of or damage to adjoining land, or dams for the conservation of floodwaters as permitted by Title 48, Chapter 21.
- (3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in any watercourse.
- (4) Any flood-control district, or other political subdivision, from exercising powers granted to it under Arizona Revised Statutes, Title 45, Chapter 10.

(c) Before any construction authorized by paragraphs (b) above may begin, the responsible person must submit plans for the construction to the floodplain administrator for review and comment.

(d) These exemptions do not preclude any person from liability if that person's actions increase flood hazards to any other person or property.  
(Ord. No. 87.25, 9-10-87)

#### Sec. 12-25. Violations.

(a) It is unlawful for any person to divert, retard or obstruct the flow of waters in any water-

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course whenever it creates a hazard to life or property.

(b) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail or personally served, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article. Any persons violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in Section 1-7 of this Code. Tempe may also enforce this article pursuant to Arizona Revised Statutes, Section 9-461.03 or under its authority to abate nuisances.

(c) If attempts to abate the violation are unsuccessful, the floodplain administrator shall submit to the administrator of Federal Insurance Administration 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.  
(Ord. No. 87.25, 9-10-87)

#### Sec. 12-26. Severability.

The ordinance from which this article is derived, and the various parts thereof, are hereby declared to be severable. Should any section of this article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.  
(Ord. No. 87.25, 9-10-87)

#### Sec. 12-27. Establishment of floodplain permit.

A floodplain permit shall be obtained before construction or development begins within any special flood hazard area. Application for a floodplain 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, drain-

age facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Proposed elevation, in relation to mean sea level, of the lowest habitable floor (including basement) of all structures; in Zone AO, elevation of existing grade and proposed elevation of lowest habitable floor of all structures;
- (2) Proposed elevation, in relation to mean sea level, to which any structure will be flood-proofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 12-29(C); and
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-28. Designation, duties and responsibilities of the floodplain administrator.**

(a) *Designation.* The floodplain administrator is hereby designated as enforcing officer for this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out its intent. He may adopt a fee schedule for review of applications for permits and variances from the requirements of this article.

(b) *Duties and responsibilities.* Duties of the floodplain administrator or his designee shall include, but not be limited to:

- (1) Review all floodplain permits to determine that:
  - a. The permit requirements of this article have been satisfied;
  - b. All other required state and federal permits relating to floodplains and floodways have been obtained;
  - c. The site is reasonably safe from flooding;
  - d. The proposed development does not adversely affect the carrying capacity of the floodway. For purposes of this article, "adversely affects" means that the cumulative effect of the proposed de-

velopment, when combined with all other existing and anticipated development within Tempe, will not increase the water surface elevation of the base flood more than one (1) foot at any point.

- (2) Use of other base flood data. When base flood elevation data has not been provided in accordance with Section 12-20, 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 this article. Any such information shall be submitted to the floodplain board for adoption.
- (3) Obtain and maintain for public inspection and make available as needed for flood insurance policies:
  - a. The certified elevation required in Section 12-29(c)(1);
  - b. The certification required in Section 12-29(c)(2);
  - c. The floodproofing certification required in Section 12-29(c)(3) and;
  - d. The certified elevation required in Section 12-32(b).
- (4) Whenever a watercourse is to be altered or relocated:
  - a. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
  - b. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.
- (5) Within one hundred twenty (120) days after completion of construction of any flood-control protective works which change the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall

be done according to the criteria adopted by the Director of the Department of Water Resources of the State of Arizona.

- (6) Advise the Flood Control District of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of the development plans included with all applications for floodplain use permits to develop land in a floodplain or floodway within one (1) mile of the corporate limits of the City of Tempe. Also, advise the Flood Control 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 (3) working days after having been received by the floodplain administrator.
  - (7) Make interpretations where needed as to the exact location of the boundaries of special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 12-35.
  - (8) Take actions on violations of this article as required in Section 12-25 herein.
- (Ord. No. 87.25, 9-10-87)

#### Sec. 12-29. Standards of construction.

In all areas of special flood hazards the following standards are required:

(a) *Anchoring:*

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes shall meet the anchoring standards of Section 12-33(b).

(b) *Construction materials and methods:*

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) *Elevation and floodproofing:*

- (1) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the regulatory flood elevation. Nonresidential structures may meet the standards in subsection (3) below. Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator prior to the issuance of a certificate of occupancy.
- (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 by at least one (1) foot higher than the depth number on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in subsection (3) below. Upon completion of the structure and prior to occupancy, a registered professional engineer or surveyor shall certify to the floodplain administrator that the elevation of the structure meets this standard.
- (3) Nonresidential construction shall either be elevated in conformance with subsections (1) or (2) above or, together with attendant utility and sanitary facilities:
  - a. Be floodproofed so that below the regulatory flood level the structure

is watertight with walls substantially impermeable to the passage of water;

- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator prior to occupying any building or structure on the property.
- (4) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. 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 standards and also the standards in Section 12-33.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-30. Standards for storage of materials and equipment within special flood hazard areas.**

(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.

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(b) Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-31. Standards for utilities within special flood hazard areas.**

The following standards shall apply to utilities within flood hazard areas:

- (a) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.
- (b) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (c) Waste disposal systems shall not be installed wholly or partially in a floodway.
- (d) Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-32. Standards for subdivisions.**

The following standards shall apply to subdivisions:

- (a) All preliminary subdivision plats shall identify the boundary of the flood hazard area and the elevation of the base flood.
- (b) All final subdivision plans will provide the elevation of proposed structure(s) and pads. The final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.
- (c) All subdivision proposals shall be consistent with the need to minimize flood damage. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located

and constructed to minimize flood damage. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-33. Standards for manufactured homes.**

All new and replacement manufactured homes and additions to manufactured homes within special flood hazard areas shall:

- (a) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at the regulatory flood elevation; and
- (b) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-34. Floodways.**

Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (b) If subsection (a) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Sections 12-29 through 12-33.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-35. Variances and the right of appeal.**

(a) The floodplain administrator may grant variances from the requirements of this article.

(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

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the floodplain administrator in the enforcement or administration of this article.

(c) In passing upon such applications, consideration shall be given all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The 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; and,
- (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 and water systems, and streets and bridges.

(d) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (c)(1) through (10) above have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(e) Upon consideration of the factors of items (c)(1) through (10) above and the purposes of this article, the floodplain administrator may attach such conditions to the granting of variances as he deems necessary to further the purposes of this article.

(f) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(g) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section.

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(j) 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; and
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(k) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land

exchange program provided for by Arizona Revised Statutes Title 26, Chapter 2, Article 2. A copy of the notice shall be recorded by the floodplain board 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.

(Ord. No. 87.25, 9-10-87)

### ARTICLE III. SALT RIVER FLOOD CHANNEL

#### Sec. 12-36. Dumping in flood channel; permit required.

No person, other than the United States government, the state or its governmental subdivisions shall dump or place dirt, sand, gravel, garbage, junk or refuse in the Salt River floodway or floodway fringe which lies within the city, unless such person has first procured a permit for such dumping or placing from the city council.

(Code 1967, § 15-18)

#### Sec. 12-37. Permit application procedure.

Applications for permits required by this article, along with a five-dollar application fee, which may not be returned, may be filed with the city engineer who shall thereupon make investigations concerning the application, and present the application along with a report concerning it and his recommendation for its approval or disapproval to the city council at a regular city council meeting, held not more than thirty (30) days after the date of filing of the application.

(Code 1967, § 15-19)

#### Sec. 12-38. Approval or denial of permit; fee.

The city council may grant or refuse a permit under this article and may in its discretion hold a public hearing to determine facts relevant to the application therefor. If the city council has not granted or refused a permit within sixty (60) days after filing of the application, the application shall be deemed approved. Upon approval of the application, the city engineer shall issue a permit upon payment of a five-dollar permit fee.

(Code 1967, § 15-20)

**Sec. 12-39. Permit conditions, renewal fee.**

The city engineer may impose reasonable conditions upon the use of the permits, and may formulate rules and regulations concerning their use, and in applying for and receiving a permit the applicant agrees to follow these conditions, rules and regulations which are in existence at the time of issuance of the permit, and all condi-

tions, rules and regulations that may be adopted by the city engineer subsequent to the date of issuance. Such permits may be renewed by payment of an annual permit fee of five dollars (\$5.00). (Code 1967, § 15-21)

**Sec. 12-40. Revocation of permit; appeal.**

The city engineer may at any time revoke a permit issued pursuant to this article for breach of any conditions, rules or regulations, but the permit holder may appeal such revocation to the city council where he shall be entitled to a public hearing.

(Code 1967, § 15-22)

**Sec. 12-41. Altering surface elevation.**

No person, other than the United States government, the state or its governmental subdivisions, shall raise or lower the elevation of the surface of the earth within that portion of the Salt River floodway or floodway fringe lying within the city so as to endanger or jeopardize public or private property lying within or without the Salt River floodway or floodway fringe, by increasing the flood danger to or increasing the probable extent of flood damage to such property.

(Code 1967, § 15-23)

**Secs. 12-42—12-55. Reserved.**

**ARTICLE IV. STORM WATER  
RETENTION**

**DIVISION 1. GENERALLY**

**Sec. 12-56. Purpose.**

The purpose of this article is to require the owner/developer of each lot, plot or parcel of land within the areas designated on the storm water storage map to provide storage of sufficient volume to hold the total runoff from the design storm falling on that lot, plot or parcel of land and, in storm water storage zone B, on adjacent street and alley rights-of-way, except arterial streets. The owner/developer shall not be required to provide storage for runoff from land other than his own.

(Code 1967, § 29A-1)

**Sec. 12-57. 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:

*Building floor elevation* means the finished floor elevation in feet above mean sea level of the lowest floor, including basement, of a building. Building floor elevations shall be related to the city datum.

*Building pad elevation* means the elevation in feet above mean sea level of the material on which the floor slab directly rests.

*Detention* means temporary storage or retardation of flows generated during the design storm.

*Drainage plan* means that certain plan on which are shown the locations, dimensions and elevations of proposed storm water storage areas.

*Five-year storm* means a storm that has a twenty-percent chance of occurring, in accordance with criteria established by the city engineer.

*One-hundred-year storm* means a storm that has a one-percent chance of occurring, in accordance with criteria established by the city engineer.

*On-site storage* means storage on public or private property or any combination thereof, but not on public street or alley right-of-way.

*Retention* means total storage, without overland relief, of flows generated during the design storm.

*Storm water storage zone A* means those areas, shown on the storm water storage map, where storage of storm water runoff from a five-year storm is required under the provisions of this article.

*Storm water storage zone B* means those areas, shown on the storm water storage map, where storage of storm water runoff from a 100-year storm is required under the provisions of this article.

*Storm water storage map* means that certain map on which are shown all areas within the city limits where storage of storm water runoff is required under the provisions of this article.

(Code 1967, § 29A-2)

**Sec. 12-58. Storm water storage map.**

(a) The locations and boundaries of storm water storage zones are hereby established as they are shown on the map titled "Storm Water Storage Map, City of Tempe," dated April 7, 1977, and signed by the mayor and the city clerk, which map is hereby declared to be a part of this chapter. Where uncertainty exists as to the boundaries of the aforesaid zones, the following shall apply:

- (1) Such zone lines are intended to follow street, alley, lot or property lines as such lines exist at the time of passage of this chapter, unless such zone lines are fixed by dimensions on the storm water storage map.
- (2) Where application of the rule above does not clarify the zone boundary line location, the city engineer shall determine the location.
- (3) Those properties which are not shown within the storm water storage zone boundaries on the storm water storage map shall be exempt from the requirements of this article.

(b) Should territory be annexed to the city subsequent to the effective date of this article, the city engineer shall proceed immediately to determine whether all or any portion of such territory properly belongs in one (1) or more of the storm water storage zones. Upon determination that such territory does in fact properly belong in one (1) or more storm water storage zones, the city engineer shall present to the city council, at its next regularly scheduled formal meeting, for introduction, an ordinance amending the storm water storage map to include such territory.

(c) Subsequent to the effective date of this article, should the city engineer determine that the boundaries of one (1) or more of the storm water storage zones should be expanded, contracted or modified, he shall prepare an ordinance to accomplish the necessary change, for introduction by the city council. Such ordinance shall be accomplished by a brief report outlining the reasons for the change. No such changes shall become effective until adoption of such ordinance by the city council.  
(Code 1967, § 29A-3)

**Sec. 12-59. Violations.**

(a) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article.

(b) Any persons violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in section 1-7 of this Code.  
(Code 1967, § 29A-4)

**Secs. 12-60—12-70. Reserved.****DIVISION 2. ADMINISTRATION****Sec. 12-71. Generally.**

(a) The city engineer is hereby designated as the enforcing officer of this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out its intent.

(b) Within a specified storm water storage zone, the building safety department shall not issue a building permit until receipt of notification from the city engineer that a drainage plan has been approved in accordance with this article.

(c) Within a specified storm water storage zone, the building safety department shall not issue a certificate of occupancy until receipt of notification from the city engineer that construction has been completed in substantial compliance with the approved drainage plan or that subsequent completion has been guaranteed by other means acceptable to the city.  
(Code 1967, § 29A-5)

**Sec. 12-72. Appeals.**

The city engineer is charged with the responsibility for administration and interpretation of this article. Any person who is dissatisfied or aggrieved by any decision of the city engineer may appeal such decision by filing written notice of appeal

with the city clerk. Such notice of appeal shall be forwarded to the city council at its next regularly scheduled meeting, at which time a date will be set for hearing on the appeal. The decision of the city council on the appeal shall be final.  
(Code 1967, § 29A-6)

**Sec. 12-73. Drainage permits.**

(a) Within a specified storm water storage zone, no person may fill or substantially alter the surface of any lot, plot or parcel of land without first having obtained a drainage permit from the city engineer.

(b) Prior to issuing a drainage permit, the city engineer shall require the owner/developer to submit for approval a drainage plan showing existing and proposed grades with calculations showing the volume of storage required and provided. Such plans and calculations shall be prepared under the direction of a professional engineer registered in the state, except as hereinafter provided.

(c) Where the permittee is the owner of a platted residential lot and where the work is to be done only on such lot, plans and calculations prepared by a professional engineer will not be required. The property owner shall submit a sketch showing the proposed work. The city engineer is authorized to assist the property owner in preparing such a sketch and making any computations which may be required.

(d) No drainage permit shall be issued by the city engineer until receipt of notification from the building safety department that the grading shown on the drainage plan has been approved.

(e) All drainage permits required by the provisions of this article shall be issued by the city engineer. Permits will be issued only upon approval of a drainage plan and payment of the following fees:

- (1) Individual storage:
  - Individual single-family lot . . . . . \$10.00
  - 1 to 5 lots . . . . . 50.00
  - 6 to 20 lots . . . . . 50.00
  - plus \$5.00 per lot over 5
  - 21 to 100 lots . . . . . 125.00
  - plus \$3.00 per lot over 20

Over 100 lots . . . . . 365.00  
plus \$1.00 per lot over 100

- (2) Central storage:
  - Less than 1 acre . . . . . 50.00
  - Over 1 acre, per acre . . . . . 50.00

- (3) Combination storage: Sum of fees for individual and central storage.

(f) The owner/developer will provide construction staking.

(g) The city will inspect and accept the work, including material testing necessary to determine that the work was done in accordance with the requirements of the city engineer.

(h) Prior to acceptance of the work, the owner/developer shall furnish a reproducible copy of the approved drainage plan containing a certificate, signed by a registered professional engineer or land surveyor, certifying that the improvements were constructed in accordance with the approved plan. As-built plans will not be required from owners of properties developed under subsection (c) of this section.

(Code 1967, § 29A-7)

**Secs. 12-74—12-85. Reserved.**

**DIVISION 3. STANDARDS AND SPECIFICATIONS**

**Sec. 12-86. On-site storage.**

(a) On-site storage may be provided in any of the following ways:

- (1) Individual storage;
- (2) Central storage;
- (3) Combination storage.

(b) Individual storage shall consist of providing adequate storage volume for the appropriate design storm on a lot, plot or parcel of land for all water falling on the lot, plot or parcel of land. In zone B, storage volume shall also be provided for adjacent streets and alleys, except for arterial streets. In single-family residential zones, the maximum depth of water in the storage area at design storm shall be eight (8) inches, unless other-

wise approved by the city engineer. In all other zoning categories, the maximum depth of water at design storm shall be three (3) feet.

(c) Central storage shall consist of providing adequate storage volume for the appropriate design storm in one (1) or more central basins to handle the runoff from more than one (1) lot, plot or parcel of land. The maximum depth of water in the storage area at design storm shall be three (3) feet, unless otherwise approved by the city engineer.

(1) The owner of the property on which the central storage basin is to be located shall grant a right to use such property for drainage purposes. Such grant shall be made by means of a document which shall be approved by the city attorney and recorded in the office of the county recorder and which shall contain the following provisions:

- a. A legal description of the property to be used for storage purposes;
- b. A legal description of the property which is permitted to drain to the basin;
- c. A statement that the owner is responsible for the construction and maintenance of the basin in accordance with standards established by the city engineer;
- d. A statement that no buildings or structures may be constructed within the basin;
- e. A statement that the property shall be used for storm water storage so long as it is required in the opinion of the city engineer;
- f. Such other provisions as are deemed by the city attorney to be necessary to effectuate the provisions of this article.

(2) In lieu of the requirements contained in paragraph (c)(1), the owner may dedicate the property to be used for central storage to the city for public use. Such dedication shall become effective only upon acceptance by the city council. As conditions precedent to the acceptance of a dedication, the city council may require the owner to comply with the following conditions:

- a. Grading of the basin in accordance with standards established by the city engineer;
- b. Construction of dry wells as necessary to dispose of nuisance water;
- c. Seeding to provide ground cover;
- d. Construction of flood irrigation and/or sprinkler systems;
- e. Such other construction as the city council may deem necessary to the proper public use of the property.

Upon the acceptance of the dedication by the city council and completion of any required construction, the city will assume responsibility for the operation and maintenance of the property and all facilities thereon.

(d) Combination storage shall consist of providing adequate storage volume for the appropriate design storm by a combination of individual and central storage. All requirements and conditions outlined in subsections (b) and (c) of this section shall apply.

(e) Where a property can be served by an existing storm drain, the city engineer may reduce the required storage volume by an amount equal to that property's proportion of the capacity of the storm drain. Where future storm drains are designed and constructed to carry a portion of the water being stored on a property, the city engineer may permit a corresponding reduction in the required storage volume upon construction by the owner/developer of an approved connection to the storm drain.

(Code 1967, § 29A-8)

**Sec. 12-87. Building floor elevations.**

(a) Within the limits of storm water storage zones A and B, the minimum building floor elevation shall be ten (10) inches above the design high water elevation for the appropriate design storm in the case of individual or combination storage.

(b) In the case of central storage, the minimum building floor elevation shall be ten (10) inches above the outfall of the lot.

(c) The owner/developer shall have the option of floodproofing, in a manner acceptable to the city engineer, to the minimum building floor elevation.

(d) The provisions of this section shall not apply to any existing building or structure, nor to an expansion of less than twenty-five (25) percent in floor area to an existing building or structure; but in no case shall the floor elevation of the extension be below the existing floor of the habitable space.

(e) Prior to occupying any building or structure constructed under the provisions of this article, the owner/developer shall submit to the city engineer a certificate, signed by a registered professional engineer or land surveyor, giving the actual building pad elevation as constructed. (Code 1967, § 29A-9)

**Secs. 12-88—12-100. Reserved.**

#### ARTICLE V. STORM WATER SYSTEM EXTENSION POLICY

##### Sec. 12-101. Established.

There is hereby established, as set forth in this article, a policy and an orderly program for extension of the city storm water system to serve those properties within and without the city limits. (Code 1967, § 31-12)

##### Sec. 12-102. Definitions.

For the purposes of this article, the following words, terms and phrases shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

*Cost* means construction contract price.

*Developer/owner* means any person engaged in the development of one (1) or more parcels of land and contracting for an extension of the city storm water system.

*Facility* means any storm water conduit, drainage structure, retention basin, pumping equipment and any other related construction which consti-

tutes or will constitute part of the city storm water system.

*Participating charge* means proportionate share of the cost (construction contract price) based on benefits derived in accordance with standards determined by the public works director and approved by the city council for any existing storm water facility.

(Code 1967, § 31-13)

##### Sec. 12-103. Preparation of plans, specifications.

Upon development of any property, area or subdivision within or without the city limits for which storm water facilities are required, all plans and specifications for such facilities shall be prepared by a professional engineer, registered in the state, and in accordance with the city department of public works standards and specifications.

(Code 1967, § 31-14)

##### Sec. 12-104. Agreement with city prerequisite to connection.

Before the extension of or connection to any facility shall be made to serve a subdivision or platted or unplatted property, the developer/owner desiring such extension or connection must execute an agreement with the city which shall include the following:

- (1) A warranty of workmanship and material for facilities installed which shall run to the benefit of the city for a period of at least one (1) year from the date of acceptance by the city;
- (2) A diagram of all property which may be served by any facility to be installed;
- (3) A statement that the city acquires ownership of any facility upon completion and acceptance of the work by the city;
- (4) A statement that the city's cost for inspecting such work shall be paid by the developer/owner;
- (5) A statement of the developer/owner's proportionate share of the cost for previously installed facilities;

- (6) A statement of the maximum possible reimbursement that may accrue to the developer/owner for the cost of facilities to be installed by him but from which others may be served. If others are served, a participating charge will be made at the time of their development.

(Code 1967, § 31-15)

**Sec. 12-105. Financing of connections.**

The following provisions may be applicable to facilities to serve individuals, unplatted areas and subdivisions:

- (1) When an existing facility will be used, a participating charge based upon that portion of the property to be developed shall be placed on deposit with the city prior to developing the property.
- (2) No person shall be permitted to extend service to adjacent property owned by someone else or to property for which a participating charge has not been advanced and deposited with the city without written approval of the city.
- (3) The city will establish a separate account for each reimbursement agreement for the collection of participating charges and reimbursements to the party who financed the installation of the facility. Sums collected shall be treated as trust funds to be paid upon receipt. In no event will the sums reimbursed exceed the contract price for the installation of the facility.
- (4) The reimbursement agreement shall state to whom reimbursement shall be made and shall include a diagram of the property from which reimbursements are contemplated. Should the property or any portion thereof not be served by the facility installed under the agreement, the developer/owner will not be reimbursed for the proportionate share of the cost otherwise due from such property.
- (5) Any developer/owner may assign the benefits arising out of any storm water facility agreement with the city; provided, however, that any such assignment shall not re-

lieve the developer/owner from his duties and obligations under such agreement.

- (6) Any agreement providing for reimbursement of the developer/owner by a subsequent and adjacent developer/owner shall run for a maximum period of twenty (20) years after execution of the agreement and thereupon terminate.
  - (7) The city shall be responsible for servicing and maintaining all storm water facilities approved and accepted by the city.
  - (8) The city shall be responsible for providing major storm water facilities but may require developer/owner to pay their proportionate share of the cost of such facilities, as established by the city.
- (Code 1967, § 31-16)

[The next page is 829]

## Chapter 21

### NUISANCES\*

#### Sec. 21-1. 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:

*Animal* means any types of animals, both domesticated and wild, male and female, singular and plural.

*At large* means off the premises of the owner or custodian of an animal or fowl, and not under the immediate control of the owner or custodian.

*Fowl* means any fowl, domesticated and wild, male and female, singular and plural.

*Improved area* means an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border as defined herein.

*Permanent curb or border* means a method of delineating the improved area from the remainder of the yard area and shall be constructed of asphalt, concrete, masonry, metal, wood or other approved permanent material secured to or embedded in the ground.

*Property* means any real property within the city which is not a street or highway.

*Street or highway* 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.

*Vehicle* means a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery, and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy and wagon.

(Code 1967, § 20-1; Ord. No. 88.22, § 2(21-8), 4-14-88)

\*Cross reference—Unsafe buildings, § 8-300(203).

Supp. No. 12

**Editor's note**—Section 2 of Ord. No. 88.22, adopted April 14, 1988, amended Ch. 21 by adding provisions designated as a new § 21-8 and containing definitions. Inasmuch as Ch. 21 already contained definition provisions in § 21-1, and in order to avoid the unnecessary duplication of material and confusion which may arise therefrom, the editor, at his discretion, has included these new definitions as a part of § 21-1.

#### Sec. 21-2. Violations.

No person shall maintain or commit a public nuisance or wilfully omit to perform any legal duty relating to the removal of a public nuisance. (Code 1967, § 20-8)

#### Sec. 21-3. Generally.

A public nuisance consists of doing 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 thing consists of one (1) of the following:

- (1) Annoys, injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) 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 city, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal;
- (5) In any way renders other persons insecure in life or the use of property;
- (6) 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;
- (7) Damages or contributes to the deterioration of public property or improvements.

(Code 1967, § 20-2)

## Chapter 21

### NUISANCES\*

#### Sec. 21-1. 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:

*Animal* means any types of animals, both domesticated and wild, male and female, singular and plural.

*At large* means off the premises of the owner or custodian of an animal or fowl, and not under the immediate control of the owner or custodian.

*Fowl* means any fowl, domesticated and wild, male and female, singular and plural.

*Improved area* means an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border as defined herein.

*Permanent curb or border* means a method of delineating the improved area from the remainder of the yard area and shall be constructed of asphalt, concrete, masonry, metal, wood or other approved permanent material secured to or embedded in the ground.

*Property* means any real property within the city which is not a street or highway.

*Street or highway* 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.

*Vehicle* means a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery, and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy and wagon.

(Code 1967, § 20-1; Ord. No. 88.22, § 2(21-8), 4-14-88)

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No person shall maintain or commit a public nuisance or wilfully omit to perform any legal duty relating to the removal of a public nuisance. (Code 1967, § 20-8)

#### Sec. 21-3. Generally.

A public nuisance consists of doing 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 thing consists of one (1) of the following:

- (1) Annoys, injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) 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 city, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal;
- (5) In any way renders other persons insecure in life or the use of property;
- (6) 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;
- (7) Damages or contributes to the deterioration of public property or improvements.

(Code 1967, § 20-2)

**Sec. 21-4. Enumeration.**

Specific acts, omissions, places, conditions and things, such as the erecting, maintaining, using, placing, depositing, causing, allowing, leaving or permitting to be or remain in or upon any private lot, building, structure or premises, or in or upon any public right-of-way, street, avenue, alley, park, parkway or other public or private place in the city, and within two (2) miles beyond the limits thereof, of any one (1) or more of the following places, conditions, things or acts, to the prejudice, danger or annoyance of others, are hereby declared to be public nuisances, including but not limited to the following:

- (1) Privies, vaults, cesspools, sumps, pits or like places which are not securely protected from insects or rodents, or which are foul or malodorous;
- (2) Filthy, littered or trash-covered exterior areas, including all buildings and structures thereon and areas adjacent thereto;
- (3) Animal manure in any quantity which is not securely protected from insects and the elements, or which is kept or handled in violation of this Code or any other ordinance of the city or the county; provided, that nothing in this subsection shall be deemed to prohibit the utilization of such animal manure on any farm or ranch in such a manner and for such purposes as are compatible with customary methods of good husbandry;
- (4) Uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches;
- (5) 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 or abandoned material, unless the same is kept in covered bins or metal receptacles approved by the county health officer or this Code or any other ordinance of the city;
- (6) Trash, litter, rags, accumulations of empty barrels; boxes, crates, packing cases, mattresses, bedding, excelsior, packing straw, packing hay or other packing material, lumber not neatly piled, scrap iron, tin and other metal not neatly piled or anything whatsoever in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard;
- (7) Any dangerous building, addition, appendage or other structure, any abandoned or partially destroyed building or structure, or any building, addition, appendage or structure commenced and left unfinished in violation of this Code and any vacated building not securely closed;
- (8) All places used or maintained as junkyards 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 places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others; provided, that nothing contained in this subsection shall be deemed to prohibit any automobile wrecking yard or other junkyard where the same are permitted by the city zoning regulations; and nothing contained in this subsection shall be deemed to prohibit the disassembling, repair or rebuilding or the storage of any of the parts thereof on any farm or ranch where such disassembling, repair, rebuilding or storage are customary and incidental to such farming or ranching activities;
- (9) 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 of-

fensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this Code or any other ordinance of the city;

- (10) The erection, continuance or use of any building, room or other place in the city 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, is discomforting or offensive or detrimental to the health of individuals or of the public;
- (11) Making, causing or permitting to be made any noise or vibration 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 streets, or with any governmental or public function of the city or as to constitute a hazard or threat to the public health, safety or welfare of the people of the city; provided, that this subsection shall not apply where the person responsible for such noise or vibration is a participant in or spectator at any exhibition, performance, amusement, attraction or event authorized or sponsored by the city, or any public, private or parochial school within the city, and within two (2) miles beyond the limits thereof;
- (12) 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 city, or as to constitute a hazard or threat to the public health, safety and welfare of the people of the city; provided, that this subsection shall not apply where the person responsible for such artificial illumination is utilizing the same at any exhibition, performance, amusement, attraction or event authorized or sponsored by the city, or any public, private or parochial school within the city and within two (2) miles beyond the limits thereof;
- (13) Burning or disposal of refuse, sawdust or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon the streets or alleys of the city, or to cause or permit the smoke, ashes, soot or gases arising from such burning to become annoying to any considerable number of persons or to injure or endanger the health, comfort or repose of such persons; provided, that this subsection shall not apply where the person responsible for the action has properly obtained a fire permit from the city fire department or the county health officer;
- (14) Any unguarded or abandoned excavation, pit, well or hole dangerous to life;
- (15) 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 ice box, refrigerator or other container which has an airtight door or lid, snaplock or other locking device which may not be released from the inside, without first removing such door or lid, snaplock or other locking device from such ice box, refrigerator or container;
- (16) The keeping or harboring of any dog or other animal which by frequent or habitual howling, yelping, barking or the making of other noises, or the keeping or harboring of any fowl which by frequent or habitual crowing or the making of other noises shall annoy or disturb a neighborhood or any considerable number of persons; provided, that a violation of this subsection shall not be established, except upon the testimony of not less than three (3) witnesses as to the facts constituting the nuisance;

- (17) To own or have in his custody animals or fowl which are permitted to run at large to the injury, annoyance or damage to persons or property of others, nor shall such animals or fowl be permitted at large upon the streets or other public ways of the city; provided, that a violation of this subsection shall not be established, except upon the testimony of not less than three (3) witnesses as to the facts constituting the nuisance;
- (18) Wilfully or negligently permitting or causing the escape or flow of water into the public right-of-way in such quantity, in the opinion of the city engineer, as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition for such traffic, or to cause damage to the public streets or alleys of the city through their failure or neglect to properly operate or maintain any water facility or device, including, but not limited to, sprinklers, hoses, pipes, ditches, standpipes, berms, valves and gates;
- (19) To leave or permit to remain outside of any single or multifamily dwelling any vehicle on blocks or deflated tires, or from which the chassis, engine, wheels or tires have been removed, or without valid registration when such vehicle or part thereof is located in any portion of the area in front of the building for the full width of the lot or between the building and the street side of a corner lot;
- (20) To leave or permit to remain outside of any single- or multifamily dwelling any vehicle or part thereof in any portion of the area in front of the building for the full width of the lot or between the building and the street side of a corner lot that is not on an improved area as defined in Section 21-8. An improved area shall extend to the street and the total area including driveways shall not exceed fifty (50) percent of the area between the building and the street for the full width of the lot;
- (21) Failure to keep any vacated or abandoned building securely closed at all times;
- (22) Any well, cellar, pit or other excavation of more than two (2) feet in depth, on any unenclosed lot, without substantial curbing, covering or protection;
- (23) To leave or permit to remain under the roof area of a single-family or multifamily dwelling which is not enclosed by the walls, doors and windows of said dwelling any 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 or abandoned material, unless the same is kept in covered bins or metal receptacles approved by the county health officer or this Code or any other ordinance of the city;
- (24) To leave or permit to remain under the roof area of a single-family or multifamily dwelling which is not enclosed by the walls, doors and windows of said dwelling any trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding, excelsior, packing straw, packing hay or other packing material, lumber not neatly piled, scrap iron, tin and other metal not neatly piled and anything whatsoever in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard;
- (25) To leave or permit to remain under the roof area of a single-family or multifamily dwelling or accessory building, which is not enclosed by walls, doors or windows, any vehicle on deflated tires or from which the chassis, engine, wheels or tires have been removed, or parts of vehicles or machinery;
- (26) Any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond more than eight (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard;
- (27) Any wall or fence with numerous missing blocks or boards, or maintained in such a

condition of deterioration or disrepair so as to constitute a hazard to persons or property.

(Code 1967, §§ 20-3, 20-4, 21-7; Ord. No. 87.31, 7-23-87; Ord. No. 88.22, § 1, 4-14-88; Ord. No. 89.65, § 2, 1-11-90)

**Sec. 21-5. Notice to abate.**

The notice to abate shall be delivered in person or sent by certified mail from the city manager or his authorized representative to the person, manager, agent or employee, owner or lessee of the property to be abated. If the person, manager, agent or employee, owner or lessee of the property to be abated cannot be located, such notice of abatement shall be posted upon the buildings, lots or grounds to be abated and shall be clearly legible and in a conspicuous place and shall be published at least two (2) times in a newspaper of general circulation throughout the city, such publications to occur at least seven (7) days apart. The effective date of the notice of abatement shall be the date received if delivered in person or sent by certified mail or the date of first publication if the alternate method of service is used.

(Code 1967, § 20-5; Ord. No. 88.22, § 3, 4-14-88)

**Sec. 21-6. Abatement by city; expense statement.**

(a) When any person, owner or occupant of any building, grounds or premises within the city, and within two (2) miles beyond the limits thereof, neglects, fails or refuses to abate such public nuisance for more than twenty (20) days from the effective date of the notice to abate, the city council may authorize and direct the city manager or his authorized representative to abate such public nuisance at the expense of such person, owner or occupant.

(b) The city manager or his authorized representative, when so directed by the city council to abate such public nuisance, shall prepare a verified statement and account of all the expenses incurred by the city or occasioned by or incidental to such abatement and file such verified statement and account with the management services director of the city. The verified statement shall include an administration charge of fifteen (15)

percent of the actual cost of abatement or twenty-five dollars (\$25.00) whichever is greater with the cost of recording liens and releases thereof.

(Code 1967, § 20-6; Ord. No. 87.16, 4-20-87)

**Sec. 21-7. Assessment of city abatement costs.**

Upon receipt of the verified statement and account as set forth in Section 20-6, the management services director shall prepare duplicate copies of a notice of lien and record one (1) copy with the office of the county recorder, and within ten (10) days thereafter serve by certified mail the remaining copy of such notice of lien upon the person, owner or occupant of the buildings, grounds or premises. If the owner or occupant of the property to be liened cannot be located, a copy of the notice of lien shall be posted upon the buildings, lots or grounds affected thereby and be clearly legible and in a conspicuous place and shall be published at least two (2) times in a newspaper of general circulation throughout the city, such publications to occur at least seven (7) days apart. The effective date of the notice of lien shall be the date received if sent by certified mail or the date of first publication if the alternate method of service is used. From and after the date of recording such notice of lien with the county recorder, all expenses incurred in connection with or incidental to such abatement and as fixed and determined by such verified statement and account are hereby declared as a lien upon such buildings, grounds and premises and shall be charged and assessed upon and against such buildings, grounds and premises and shall be collected in the same manner as city improvement district assessments. The recorded lien shall bear interest at the legal rate for judgments in the State of Arizona from the day that the lien is recorded until it is paid in full.

(Code 1967, § 20-7; Ord. No. 87.16, 4-30-87)

## Chapter 22

### OFFENSES—MISCELLANEOUS

- Art. I. In General, §§ 22-1—22-39  
Art. II. Smoking Pollution Control, §§ 22-40—22-59  
Art. III. Neighborhood Enhancement and Cleanup, §§ 22-60—22-70

#### ARTICLE I. IN GENERAL

##### Sec. 22-1. Prostitution; solicitation of prostitution.

(a) No person shall use or occupy any room in any hotel, roominghouse, dwelling house, tenement or other building whatever for the purpose of prostitution.

(b) A person is guilty of a misdemeanor who:

- (1) Offers to, agrees to, attempts to commit, or commits an act of prostitution;
- (2) Solicits or hires another person to commit an act of prostitution;
- (3) Is in a public place or place open to public view and by word, sign or action manifests an intent to commit an act of prostitution;
- (4) Aids or abets the commission of any of the acts prohibited by this section.

(c) The following definitions shall apply to subsections (a) and (b):

- (1) *Prostitution* means the act of performing sexual activity for hire by a male or female person.
- (2) *Sexual activity* means vaginal or anal intercourse, oral-genital or oral-anal contact, masturbation, sodomy or bestiality.

(Code 1967, §§ 21-8, 21-9; Ord. No. 89.42, 7-27-89)  
State law reference—Prostitution, A.R.S. § 13-3208 et seq.

##### Sec. 22-2. Enticing commission of lewd and lascivious act.

A person who entices by statements, suggestions, promises, threats, fraud, gestures or artifice another person, male or female, to engage in

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the commission of the infamous act against nature, fellatio, bestiality, buggery or any other lewd or lascivious act as defined by state law, with the intent of arousing, appealing or gratifying the lust, passion or sexual desire of either himself or any such other person in such a place as can be viewed by the public, is guilty of a misdemeanor. (Code 1967, § 21-17)

##### Sec. 22-3. Discharge of air rifles.

(a) Discharge of an air rifle is a misdemeanor except:

- (1) As allowed pursuant to the provisions of Arizona Revised Statutes, title 13, chapter 4 [A.R.S. 13-401 et seq.];
- (2) On a properly supervised range;
- (3) In an area recommended as a hunting area by the state game and fish department, approved and posted as required by the chief of police, but any such area may be closed when deemed unsafe by the chief of police or the director of the game and fish department;
- (4) For the control of nuisance wildlife by permit from the state game and fish department or the United States Fish and Wildlife Service;
- (5) By special permit of the chief of police;
- (6) As required by an animal control officer in the performance of duties as specified in Arizona Revised Statutes section 9-499.04.

(b) A "properly supervised range" for the purposes of this section means a range operated by a

Chapter 22

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- Art. I. In General, §§ 22-1—22-39  
Art. II. Smoking Pollution Control, §§ 22-40—22-59  
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- (3) In an area recommended as a hunting area by the state game and fish department, approved and posted as required by the chief of police, but any such area may be closed when deemed unsafe by the chief of police or the director of the game and fish department;
- (4) For the control of nuisance wildlife by permit from the state game and fish department or the United States Fish and Wildlife Service;
- (5) By special permit of the chief of police;
- (6) As required by an animal control officer in the performance of duties as specified in Arizona Revised Statutes section 9-499.04.

(b) A "properly supervised range" for the purposes of this section means a range operated by a

club affiliated with the National Rifle Association of America, the Amateur Crapshooting Association, the National Skeet Association, or any other nationally recognized shooting organization, any agency of the federal government, the state, the county or the city, or any public or private school, and, in the case of air or carbon dioxide gas operated guns, or underground ranges on private or public property, such ranges may be operated with adult supervision.

(Code 1967, §§ 21-2, 21-3)

State law reference—Discharge of firearms, A.R.S. § 13-3107.

**Sec. 22-4. Obstructing, interfering with use of public ways.**

(a) It shall be unlawful for any person to obstruct any public street or alley, sidewalk or park or other public grounds within the city by committing any act or doing anything which is injurious to the health, or to do in or upon any such streets, alleys, sidewalks, parks or other public grounds, any act or thing which is an obstruction or interference to the free use of property or with any business lawfully conducted by anyone, in or upon or facing or fronting on any of such streets, alleys, sidewalks, parks or other public grounds in the city.

(b) No person shall obstruct or place any obstruction upon, across or along any street, alley or sidewalk in any manner.

(Code 1967, §§ 21-15, 30-1)

**Sec. 22-5. Giving false information to police.**

No person shall wilfully give false information to any police officer in the exercise and performance of his duty, when such false information would interfere with, delay or obstruct the police officer in the exercise and performance of his duty.

(Code 1967, § 21-20)

**Sec. 22-6. Resisting, interfering with police.**

No person shall wilfully interfere with, resist, delay, obstruct, molest or threaten to molest any police officer in the exercise of his duty.

(Code 1967, § 21-12)

State law references—Obstructing governmental operations, A.R.S. § 13-2402; resisting arrest, A.R.S. § 13-2508.

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**Sec. 22-7. Depositing excavated material.**

(a) No person shall deposit excavated material on any parcel of land within the city without first having obtained written permission from the owner of the parcel. Such written permission shall be in the possession of any person depositing fill material. All excavated material containing garbage, debris, trash, refuse, construction material or other waste shall be deposited in accordance with chapter 28 of this Code.

(b) Excavated material shall be of natural earth material free from garbage, debris, trash, refuse, construction materials and other waste. Earth material is any rock, natural soil or fill or any combination thereof.

(Code 1967, § 21-21)

**Sec. 22-8. Curfew for juveniles; responsibility of parents or guardians.**

(a) It shall be unlawful for any juvenile under the age of fourteen (14) years to be, remain or loiter in, about or upon any place in the city away from the dwelling house or usual place of abode of the juvenile between the hours of 10:00 p.m. and 5:00 a.m. of the following day; provided, that the provisions of this subsection do not apply to the juvenile when accompanied by his parent, guardian or other adult person having the care, custody or supervision of the juvenile; or where the juvenile is on an emergency errand; or where the juvenile is on reasonable, legitimate and specific business or activity directed or permitted by his parent, guardian or other adult person who, by operation of law, has or should have had the care, custody or supervision of the juvenile at the time of such violation.

(b) It shall be unlawful for any juvenile fourteen (14) years of age or over and under the age of eighteen (18) years to be, remain or loiter in, about or upon any place in the city away from the dwelling house or usual place of abode of the juvenile, between the hours of 12:00 midnight and 5:00 a.m. each day Monday through Friday and between the hours of 1:00 a.m. and 5:00 a.m. each Saturday, Sunday, eves of holidays and holidays; provided, that the provisions of this subsection do not apply to any emancipated minor or

to a juvenile accompanied by his parent, guardian or other adult person having the care, custody or supervision of the juvenile; or where the juvenile is on an emergency errand; or where the juvenile is on reasonable, legitimate and specific business or activity directed or specifically permitted by his parent, guardian or other adult person who, by operation of law, has or should have had the care, custody or supervision of the juvenile at the time of such violation.

(c) Any juvenile who shall violate the provisions of subsection (a) or (b) of this section shall be guilty of a misdemeanor, and proceedings shall be taken in accordance with and pursuant to the juvenile code as contained in the Arizona Revised Statutes, section 8-201 et seq.

(d) It shall be unlawful for the parent, guardian or other adult person having the care, custody or supervision of a juvenile to permit such juvenile to be, remain or loiter in, about or upon any place in the city away from the dwelling house or usual place of abode of the juvenile in violation of subsection (a) or (b) of this section; provided, that the provisions of this subsection do not apply when the juvenile is an emancipated minor; or when the juvenile is accompanied by his parent, guardian or such other adult person having the care, custody or supervision of the juvenile by operation of law or with consent of such parent or guardian; or where the juvenile is on reasonable, legitimate and specific business or activity directed or specifically permitted by his parent, guardian or other person having the care, custody or supervision of such juvenile at the time of the violation.

(e) It shall not constitute a defense to this section that such parent, guardian or other adult person who, by operation of law, has or should have had the care, custody or supervision of such juvenile, coming within the provisions of subsections (a) and (b) of this section, did not have actual knowledge of the presence of such juvenile in, about or upon any place in the city away from the dwelling house or usual place of abode of the juvenile, if the parent, guardian or other adult person who, by operation of law, has or should have had the care, custody or supervision of such juvenile, in the exercise of reasonable care and diligence, should have known of the aforementioned unlawful acts of such juvenile.

(f) Any parent or guardian of the person of a juvenile who shall violate the provisions of subsections (d) and (e) of this section shall be deemed guilty of a misdemeanor and shall be punished as set forth in section 1-7 of this Code.

(g) In addition to any other powers he may have, any law enforcement officer who arrests a juvenile for violating any of the provisions of subsections (a) or (b) of this section is also hereby empowered to demand of the parent, guardian or other adult person, who by operation of law has or should have had the care, custody or supervision of such juvenile that such parent, guardian or other person take such juvenile into custody. Should there be a failure of the parent, guardian

or other person to take custody of such juvenile, the officer may then be empowered to take such juvenile to his home or to his normal place of abode. If no competent adult is at such place of abode at such time the officer arrives, he shall be empowered to deliver the juvenile by referral to the county juvenile detention center. It shall be unlawful for any such parent, guardian or other adult person who, by operation of law has or should have had the care, custody or supervision of the juvenile to fail or refuse to take such juvenile into custody after such demand is made upon him.

(Code 1967, §§ 18-6.1—18-6.3, 18-7.1—18-7.3, 18-8.1)

**Sec. 22-9. Disclosure of information to prospective buyers of single- or multiple-family residences, tenants and buyers of mobile homes, mobile home lots or mobile home parks.**

(a) *Definitions.* For the purposes of this section, the following term, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- (1) *Buyer* means any person who purchases a newly constructed single- or multiple-family dwelling or any person who purchases a single- or multiple-family dwelling that has not been previously occupied since it was constructed. Any person who purchases a mobile home, a mobile home lot or, individually or in conjunction with others, purchases a mobile home park.
- (2) *City* means the City of Tempe, a municipal corporation of the state, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- (3) *Person* means any individual, corporation, partnership, company and any other form of multiple organization.
- (4) *Seller* means any person who sells to a buyer a newly constructed single- or multiple-family

dwelling or a single- or multiple-family dwelling that has not been previously occupied since it was constructed. Any person who sells to a buyer a mobile home, mobile home lot, mobile home park or mobile home subdivision, as defined in Ordinance No. 808, Section 1, Part IV.

- (5) *Tenant* means any person who rents or leases, for a residence, a mobile home lot or a mobile home which is attached to a lot or is located in a mobile home park.
- (6) *Landlord* means any person or corporation or partnership or other business entity who rents or leases a mobile home lot or a mobile home to any tenant for residential purposes.

(b) *Required information.* Every seller of a single- or multiple-family residence located in the city that has not been previously occupied shall disclose information to any prospective buyer which shall specify the zoning classification of the property to be sold, the zoning classification of undeveloped land bordering the subdivision, that zoning classifications are subject to change, the school district the buyer's children will attend, which are also subject to change, the necessity for depressed lots, the nature of the water, sewer and garbage services provided by the city, the existence of neighborhood mailbox units, if the property is in the proximity of a proposed freeway, the nature of the residential development tax, the nonavailability of a product or service normally furnished by a public utility and other pertinent information which may be required by the city. In addition, if the residence is located in an overflight impacted area, as determined by the community development director, the statement shall disclose that the residence is in that area.

Every seller or landlord of a mobile home, mobile home lot or mobile home park located in the city shall disclose information to any prospective buyer or tenant which shall specify the zoning classification of the property to be sold or rented, the zoning classification of land bordering the property, that zoning classifications are subject to change, the nature, structure and standard of all utility services, if the property is in the proximity

of a proposed freeway, and a statement of any present intention to change the use of the mobile home park within one year of tenant's moving into the park. If the residence is located in an overflight impacted area, as determined by the community development director, the statement shall disclose that the residence is in that area.

(c) *Form.* The required information shall be disclosed on a written form which shall be signed by all parties. The seller or landlord shall cause the form to be duly executed by the buyer, tenant, seller, landlord, broker, salesman and rental agent, if any, on or before the close of escrow or upon signing of the lease or upon the tenant's moving into the mobile home or onto the mobile home lot, whichever occurs first.

(Code 1967, § 21-1.1; Ord. No. 744.2, 11-14-85)

#### Sec. 22-10. Railroad speed limits.

(a) No person shall run upon any railroad, or any part thereof, any train, locomotive or engine in excess of the following designated speed limits within the following designated areas:

From the east city limits to the east intersection of Rural Road, any speed in excess of sixty (60) miles per hour; from the east intersection of Rural Road to the east intersection of College Avenue, any speed in excess of forty (40) miles per hour; from the east intersection of College Avenue to the south intersection of Thirteenth Street, any speed in excess of thirty (30) miles per hour; from the south intersection of Thirteenth Street to the bridge across Salt River, any speed in excess of twenty (20) miles per hour.

(Code 1967, § 21-11)

#### Sec. 22-11. Unauthorized sale of motor vehicles on private property.

(a) It shall be unlawful for a person to park or place a motor vehicle, mobile home or trailer upon the real property of another for the purpose of sale or lease unless the real property owner has first obtained all required permits and licenses for the sale or lease of motor vehicles at that location, including, but not limited to, complying with all zoning requirements.

(b) The owner or person in lawful possession of any land, property or building may authorize the city to act as his agent for the purpose of complying with this section. Such application shall be made to the building safety department and shall be accompanied by an application fee of twenty-five dollars (\$25.00). The applicant shall authorize the City of Tempe to post signs indicating that the sale or offer of sale of any new or used motor vehicle, mobile home or trailer is prohibited on the applicant's property together with information indicating any motor vehicle, mobile home or trailer in violation of this section may be towed away by the city.

(c) The police department shall either cite the violator or take charge of, remove and keep in custody any unoccupied motor vehicle, mobile home or trailer of any kind or description found violating any of the provisions of this section from and after posting of the signs specified in subsection (b) above. The police department may promulgate necessary and desirable rules and regulations to carry out the intent of this section.

(Ord. No. 86.09, 2-13-86)

#### Sec. 22-12. Failure to provide identification.

Any person who fails or refuses to provide evidence of his identity to a peace officer, when such officer has reasonable cause to believe the person has committed a violation of an ordinance of the City of Tempe or any law of the State of Arizona or United States, is guilty of misdemeanor.

(Ord. No. 86.48, 7-24-86)

**Editor's note**—Ordinance No. 86.48, adopted July 24, 1986, amended Ch. 22 by adding a new § 22-11. Inasmuch as Ord. No. 86.09, adopted Feb. 27, 1986, already enacted provisions which the editor has included as § 22-11, the editor, at his discretion, has included the provisions of Ord. No. 86.48 as a new § 22-12.

Secs. 22-13—22-39. Reserved.

## ARTICLE II. SMOKING POLLUTION CONTROL\*

### Sec. 22-40. Purpose.

Since the smoking of tobacco or any plant is a positive danger to the health and a material an-

\*Cross reference—Nuisances, Ch. 21.  
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noyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces, and in order to serve the public health, safety and welfare, the declared purpose of this article is to restrict the smoking of tobacco or any plant within enclosed places, in particular, public places and places of employment.

(Ord. No. 86.06, 1-30-86)

### Sec. 22-41. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

- (a) *Smoke or smoking*, as defined in this article, includes the:
- (1) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling and exhaling smoke or blowing smoke rings;
  - (2) Placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle, and allowing smoke to diffuse in the air;
  - (3) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air.
- (b) *Enclosed public place* means any area closed in by a roof and walls with openings for ingress and egress which is available to and customarily used by the public. Enclosed public places governed by this article shall include, but not be limited to, public areas of grocery stores, waiting rooms, public and private schools, doctors' office buildings, community centers, child care centers, public restrooms, all indoor facilities and any public places already regulated by Arizona Revised Statutes, Section 36-601.01 and restaurants/cafeterias with seating capacity of one hundred (100) or more, including outside seating; however, restaurants/cafeterias with fewer than one hundred (100) seats may designate nonsmoking areas;

restaurants/cafeterias with fewer than one hundred (100) seats which do not provide a nonsmoking section must post a notice in a conspicuous location at the entrance stating that a nonsmoking section is not available. A private residence is not a "public place."

- (c) *Bar* shall mean an area devoted primarily to alcoholic beverage service to which food service is only incidental.
- (d) *Employee* means any person who is employed by any employer for direct or indirect monetary wages or profit.
- (e) *Employer* means any person or entity employing the services of an employee.
- (f) *Place of employment* means any enclosed area under the control of a private or public employer. A private residence is not a "place of employment."
- (g) *Designated smoking area* means any area within an enclosed public place where smoking is specifically permitted. No designated smoking area shall exceed an area in size in a nonsmoking area within the enclosed public place and any designated smoking area must be so situated as to allow nonsmoking individuals to conduct normal activity in a smoke-free environment.
- (h) *Employee work area* means any areas within a place of employment which share a common ventilation, heating or air conditioning system.

(Ord. No. 86-06, 1-30-86; Ord. No. 88.16, 2-25-88; Ord. No. 88.18, 2-25-88; Ord. No. 88.28, § 1, 3-31-88)

**Editor's note**—Section 1 of Ord. No. 88.28, adopted March 31, 1988, amended § 22-41 by adding a new subsection (g) thereto. Inasmuch as Ord. No. 88.18, adopted Feb. 25, 1988, had already amended § 22-41 by adding a subsection (g), the editor has redesignated these provisions as a new subsection (h).

#### **Sec. 22-42. Prohibition and regulation of smoking in city-owned facilities.**

All enclosed facilities owned by the City of Tempe shall be subject to this article.

(Ord. No. 86.06, 1-30-86)

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#### **Sec. 22-43. Prohibition of smoking in enclosed public places.**

No person shall smoke in any enclosed public place or place of employment except in designated smoking areas.

(Ord. No. 86.06, 1-30-86)

#### **Sec. 22-44. Regulation of smoking in places of employment.**

(a) Within ninety (90) days after the effective date of this article, each employer in each place of employment within the city shall adopt, implement and maintain a smoking policy containing at a minimum the following requirements:

- (1) Designation of nonsmoking areas where applicable.
- (2) Provision and maintenance of a separate nonsmoking area of not less than one-half of the seating capacity and floor space in cafeterias, lunch rooms and employee lounges.
- (3) Any nonsmoking employee may object to his or her employer about smoke in his or her work area. If no accommodation which is reasonably satisfactory to all affected nonsmoking employees can be reached in a given work area, the preferences of the nonsmoking employees shall prevail and the employer shall prohibit smoking in that work area.
- (4) Where the employer prohibits smoking in a work area, it shall clearly mark that area with appropriate no smoking signs and, upon request, provide signs to employee(s) for use in designating their areas.
- (5) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, waiting areas, medical facilities, hallways, stairways and elevators.

(b) The employer shall announce its smoking policy within ninety (90) days after the effective date of this article to all its employees working in workplaces within the City of Tempe.

(c) Notwithstanding the provisions of paragraph (a) of this section, every employer shall have the

right to designate any place of employment, or portion thereof, as a nonsmoking area.

(d) The provisions of this section shall not apply to those areas listed in Section 22-45, to the public areas of restaurants or to the merchandise display areas of any retail sales business.

(e) No employee shall be terminated or subject to disciplinary action solely as a result of his or her complaint about smoking or nonsmoking in the workplace.

(Ord. No. 86.06, 1-30-86; Ord. No. 88.17, 2-25-88; Ord. No. 88.19, 2-25-88; Ord. No. 88.20, 2-25-88; Ord. No. 88.28, § 2, 3-31-88; Ord. No. 88.36, 6-9-88)

#### **Sec. 22-45. Where smoking is not regulated.**

Notwithstanding any other provisions of this article to the contrary, the following area shall not be subject to the smoking restrictions of this article:

- (a) Private residences.
- (b) Bars.
- (c) Bowling lanes, billiards/recreation rooms.
- (d) Hotel and motel rooms rented to guests.
- (e) Retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia.
- (f) On-stage smoking as part of a stage production, ballet or similar exhibition.
- (g) Conference/meeting rooms and private meeting rooms while these places are being used exclusively for private functions.
- (h) Private clubs and recreation facilities.  
(Ord. No. 86.06, 1-30-86)

#### **Sec. 22-46. Posting requirements.**

"Smoking" or "No Smoking" signs, or the international "No Smoking" symbol shall be clearly and conspicuously posted by the owner, operator, manager, employer or other person in control in every place where smoking is controlled by this article.

(Ord. No. 86.06, 1-30-86)

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#### **Sec. 22-47. Enforcement and penalties.**

(a) Citations may be issued for violation of Section 22-43 and Section 22-46.

(b) Any person violating any of the provisions of Sections 22-43 and 22-46 shall be liable for the imposition of a civil sanction not to exceed twenty-five dollars (\$25.00) for the first offense and fifty dollars (\$50.00) for each successive offense. Each day a violation of Section 22-43 and 22-46 continues after a citation for the violation has been issued constitutes a separate violation.

(c) The City of Tempe shall provide for payment by mail of civil fines under this article.

(d) Any owner, manager, operator or employer of any establishment controlled by this article shall, upon either observing or being advised of a violation of Section 22-43, have the obligation to inform the violator of the appropriate requirements of this law and then request immediate compliance.

(e) Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to this article has the responsibility:

- (1) To properly set aside "no smoking" areas;
- (2) To properly post signs required hereunder;
- (3) To take the action required by paragraph (e) of this section when observing or being advised of a violation.

(f) Any employer who knowingly and intentionally violates Section 22-44 may be liable for a civil penalty not to exceed five hundred dollars (\$500.00). Each day such violation is committed or permitted to continue shall constitute and be punished as a separate offense.

(g) By enforcing this article, the City of Tempe undertakes only to promote the general welfare and health of the community. It does not assume, nor does it impose on its officers and employees, an obligation for breach of which it is liable in money damages to any person claiming injury from such breach.

(Ord. No. 86.06, 1-30-86)

#### **Sec. 22-48. Hardship cases; exemptions.**

(a) An employer may be granted an exemption from the requirements of Section 22-44 on a show-

ing that an undue hardship would result to the business of the employer if forced to comply with the provisions of that section, and such exemption would not be detrimental to the employees of the employer.

(b) An application for an exemption pursuant to this section shall be made to the city manager and shall be in writing. The application shall set forth the reasons why the requirements of this article would result in undue hardship, shall contain a statement by the employer that such an exemption would not be detrimental to any of its employees, and shall list the names, addresses and telephone numbers of all employees of the employer.

(c) Upon receiving an application, the city manager shall appoint a hearing officer to hear the application. The hearing officer shall set a hearing date, time and place within a reasonable time. The employer and all employees of the employer shall be given written notice by the hearing officer of the date, time and place of the hearing, and shall be given an opportunity to be heard. If the hearing officer finds that compliance with the requirements of Section 22-44 would be an undue hardship and that an exemption would not be detrimental to any of the employees, the hearing officer may grant an exemption.

(Ord. No. 88.21, 2-25-88)

**Sec. 22-49. Appeals to the city council.**

(a) Any person who appeared before the hearing officer at the hearing provided for in Section 22-48 may appeal the decision of the hearing officer to the city council. An appeal may be taken by filing with the hearing officer, appointed pursuant to Section 22-48, a notice of appeal specifying the grounds thereof. The hearing officer shall forthwith transmit to the members of the city council all papers constituting the record or problem which the action appealed from was taken.

(b) Upon receiving the notice of appeal and the records from the hearing officer, the city council shall set a hearing date, time and place within a reasonable time, with a hearing to be held before the city council. The employer and all employees of the employer shall be given written notice by the city clerk of the date, time and place of the hearing and shall be given an opportunity to be

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heard. The city council may affirm, reverse or modify any ruling made by the hearing officer, and the decision of the city council shall be final. (Ord. No. 88.21, 2-25-88)

**Secs. 22-50—22-59. Reserved.**

**ARTICLE III. NEIGHBORHOOD  
ENHANCEMENT AND CLEANUP\***

**Sec. 22-60. Unlawful parking of motor vehicle; unlawful height of grass and weeds; and unlawful obstruction of vision or passage of any sidewalk or street.**

It shall be unlawful and a violation of Tempe City Code for any resident/occupant or owner of record or both:

(a) To leave or permit to remain outside of any single-family or multifamily dwelling any vehicle on jacks, blocks or similar equipment, or having deflated tires, or from which the chassis, engine, wheels or tires have been removed, or without valid registration, or any part of a vehicle when such vehicle or part thereof is located in an unenclosed area.

(b) To leave or permit to remain outside of any single-family or multifamily dwelling any vehicle in any portion of the area in front of the building for the full width of the lot or between the building and the street side of a corner lot that is not on an improved area. An improved area shall extend to the street and the total area including driveways shall not exceed fifty (50) percent of the area between the building and the street for the full width of the lot.

(c) To cause or permit any object, building, tree or bush to interfere with, obstruct, tend to obstruct, or render dangerous the free passage, use or vision in the customary manner of any sidewalk, street or highway in the city.

(d) To leave or allow in an unenclosed area of a single-family or multifamily dwelling grass or weeds which exceed twelve (12) inches in height.

\*Cross reference—Nuisances, Ch. 21.

(e) To leave or allow outside of any single-family or multifamily dwelling any dead trees, bushes or shrubs.

(f) To leave or permit to remain outside of any single-family or multifamily dwelling in an unenclosed area excessive litter, debris or trash, including, but not limited to, cans, bottles, wood, metal, plastic, rags, boxes and paper.  
(Ord. No. 86.11, 2-27-86; Ord. No. 88.23, § 1, 4-14-88; Ord. No. 89.66, §§ 1, 2, 1-11-90)

#### Sec. 22-61. Definitions.

The following definitions shall apply to this article:

- (a) *Owner or owner of record*, as used within this article, shall be presumed to be the person(s) or entity indicated on the records of the Maricopa County Assessor as the owner of the property in question on the date of any alleged violation.
- (b) *Resident/occupant* means a person or persons who are occupying a building or structure and are using it as a place of abode, a place of residence or a place to live on either a temporary or permanent basis.
- (c) *Improved area* shall mean an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border as defined herein.
- (d) *Permanent curb or border* shall mean a method of delineating the improved area from the remainder of the yard area and shall be constructed of asphalt, concrete, masonry, metal, wood or other approved permanent material secured to or embedded in the ground.
- (e) *Unenclosed area* shall mean any unroofed portion of the property visible from the street and not enclosed in a substantially opaque fence at least five (5) feet high.  
(Ord. No. 86.11, 2-27-86; Ord. No. 88.23, § 2, 4-14-88; Ord. No. 89.66, § 3, 1-11-90)

#### Sec. 22-62. Violations not exclusive.

Violations of this article are in addition to any other violation enumerated within the Tempe ordinances and Code and in no way limits the penalties, actions or abatement procedures which may be taken by the City of Tempe for any violation of this article which is also a violation of any other ordinance of the City of Tempe, or statute of the State of Arizona.

(Ord. No. 86.11, 2-27-86)

#### Sec. 22-63. Commencement of action, citation, contents.

(a) The department of building safety is assigned the responsibility of enforcing this article and is granted the authority expressly granted and/or impliedly needed and necessary for enforcement.

(b) The director of the Tempe Building Safety Department (hereinafter director) or his designee is authorized to commence an action under this article by issuing a citation to the occupant of the property where the violation has occurred, or to the owner of record, or to both.

(c) The citation will be substantially in the same form as the Arizona traffic citation form currently in use and shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed pursuant to Section 22-64(b) within ten (10) days after issuance of the citation. The form shall contain a schedule of fines and penalties which are imposed by this article.

(d) The citation may be signed by the resident/occupant or owner of record with his/her promise to appear or pay the fine imposed as provided in Section 22-64(b) within ten (10) days of the issuance of the citation. If the occupant or owner is unavailable at the time the violation is noted or refuses to sign the citation, service may be accomplished and will be deemed proper and complete by any of the following:

- (1) Upon the resident/occupant of the premises where the violation has occurred by posting a copy of the citation on or about an entrance to the dwelling unit.

- (2) Upon the owner of record or the resident/occupant if they should refuse to sign the citation as to their promise to appear, the director or his designee may leave a copy of the citation with the defendant (handed to him/her or left in defendant's presence) executed by the director or designee under penalty of perjury that a copy of the citation was left with the defendant.
- (3) Upon the resident/occupant by mailing a copy of the citation certified mail, return receipt requested, restricted delivery, to the defendant. The return receipt with the defendant's signature shall be filed with the court.
- (4) Upon the owner of record by mailing a copy of the citation by first class mail, postage prepaid, to the address and person(s) or entity indicated on the records of the Maricopa County Assessor. Service is complete upon posting or upon deposit into the mail whichever is applicable.

(e) The citation shall contain the date and location of the violation, reference to the Tempe City Code provision or ordinance violated, and notice that within ten (10) days from the date on which the citation was issued, the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court.

(f) Should the defendant fail to appear within the time specified and either pay the fine for the violation or request a hearing, the citation shall notify the defendant that judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as established by this article for the defendant's failure to appear.  
(Ord. No. 86.11, 2-27-86)

#### **Sec. 22-64. Appearance or payment by mail.**

(a) The defendant shall within ten (10) days of the issuance of the citation appear in person or through his attorney in the Tempe Municipal Court and shall either admit or deny the allegations contained in the citation or defendant may proceed as provided in paragraph (b) below. If the

defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged as set by this article. If the defendant denies the allegations contained in the citation, the court shall set a hearing date for trial of the matter.

(b) The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check for the amount of the fine to and made payable to the Tempe Municipal Court.  
(Ord. No. 86.11, 2-27-86)

#### **Sec. 22-65. Default judgment.**

If the defendant fails to appear as directed on the citation, the court, upon request of the director or his designee, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a penalty for the defendant's failure to appear as established by this article. If the defendant fails to appear at a prehearing conference as set by the court, the court shall nonetheless set the matter for trial. If a defendant fails to appear at a trial, the court may enter judgment against the nonappearing defendant for the amount of the fine plus a penalty for failure to appear as established by this article. No judgment may be entered against a fictitiously identified defendant.  
(Ord. No. 86.11, 2-27-86)

#### **Sec. 22-66. Option to proceed criminally or civilly.**

The director or his designee may proceed pursuant to this article by citation for civil sanctions or by long form complaint for criminal sanctions pursuant to the general penalties provision of the Section 1-7.

(Ord. No. 86.11, 2-27-86)

#### **Sec. 22-67. Civil fines and penalties imposed.**

(a) *Civil fine/penalty schedule:*

- (1) The civil fine/penalty for violating Section 22-60 (a through d) shall be the amount of ten dollars (\$10.00).

- (2) An additional civil fine/penalty for a second violation of Section 22-60 within sixty (60) days shall be the amount of twenty dollars (\$20.00).
- (3) An additional civil fine/penalty for a third violation of Section 22-60 within sixty (60) days shall be the amount of thirty dollars (\$30.00).

(b) *Civil penalties imposed for failure to appear:*

- (1) There is imposed a civil penalty in the same amount as the fine indicated should the defendant fail to appear and answer for a violation of Section 22-60 within the time period stated on the citation.
- (2) There is imposed a civil penalty in the amount set by the court not to exceed two hundred dollars (\$200.00) for the failure of a defendant to appear at the time and place set for any trial of a matter arising under this article.

(Ord. No. 86.11, 2-27-86)

**Sec. 22-68. Rules of procedure.**

The Arizona rules of court for civil traffic violation cases may be followed by the Tempe Municipal Court for citations issued pursuant to this article except as modified or where inconsistent with the provisions of this article or as modified or established for use by the Tempe Municipal Court or the Arizona Supreme Court.

(Ord. No. 86.11, 2-27-86)

**Sec. 22-69. Collection of fines, lien, abatement.**

Any judgment for a civil fine and/or penalty imposed pursuant to this article shall constitute a lien against the real property of the defendant which may be perfected by recording a copy of the judgment under seal of the City of Tempe with the Maricopa County Recorder. Any judgment for civil fines or penalties taken pursuant to this article may be collected as any other civil judgment. If the defendant fails to correct the violation charged within thirty (30) days of the issuance of the first citation, the city attorney may proceed without further notice to commence an injunctive action for abatement of the violation.

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Any action taken under this article shall be in addition to any other remedies provided for in the Tempe City Code.

(Ord. No. 86.11, 2-27-86)

**Sec. 22-70. Each day separate violations.**

Each day that a violation of this article is permitted to continue or occur by the defendant shall constitute a separate offense which is subject to separate citation pursuant to the provisions of this article.

(Ord. No. 86.11, 2-27-86)

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- (1) A maximum speed of five (5) m.p.h. shall be in effect at all times.
- (2) Parking shall not be allowed except within specifically designated parking areas.
- (3) Unlicensed motor vehicles or unlicensed operators shall not be allowed on any park property. With the exception of city vehicles or authorized maintenance vehicles, all motor vehicles shall remain on surfaced roadways at all times.
- (4) Horses shall be allowed only on specific bridle paths, where designated.  
(Code 1967, § 22-2; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-38. Abusing facilities.**

No person shall damage or wastefully or improperly use the toilet, water and sewer facilities in any city park, playground or golf course or cause the lighting facilities or electrical appliances to be turned on or used without written permission of the official designated by the community services director.  
(Code 1967, § 22-3; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-39. Swimming, wading, boating.**

No person shall use any portion of any city park or city lake, lagoon or other water facilities located in any city park or areas without the express written permission of the official designated by the community services director.  
(Code 1967, § 22-3.1; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-40. Golfing.**

No person shall use any portion of any city park or city-owned property for golfing purposes, or make use of any golf club or golf ball in any city park or on city-owned property, except at places designated for golfing.  
(Code 1967, § 22-3.2; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-41. Skateboards, roller skates, bicycles.**

No person shall operate skateboards, roller skates, bicycles or any rolling (nonmotorized) vehicles in city parks where such activity is specifically prohibited by appropriate posting or in an unsafe

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manner so as to infringe upon the safety of themselves or other park users.  
(Code 1967, § 22-3.3; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-42. Committing dangerous acts.**

No persons shall commit any act in a public park or recreation facility so as to endanger the health and safety of themselves or other park and recreation facility users.  
(Code 1967, § 22-3.4; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-43. Consumption of spirituous liquors.**

No person shall consume spirituous liquors within the community services department's buildings or in any other portion of a public park or recreational area at such times as recreational activities organized by the community services department are being conducted without full compliance with all rules and regulations of the department.  
(Code 1967, § 22-3.5; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-44. Consumption of malt beverages; permit.**

Consumption of malt beverage in a city park by five (5) or more persons in a group without a permit issued by the community services department is prohibited. The permit will be available to city residents only and be good for one (1) day.  
(Code 1967, § 22-3.6; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-45. Spirituous liquor in parks of three (3) acres or less.**

The possession or consumption of spirituous liquors in city parks of three (3) acres or less is prohibited. The prohibition of spirituous liquors in any such city park shall be conspicuously posted near all entrances to the park.  
(Code 1967, § 22-3.7; Ord. No. 637.7, 2-28-85)

**Sec. 23-46. Sound amplification equipment.**

It shall be unlawful for any person to use any sound amplification equipment without first obtaining a permit for said use. The application fee shall be two dollars (\$2.00). Permits shall be issued subject to the following restrictions:

- (1) A maximum speed of five (5) m.p.h. shall be in effect at all times.
  - (2) Parking shall not be allowed except within specifically designated parking areas.
  - (3) Unlicensed motor vehicles or unlicensed operators shall not be allowed on any park property. With the exception of city vehicles or authorized maintenance vehicles, all motor vehicles shall remain on surfaced roadways at all times.
  - (4) Horses shall be allowed only on specific bridle paths, where designated.
- (Code 1967, § 22-2; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-38. Abusing facilities.**

No person shall damage or wastefully or improperly use the toilet, water and sewer facilities in any city park, playground or golf course or cause the lighting facilities or electrical appliances to be turned on or used without written permission of the official designated by the community services director.

(Code 1967, § 22-3; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-39. Swimming, wading, boating.**

No person shall use any portion of any city park or city lake, lagoon or other water facilities located in any city park or areas without the express written permission of the official designated by the community services director.

(Code 1967, § 22-3.1; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-40. Golfing.**

No person shall use any portion of any city park or city-owned property for golfing purposes, or make use of any golf club or golf ball in any city park or on city-owned property, except at places designated for golfing.

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manner so as to infringe upon the safety of themselves or other park users.

(Code 1967, § 22-3.3; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-42. Committing dangerous acts.**

No persons shall commit any act in a public park or recreation facility so as to endanger the health and safety of themselves or other park and recreation facility users.

(Code 1967, § 22-3.4; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-43. Consumption of spirituous liquors.**

No person shall consume spirituous liquors within the community services department's buildings or in any other portion of a public park or recreational area at such times as recreational activities organized by the community services department are being conducted without full compliance with all rules and regulations of the department.

(Code 1967, § 22-3.5; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-44. Consumption of malt beverages; permit.**

Consumption of malt beverage in a city park by five (5) or more persons in a group without a permit issued by the community services department is prohibited. The permit will be available to city residents only and be good for one (1) day.

(Code 1967, § 22-3.6; Ord. No. 637.6, § I, 12-13-84)

**Sec. 23-45. Spirituous liquor in parks of three (3) acres or less.**

The possession or consumption of spirituous liquors in city parks of three (3) acres or less is prohibited. The prohibition of spirituous liquors in any such city park shall be conspicuously posted near all entrances to the park.

(Code 1967, § 22-3.7; Ord. No. 637.7, 2-28-85)

**Sec. 23-46. Sound amplification equipment.**

It shall be unlawful for any person to use any sound amplification equipment without first obtaining a permit for said use. The application fee shall be two dollars (\$2.00). Permits shall be issued subject to the following restrictions:

- (1) Permits will only be issued to Tempe residents and be valid only for the day specified on the permit.
- (2) The permits shall be issued only for Kiwanis Park and Tempe Beach Park and shall designate in which areas of those parks the sound amplification equipment may be used.
- (3) The amplification shall remain at an acceptable sound level that does not disturb the reasonable use of the park facilities by other users.
- (4) The acceptable sound level shall be determined by a representative of the community services department or the Tempe Police Department and any permittee refusing to abide by their decision will have their permit revoked immediately.
- (5) Permits will only be issued for functions where music is an ancillary part of the function and no admission shall be charged for any musical exhibition.

(Ord. No. 86.29, § 1, 4-24-86)

**Sec. 23-47. Spirituous liquors and malt beverages prohibited after sundown.**

It shall be unlawful to possess or consume spirituous liquors or malt beverages in a city park between sundown and sunrise except with a permit issued pursuant to Section 23-56.

(Ord. No. 86.34, § 1, 5-15-86)

**Sec. 23-48. Glass containers in public parks.**

(a) It shall be unlawful for any person to have a glass beverage container in his possession in any public park under the jurisdiction of the City of Tempe, unless specifically authorized by a permit issued pursuant to Tempe City Code, Section 23-56.

(b) It shall be unlawful for any person to throw, toss or otherwise propel or either willfully and maliciously or carelessly and negligently break any glass object in a public park under the jurisdiction of the City of Tempe.

(Ord. No. 87.20, 7-9-87)

**Secs. 23-49—23-55. Reserved.**

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**DIVISION 2. PARK AND BUILDING  
USE PERMIT**

**Sec. 23-56. When required; consideration of applications.**

(a) A permit shall be obtained from the community services administration office whenever any person or group desires to reserve any portion of the public community services facilities for any activity. The community services director shall interpret this division and may act in any case not specifically covered by this division. Any request for a use not contemplated or prohibited in this division may be forwarded to the city manager who will take the matter before the city council for its consideration.

(b) Department-organized recreation activities shall be given first preference for use of facilities.

(c) Organizations using the facility must be non-profit and involve city residents. An application for permission to reserve a community services facility or portion thereof by persons or groups not officially a part of the community services department shall be initiated at least two (2) weeks prior to the requested date, and have written approval from the community services department; provided however, that in extraordinary cases, an official designated by the community services director may waive or shorten the two-week time period as set forth above.

(Code 1967, § 22-11; Ord. No. 637.6, § II, 2-13-84)

**Sec. 23-57. Rules of conduct upon approval; grounds for revocation.**

(a) All activities must be under competent, adult supervision, with the organization using the facility assuming full responsibility for any damage to the facility or the equipment. A responsible party must be a city resident and be in attendance at the event. The community services department employee on duty shall exercise authority over the organization or its activities. If the adult supervision is inadequate, it shall be the responsibility of the community services employees on duty to report same to the community services department. Cleanup of the contracted area will be the responsibility of the user. The user shall be charged on an hourly basis to pay

agent thereof, when such boat is being used to enforce the provisions of this division or when such boat is being used to effect the rescue of any person or property upon or in the waters of any city park or area.

(Code 1967, § 22-22)

**Sec. 23-72. Applicable regulations.**

All applicable city ordinances and statutes of the state and all boating regulations of the state game and fish department shall be observed while boating upon the waters of any city park or area. In the event of a conflict between a city ordinance and a state statute or regulation, the more restrictive provision shall prevail and be obeyed.

(Code 1967, § 22-21)

State law reference—Boating and water sports, A.R.S. § 5-301 et seq.

**Sec. 23-73. Permitted on certain waters.**

Notwithstanding the provisions of section 23-39, boating shall be permitted upon the waters of Kiwanis Lake, located in Kiwanis Park, and upon such other waters as the council may hereinafter designate by resolution, subject to the provisions of this division.

(Code 1967, § 22-14)

**Sec. 23-74. Permit required; fees.**

(a) In addition to such other registration as is required by applicable law, no boat may be placed in the waters of any lake, lagoon or other water facility located in any city park or area unless there is affixed to the stern of such boat a city boating permit, to be issued by the director of the parks and recreation department.

(b) Applications for boating permits shall include the following:

- (1) The owner's name and address;
- (2) A description of the boat covered by the permit;
- (3) The state boat registration number of such boat;
- (4) Such other information as the director of the parks and recreation department deter-

mines to be necessary to fully accomplish the purposes of this division.

(c) Each application for a boating permit shall be accompanied by a permit fee of five dollars (\$5.00) for city residents and ten dollars (\$10.00) for non-city residents.

(d) Each boating permit issued by the director shall be valid only during the calendar year of its issuance and may be renewed annually upon re-application accompanied by the permit fee, as set forth in subsection (c) of this section.

(Code 1967, § 22-15)

**Sec. 23-75. Prohibited during certain hours.**

No boat shall be placed in or sailed, operated or floated upon the waters of any city park or area between the hours of sunset and sunrise or as posted, as those hours are established by the state game and fish department.

(Code 1967, § 22-16)

**Sec. 23-76. Boat types regulated.**

(a) Subject to the provisions of subsection (b) of this section, no boat in excess of fourteen (14) feet in length shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(b) Notwithstanding the provisions of subsection (a) of this section, no canoe in excess of seventeen (17) feet in length shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(c) No inflatable rubber boat of less than six (6) feet in length shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(d) No rafts, inner tubes, inflatable mattresses, catamarans or sail boards shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(e) No boat may be driven by or equipped with an electric motor or gasoline engine while placed in or sailed, operated or floated upon the waters of any city park or area.

(Code 1967, § 22-17)

**Sec. 23-77. Personal flotation devices.**

(a) Each boat shall be equipped with at least one (1) serviceable personal flotation device, approved by the United States Coast Guard, for each person aboard such boat while same is being operated upon the waters of any city park or area.

(b) Each child under the age of eight (8) years shall be wear a serviceable Type I or Type II personal flotation device, approved by the United States Coast Guard, at all times while boating upon the waters of any city park or area.  
(Code 1967, § 22-18)

**Sec. 23-78. Overloading boats.**

No boat shall be loaded and/or operated with passengers and/or cargo in excess of its safe carrying capacity or the limitations on the manufacturer's load capacity plate.  
(Code 1967, § 22-19)

**Sec. 23-79. Launching areas.**

(a) All boats shall be launched and removed from the water only at the boat ramp provided for such purpose.

(b) No person shall park or place any motor vehicle so as to block or obstruct the launching area and/or the driveways leading thereto.  
(Code 1967, § 22-20)

**Sec. 23-80. Penalty.**

Any person or persons guilty of violating any of the provisions of this division shall be deemed guilty of a misdemeanor, punishable as set forth in section 1-7 of this Code.  
(Code 1967, § 22-23)

tion shall carry a number and address indicating its location east of such base street.

- (4) Each building west of Mill Avenue and facing a street running in a westerly direction shall carry a number and address indicating its location west of such base street.
- (5) All buildings on diagonal streets shall be numbered the same as buildings on northerly and southerly streets if the diagonal runs more from the north to the south, and the same rule shall apply on easterly and westerly streets if the diagonal runs more from the east to the west.

(Code 1967, § 8-7)

**Sec. 25-38. Basis for assigning numbers.**

The numbering of buildings on each street shall begin at the base line. All numbers shall be assigned on the basis of one (1) number for each twenty (20) feet of frontage along the street. Grid lines, as shown on the property numbering map, indicate the point at which numbers will change from one hundred (100) to the next higher hundred. All buildings on the south of east-west streets and east of north-south streets shall bear odd numbers, and likewise all buildings on the north side of east-west streets and west of north-south streets shall bear even numbers.

- (1) Where any building has more than one (1) entrance serving separate occupants, a separate number shall be assigned to each entrance serving an occupant.
- (2) The building shall be assigned the number of the twenty-foot interval in which the main entrance of the building falls. In measuring the twenty-foot intervals of street frontage, if the main entrance of the building falls exactly upon the line which divides a twenty-foot interval from the next higher interval, either the number of the lower interval or the number of the next higher interval will be assigned to that entrance.
- (3) A multiple-family dwelling having only one (1) main entrance shall be assigned only one (1) number, and separate apartments in the building will carry a letter designation such as A, B, C, in addition to the

number assigned to the main entrance of the building.

- (4) The duplex houses having two (2) front entrances shall have a separate number for each entrance. If both entrances fall within the same increment, either the preceding number or next highest number shall be used for one (1) entrance number, and the interval number in which the entrances fall shall be used for the other entrance.
- (Code 1967, § 8-8)

**Sec. 25-39. Buildings facing short streets.**

All buildings facing streets not extending through to the base line shall be assigned the same relative numbers as if the street had extended to the base line.

(Code 1967, § 8-8.1)

**Sec. 25-40. Directional designation.**

In addition to the numbers placed on each house or other building as heretofore provided, all streets, avenues and other public ways within the city are hereby given the following directional designation.

- (1) All streets north of Salt River and running in a generally northerly direction are given the direction "North" as part of the street name.
  - (2) All streets south of Salt River and running in a generally southerly direction are given the direction "South" as part of the street name.
  - (3) All streets east of Mill Avenue and running in an easterly direction are given the direction "East" as part of the street name.
  - (4) All streets west of Mill Avenue and running in a westerly direction are given the direction "West" as part of the street name.
- (Code 1967, § 8-8.2)

**Sec. 25-41. Number assignment; placement on buildings.**

- (a) There shall be assigned to each house and other residential or commercial building located on any street, avenue or public way in the city, its

tion shall carry a number and address indicating its location east of such base street.

- (4) Each building west of Mill Avenue and facing a street running in a westerly direction shall carry a number and address indicating its location west of such base street.
- (5) All buildings on diagonal streets shall be numbered the same as buildings on northerly and southerly streets if the diagonal runs more from the north to the south, and the same rule shall apply on easterly and westerly streets if the diagonal runs more from the east to the west.

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(Code 1967, § 8-8.2)

#### **Sec. 25-41. Number assignment; placement on buildings.**

(a) There shall be assigned to each house and other residential or commercial building located on any street, avenue or public way in the city, its

respective number under the uniform system provided for in this article. When each house or building has been assigned its respective number or numbers, the owner, occupant or agent shall place or cause to be placed upon each house or building controlled by him the number or numbers assigned under the uniform system as provided in this article.

(b) Such numbers shall be placed on all appropriate existing buildings within thirty (30) days after the assignment of a permanent number. The numbers used should not be less than three (3) inches in height and shall be made of a durable and clearly visible material.

(c) The numbers shall be conspicuously placed so that the number can be seen plainly from the street line. Whenever any building is situated more than fifty (50) feet from the street line, the number shall appear near the walk, driveway or common entrance to such building so as to be easily discernible from the sidewalk.  
(Code 1967, § 8-8.3)

#### **Sec. 25-42. Plat book.**

For the purpose of facilitating correct numbering, a plat book of all streets, avenues and public ways within the city showing the proper numbers of all houses or other buildings fronting upon all streets, avenues or public ways shall be kept on file in the office of the public works director. These plats shall be open to inspection of all persons during the office hours of the public works director. Duplicate copies of such plats shall be furnished to the engineer and building inspector by the public works director.  
(Code 1967, § 8-8.4)

#### **Sec. 25-43. Duties of public works director.**

It shall be the duty of the public works director to inform any applicant of the number or numbers belonging to or embraced within the limits of any such lot or property as provided in this article. In case of conflict as to the proper number to be assigned to any building, the public works director shall determine the number of such building. Final approval of any structure erected, repaired, altered or modified shall be withheld by

the building safety director until permanent and proper numbers have been affixed to such structure.  
(Code 1967, § 8-8.5)

#### **Sec. 25-44. Approval required for new street names.**

Everyone submitting a subdivision plat to the planning and zoning commission for their approval shall show the proper names of any and all streets and these street designations shall be approved by the planning and zoning commission before such new streets are officially named. Street name suggestions may originate with the party submitting the plat under the guidance of the community development director.  
(Code 1967, § 8-8.7)

#### **Sec. 25-45. Changing, renaming or naming existing streets.**

The mayor and council by resolution may change, rename or name an existing or newly established street within the limits of the city at any time upon recommendation of the planning and zoning commission and after consultation with the county court or county planning commission, if any, and any other governmental agency directly affected thereby.  
(Code 1967, § 8-8.8)

#### **Secs. 25-46—25-60. Reserved.**

### **ARTICLE IV. OFF-SITE IMPROVEMENTS**

#### **Sec. 25-61. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the text clearly indicates otherwise:

*Off-site improvements* means those required improvements in the public right-of-way and shall include, but not be limited to, asphaltic concrete surfacing, aggregate base, curb and gutter, valley gutters, concrete sidewalks, water mains, fire hydrants, sanitary sewers, storm drains and irrigation facilities when required.

*Redeveloped* means major additions or major alterations to existing structures, and shall include new structures on parcels of land having existing structures situated thereon.

(Code 1967, § 31-1)

**Sec. 25-62. Approval of plans prerequisite to issuance of building permit.**

No building permit shall be issued by the building safety department until plans are submitted indicating that off-site improvements are planned for the project in conformance with city standards and requirements. These off-site improvement plans shall be submitted with all other building plans and applications. Building plans shall be approved in writing by the building safety department. Off-site improvement plans shall be approved in writing by the public works department. Approval of both departments is required prior to the issuance of a building permit.

(Code 1967, § 31-2)

**Sec. 25-63. Bond or deposit.**

(a) The building safety department shall deny final approval and certificate of occupancy of any building until the required off-site improvements are completed and have been inspected and approved by the public works department, unless performance of the off-site improvements is guaranteed by a performance bond, approved by the city attorney and the public works director, or a cash deposit with the management services director, for a sum which shall be in an amount fixed by the public works director, or a cash deposit with the management services director for a sum which shall be in an amount fixed by the public works director.

(b) The performance bond or cash deposit shall be returned to the depositor upon the approval of the public works department subsequent to the completion of the off-site improvements. It is further provided that the performance bond or cash deposit, or a portion thereof, the amount of such portion to be determined by the public works director, may be retained by the city as compensation for performing the work required in the approved off-site improvement plans; provided, that the permittee shall have failed, or refused, to in-

stall the work within thirty (30) days after receipt of a notice in writing by the public works director.  
(Code 1967, § 31-3)

**Sec. 25-64. Temporary waivers.**

If any of the off-site improvements cause a hardship on the city, or it is not practical to construct the improvements because of the pending formation of an improvement district, the public works director may temporarily waive the off-site improvements upon the property owners signing a contract with the city to accept an improvement district assessment or to construct the improvements within thirty (30) days after receipt of a notice in writing by the public works director.  
(Code 1967, § 31-4)

**Secs. 25-65—25-80. Reserved.**

**ARTICLE V. WATER AND SEWER EXTENSIONS TO NEWLY DEVELOPED AREAS\***

**Sec. 25-81. Policy.**

There is hereby established as set forth in this article a policy and orderly program for extension of the services and facilities of the city water and sewer systems to serve and provide for newly developed areas and subdivisions within the city and those areas and subdivisions outside of the city for which city water or sewer service is desired and available.

(Code 1967, § 31-5)

**Sec. 25-82. Applicability.**

The elements of the extension policy and program stated in this article shall apply to extension of the city water and sewer systems.

(Code 1967, § 31-6)

**Sec. 25-83. 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:

\*Cross references—Sewers and sewage disposal, Ch. 27; water, Ch. 33.

*Cost* means the construction contract price.

*Developer-owner* means any person engaged in the development of one (1) or more parcels of land and contracting for a city water or sewer system extension.

*Main* means any water line not exceeding twelve (12) inches in diameter or any sewer line not less than eight (8) inches in diameter which constitutes or will constitute part of the city water or sewer system.

*Participating charge* means the proportionate share of the cost (construction contract price) based on benefits derived in accordance with standards determined by the public works director and approved by the city council for any existing main. (Code 1967, § 31-7)

**Sec. 25-84. Plans, specifications.**

Upon development of any property, area or subdivision within the city or of any property, area or subdivisions outside of the city for which city water or sewer service is desired and available, all plans and specifications for water and sewer systems shall be prepared by a professional engineer, registered in the state, and in accordance with the city public works department standards and specifications. (Code 1967, § 31-8)

**Sec. 25-85. Agreement between city and developer-owner.**

Before the extension of any water or sewer main shall be made to serve a subdivision, platted or unplatted property, or any existing main tapped to provide service for any individual or unplatted property, the developer-owner desiring such service shall execute an agreement with the city which shall include the following:

- (1) A warranty of workmanship and material for mains and facilities installed which shall run to the benefit of the city for a period of at least one (1) year from the date of acceptance by the city;
- (2) A diagram of all property which may be served by any main to be installed;

- (3) A statement that the city acquires ownership of any main and appurtenances upon completion and acceptance of the work by the city;
- (4) A statement that the city's cost for inspecting such work shall be paid by the developer-owner;
- (5) A statement of the developer-owner's proportionate share of the cost for previously installed mains;
- (6) A statement of the maximum possible reimbursement that may accrue to the developer-owner for the cost of mains to be installed by him but from which others may be served. If others are served, a participating charge will be made at the time of their development. (Code 1967, § 31-9)

**Sec. 25-86. Financing—Generally.**

The following provisions related to financing the extension of water and sewer system mains may be applicable to mains to serve individuals, unplatted areas and subdivisions:

- (1) When an existing main will serve the water or sewer system being created for the subdivision or platted area, any participating charges must be deposited with the city prior to start of construction of the proposed development.
- (2) Where an existing main is to be tapped, a participating charge based upon that portion of the property to be developed shall be placed on deposit with the city prior to tapping the existing main.
- (3) No person shall be permitted to extend service from his tap to adjacent property owned by someone else or to property for which a participating charge has not been advanced and deposited with the city without written approval of the city.
- (4) The city will establish a separate account for each reimbursement agreement for the collection of participating charges and reimbursements to the party who financed

the installation of the main. Sums collected shall be treated as trust funds to be paid upon receipt. In no event will the sums reimbursed exceed the contract price for the installation of the main.

- (5) The reimbursement agreement shall state to whom reimbursement shall be made and shall include a diagram of the property from which reimbursements are contemplated. Should the property or any portion thereof not be served by the main or mains installed under the agreement, the developer-owner will not be reimbursed for the proportionate share of the main cost otherwise due from the property.
- (6) Any developer-owner may assign the benefits arising out of any water or sewer agreement with the city; provided, that any such assignment shall not relieve the developer-owner from his duties and obligations under the agreement.
- (7) Any agreement providing for reimbursement of developer-owners by subsequent and adjacent developer-owners shall run for a maximum period of twenty (20) years after execution of the agreement and thereupon terminate.
- (8) Water mains larger than twelve (12) inches in diameter shall be considered transmission mains and, therefore, a city obligation. Sewer mains larger than twelve (12) inches in diameter shall be a city obligation unless necessary to serve the developer-owner and to satisfy city and state health department requirements, which mains shall be the obligation of the developer-owner.
- (9) An individual service connection to any transmission water or trunk sewer main may be permitted upon approval of the public works director and payment of a front-foot charge based on current costs for six-inch water mains or eight-inch sewer mains. Should the requested water connection exceed six (6) inches or sewer connection exceed eight (8) inches, the front-foot charge shall be based on current cost for main of same diameter as connection.

- (10) The city shall be responsible for installation of permanent lift stations, while developer-owners shall be responsible for installation of temporary lift stations.
- (11) The city shall be responsible for servicing temporary seepage pits where a sewer trunk system is not yet constructed.
- (12) The city shall be responsible for providing and maintaining sewer outfall and interceptor mains but may require developer-owners to pay their proportionate share of the cost of the mains, as may be established by the city.

(Code 1967, § 31-10)

**Sec. 25-87. Same—Hardship cases.**

(a) If a bona fide hardship exists, the sewer and water participating charges for residential properties may be paid to the city in twelve (12) equal installments added to the monthly water bill as a service charge; provided, that in the event of a default in any installment, service or utility charge the city shall discontinue service on the tenth day immediately following the day of default.

(b) A bona fide hardship exists when the gross annual income per household is equal to or less than the income criteria listed below and when certified in writing by the filing of an affidavit with the management services director:

<i>Household size</i>	<i>Income</i>
2 .....	\$2,400.00
3 .....	3,000.00
4 .....	3,600.00
5 .....	4,200.00
6 .....	4,800.00
7 .....	5,400.00
8 .....	6,000.00
9 .....	6,600.00
10 .....	7,000.00
11 .....	7,800.00
12 .....	8,400.00
13 .....	9,000.00

For families with more than thirteen (13) members, add six hundred dollars (\$600.00) for each additional member in the family.

(Code 1967, § 31-10.1)

**Secs. 25-88—25-100. Reserved.**

**ARTICLE VI. IMPROVEMENT OF STREETS  
PRIOR TO DEVELOPMENT OF ADJACENT  
PROPERTY**

**Sec. 25-101. Purpose.**

The provisions of this article shall be applicable when the city council determines that certain streets are necessary before the development of property and provides a procedure for the installation of certain streets which may or may not constitute the entire off-site improvement requirements of the developer at the time of development of his property. This procedure basically consists of the improvement of short stretches, portions or reaches of streets to alleviate a condition deemed undesirable by the city council. (Code 1967, § 31-17)

**Sec. 25-102. Definitions.**

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the text clearly indicates otherwise:

*Cost* means the actual cost of:

- (1) Construction of the public street improvements as determined by the construction contract price;
- (2) Inspection and permit fees;
- (3) Engineering fees required for the preparation of plans and specifications;
- (4) Other incidental fees required to complete the improvements.

*Development* includes construction of residential, commercial or industrial buildings or structures or major additions or alterations to existing structures and includes new buildings or structures on property having existing buildings or structures situated on such property. When such property is zoned for agricultural or single-family residential use at the time of assessment, development shall also require a change of use or purpose.

*Property owner* means the individual, corporation, partnership, trust or other legal entity that owns property adjacent to the street right-of-way.

*Right-of-way* means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, pedestrian walkway, bikeway or drainage purposes.

*Street improvements* includes but is not limited to asphaltic concrete surfacing, aggregate base, portland cement concrete, curb and gutters, sidewalks, or valley gutters, storm drainage facilities, and irrigation tiling.

*Streets* means the full width of the right-of-way of any road, street, highway, alley, land or pedestrian walkway used by or for the general public, whether or not such road, street, highway, alley, land or pedestrian right-of-way has been improved or accepted for maintenance by the city. (Code 1967, § 31-18)

**Sec. 25-103. Assessment policy.**

(a) The city council may determine that certain streets within the city be constructed or improved prior to development of the property adjacent to such streets.

(b) If deemed necessary by the council, the council may order such streets constructed or improved at city expense. Such expense shall be assessed against the adjoining property subject to the following:

- (1) The assessment of property, if adjacent arterial streets are involved, shall not exceed the cost of improving more than one-half of the width, not to exceed thirty-four (34) feet, nor more than one thousand (1,000) lineal feet of such adjacent arterial street.
- (2) Any parcel of land which at the time of assessment is used for single-family residential use and the width of which does not exceed two hundred (200) lineal feet shall not be assessed greater than one-half the costs of a residential street.

## Chapter 27

### SEWERS AND SEWAGE DISPOSAL\*

- Art. I. In General, §§ 27-1-27-20
- Art. II. Connections, §§ 27-21-27-40
- Art. III. Rates and Charges, §§ 27-41-27-60
- Art. IV. General Discharge Limitations, §§ 27-61-27-75
- Art. V. Industrial Users and Discharges, §§ 27-76-27-100
- Art. VI. Sewer Development Fees, §§ 27-101-27-104

#### ARTICLE I. IN GENERAL

##### Sec. 27-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

*Biochemical oxygen demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade expressed in parts per million by weight.

*Building connection or house connection* means the connection to the public sewer and the extension from the sewer.

*Director* means the public works director, or his authorized deputy, agent or representative.

*Garbage* means solid wastes from the preparation, cooking, dispensing of food and from the handling, storage and sale of produce.

*Industrial wastes* means the liquid, gaseous or solid wastes produced as a result of any industrial operation.

*pH* means a measure of hydrogen ion concentration, or acidity, in which the neutral point of 7.0 and decreasing number indicate greater acidity as prescribed by standard methods.

*Properly shredded garbage* means garbage that has been shredded to such a degree that all particles will be carried freely under the flow condi-

tions normally prevailing in public sewers, with no particle greater than one-fourth of an inch in any dimension.

*Sewerage system* means all facilities for cooling, pumping and transporting domestic or industrial wastes of any nature, including all such facilities both inside and outside of the city owned, co-owned, operated or controlled by the city.

*Standard methods or standard laboratory procedure* means the procedure outlined in the latest edition of the book, "Standard Methods for the Examination of Water and Sewage," published by the American Public Health Association.

*Suspended solids* means the solids in wastes which are removable by filtering as prescribed by standard methods of the American Public Health Association.

(Code 1967, § 28-1)

##### Sec. 27-2. Applicability.

The provisions of this chapter shall be applicable to any building, structure or property situated within the city, including that which may be owned, leased, controlled, operated or occupied by the United States, the state, the county, the Tempe School District or by any public or quasi-public agency, corporation or association, except the city. (Code 1967, § 28-2)

##### Sec. 27-3. Nonliability of city for inadequate service.

The city shall not be held liable for any damage that may result from its inability to provide ade-

\*Cross references—Plumbing, § 8-181 et seq.; water and sewer extensions to newly developed areas, § 25-81 et seq.; solid waste, Ch. 28; water, Ch. 33.

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*pH* means a measure of hydrogen ion concentration, or acidity, in which the neutral point of 7.0 and decreasing number indicate greater acidity as prescribed by standard methods.

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\*Cross references—Plumbing, § 8-181 et seq.; water and sewer extensions to newly developed areas, § 25-81 et seq.; solid waste, Ch. 28; water, Ch. 33.

quate sewer service, or from a discontinuance thereof for any cause.  
(Code 1967, § 28-6)

**Sec. 27-4. Violations; discontinuance of service; charges.**

The violation of this chapter shall be sufficient cause for the public works department to discontinue sewer service to any premises, and such service shall not be restored until such violations have been discontinued or eliminated. The discontinuance of sewer service shall be accomplished by physically cutting and blocking the building connection. The actual cost for disconnecting and reconnecting the sewer service, plus a service charge of twenty-five dollars (\$25.00), shall be paid to the city prior to reconnecting the sewer.  
(Code 1967, § 28-7)

**Sec. 27-5. Enforcement.**

(a) The public works director is hereby charged with the duty of enforcing this chapter. The director shall have the authority to decide any question that may arise which is not fully covered by the provisions contained in this chapter, and his decision in such cases shall be final subject only to the general discretion of the city manager.

(b) The officers, employees and inspectors of the public works department shall have the right to enter upon the premises of any person at reasonable hours to inspect and to determine whether this chapter is being violated.

(c) The director shall have the authority to approve the design of, issue permits for, and conduct inspections of sewer facilities that are to be connected to the city's sanitary sewer system.

(d) The design and construction of all sanitary sewers under the jurisdiction of the city must conform to the standard sewer design and construction specifications as identified in the Maricopa Association of Governments Specifications, Tempe Standard Details, and the Arizona State Health Services Bulletin No. 11.

(e) The director shall incorporate the pertinent requirements of this chapter into every city contract with any POTW user located outside the municipal jurisdiction of the city. Such contracts

shall also provide for liquidated damages and, if applicable, specific performance as remedies for breach of contract.

(f) All sewers to be attached directly or indirectly to a city sanitary sewer shall be inspected by personnel of the city during construction. No physical alteration of the city's facilities shall commence until an inspector is present. No waste water shall be discharged into any sewerage facility tributary to a city facility prior to obtaining inspections and approval of construction by the city.

(Code 1967, §§ 28-8, 28-24)

**Secs. 27-6-27-20. Reserved.**

**ARTICLE II. CONNECTIONS**

**Sec. 27-21. When required.**

(a) All persons owning real property adjoining streets and alleys in which there are sewer pipes or mains of the city sanitary sewer system and all persons leasing or using real property, buildings or fixtures thereon which can be served by sewers shall cause to be connected all privies, cesspools and open or unconnected drains with such sewer system. All expense of such connections shall be borne by the owner of such real property or building or the person leasing or using the same. In addition to any other remedy provided for by law, the city shall charge sewer service rental in accordance with the applicable rate schedule for each property, building or structure which has not made connection to available sewer pipes or mains of the city.

(b) All persons owning real property adjoining streets and alleys in which there are thereafter installed sewer pipes or mains of the sanitary sewer system of the city and all persons leasing or using real property, buildings or fixtures thereon which can be served by sewers shall cause to be connected all privies, cesspools and open or unconnected drains with such sewer system prior to the end of one (1) year from the time such sewer system becomes available. All expense of such connection shall be borne by the owner of such real property or the person using or leasing the

same. In addition to any other remedy provided for by law, the city shall charge sewer service rental in accordance with the applicable rate schedule for each property, building or structure which has not made connection to sewer pipes or mains of the city prior to the end of one (1) year from the time such sewer system becomes available.

(c) No person shall fail to abate all privies, cesspools and open or unconnected drains within one (1) year from the date sanitary sewer service becomes available. Such abatement shall include filling in such privies, cesspools or septic tank systems, seepage pits and open or unconnected drains with earth, sand, gravel, concrete or other approved material.  
(Code 1967, § 28-9)

**Sec. 27-22. Inspection, approval.**

All sewer taps shall be inspected and approved by the city.  
(Code 1967, § 28-10)

**Sec. 27-23. Fees.**

(a) Before any sewer tap is made, the sewer participation charge computed in accordance with chapter 25, article V (and all amendments thereto) of the Code shall be paid to the city.

(b) Multiple sewer taps will be made by those persons requiring such connections. The city will make individual sewer taps for the following fees:

- (1) Six-inch alley: \$550.00, including paving replacement;
- (2) Six-inch street (local and collector): \$750.00, including paving replacement;
- (3) Six-inch street (arterial): Actual cost;
- (4) Four-inch machine tap only: \$110.00;
- (5) Six-inch machine tap only: \$110.00.

Charges for taps outside the city will be one and one-half (1½) the above fees. Charges for dye test, twenty-five dollars (\$25.00) per request.  
(Code 1967, § 28-11)

**Sec. 27-24. Taps made by user; inspection.**

Any person desiring to make his own sewer tap shall notify the public works director at least twenty-

four (24) hours prior to making the tap, and shall pay to the city fifteen dollars (\$15.00) for an inspection fee. No sewer tap shall be made unless a city inspector is present at the tap site.  
(Code 1967, § 28-12)

**Sec. 27-25. Maintenance.**

The sewer service customer shall maintain the building connection or house connection at his sole expense.  
(Code 1967, § 28-13)

**Sec. 27-26. Control manholes.**

When required by the public works director, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation and sampling of the wastes. Such manholes when required shall be accessible and safely located and shall be constructed in accordance with plans approved by the director. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.  
(Code 1967, § 28-22)

**Secs. 27-27—27-40. Reserved.**

**ARTICLE III. RATES AND CHARGES**

**Sec. 27-41. "Unit of service" defined; determination of units.**

For the purposes of this article, "unit of service" shall be each separate occupancy, house, store or building so situated upon any lot within the city that is served by the city sewer system, or in the opinion of the city manager could be served separately from any other occupancy, residence, house, store or building upon the same lot, irrespective of the number of residences, houses, stores or buildings upon such lot, even though two (2) or more of such occupancies, residences, houses, stores or buildings are held or owned by the same person. The determination of the city manager as to whether any house, occupancy, residence, store or building comes within the meaning of this section so as to require a separate sewer connection shall be final; provided, that the owner or occupant of

such premises shall have the right to appeal from such decision of the city manager to the city council at its next regular meeting, and in the event of any such appeal being taken the determination of the city council shall be final.  
(Code 1967, § 28-14)

**Sec. 27-42. When due and payable; disconnection upon delinquency.**

(a) All persons using the sewerage system of the city shall pay for such service and for the privilege of connecting to the sewer at the rates, at the time and under the conditions set forth in this chapter and Resolution 1925 of the city, and shall comply with all regulations set forth in this chapter relating to the use of such sewerage system.

(b) Sewer service rental shall be due and payable at the office of the management services director when the monthly statement is rendered and shall be delinquent ten (10) days thereafter. If the total bill for any such charge is not paid within five (5) days after the date of delinquency, service of all domestic water shall be discontinued to such user and additional service charges as specified in section 33-58 shall be charged and collected plus the total amount of the delinquent bill before service is again resumed.  
(Code 1967, §§ 28-4, 28-16)

**Sec. 27-43. Payment guaranteed by property owner.**

In all cases where sewer service is used on any premises and the payment thereof is guaranteed by the property owner, the property owner or his agent shall settle for the full amount of sewer service rental against such property, and the collector of sewer service rental shall not receive pay from the tenant unless the tenant sees fit to pay the whole of such sewer service rental charged against such property.  
(Code 1967, § 28-17)

**Sec. 27-44. Deposit.**

All sewer service users other than property owners shall place a deposit with the city to ensure the payment of sewer service rental equal to one

(1) month's sewer service rental for the property occupied or used by him.  
(Code 1967, § 28-18)

**Sec. 27-45. Lien.**

(a) Delinquent sewer service rental shall constitute a lien against such property upon which such lien may be imposed. The procedure to perfect such lien shall be as follows:

- (1) The management services director shall give written notice to the owner, occupant or lessee of the property within thirty (30) days after the statement is rendered by either personally serving or mailing to such owner, occupant or lessee, at his last-known address by certified or registered mail, or the address to which the sewer service rental billing was sent. This written notice shall indicate that the city shall impress and secure a lien on the subject property unless the owner, occupant or lessee brings his delinquent bill current within thirty (30) days from service or receipt of the letter, and, in addition, pays any penalties that may be due pursuant to section 27-42. The notice shall also contain a statement that the owner, occupant or lessee may appeal the delinquency to the city council by filing such appeal within the thirty-day time period after receipt of such notice.
- (2) If the owner, occupant or lessee of the property does not bring his delinquency current or successfully prosecute his appeal to the city council within the thirty (30) days from service or receipt of the registered or certified letter, the management services director shall prepare duplicate copies of a notice and claim of lien and file one (1) copy with the county recorder, and within a reasonable time thereafter serve or mail by registered or certified mail the remaining copy to the owner, occupant or lessee of the property. The notice and claim of lien shall be made under oath by the management services director or his duly authorized representative and shall contain the following:

- a. A description of the property sufficient for its identification;
  - b. The name of the owner or reputed owner of the property if known; otherwise the name of the occupant or lessee to whom service was rendered;
  - c. The amount of the delinquent bill.
- (3) From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure and order of sale. The city shall have the right to bring an action to enforce the lien in the county superior court at any time after its recording, but failure to enforce the lien by such action shall not affect its validity. The recorded notice and claim of lien shall be prima facie evidence of the truth of all matter recited therein and of the regularity of all proceedings prior to the recording therein.
- (b) A prior recording for the purposes provided in this section shall not be a bar to a subsequent recording of a lien for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.  
(Code 1967, § 28-19)

Secs. 27-46—27-60. Reserved.

#### ARTICLE IV. GENERAL DISCHARGE LIMITATIONS

##### Sec. 27-61. Discharge of certain wastes prohibited.

Except as provided in this chapter, no person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewer:

- (1) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit;
- (2) Any water or waste which may contain more than one hundred (100) parts per million by weight of fat, oil or grease;
- (3) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
- (4) Any garbage that has not been properly shredded;
- (5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, grits such as brick, cement, onyx, carbide or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works;
- (6) Any waters or wastes having pH lower than 5 or higher than 9.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
- (7) Any waters or wastes containing a toxic, radioactive or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters of the sewage treatment plant;
- (8) Any waters or wastes containing dissolved or suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;
- (9) Any noxious or malodorous gas or substance capable of creating a public nuisance;
- (10) Any water or waste that has in any way been diluted as a substitute for pretreatment for the purpose of obtaining compliance with any categorical standard or pretreatment requirement imposed by this chapter, except where dilution is expressly authorized by any categorical standard;
- (11) Any water or waste that could cause a violation of any categorical standard or pretreatment requirement;
- (12) Any water or waste that is transported from the point of discharge to the POTW by any

septic tank pumper, chemical waste hauler, or similar transporter unless the transporter has first:

- a. Disclosed to the director the origin, nature, concentration and volume of all pollutants to be discharged;
- b. Obtained the consent of the director to discharge.

(Code 1967, § 28-20)

**Sec. 27-62. Wastes subject to approval; pre-treatment, interceptors.**

(a) The admission into the city sewerage system of any waters or wastes having a five-day biochemical oxygen demand greater than three hundred (300) parts per million by weight of suspended solids; containing any quantity of substances having the characteristics described above; or having an average daily flow of greater than twenty-five thousand (25,000) gallons shall be subject to the review and approval of the public works director.

(b) If necessary, the public works director may require an owner to provide, at his sole expense, such preliminary treatment of wastes as may be necessary to reduce the BOD to three hundred (300) parts per million and the suspended solids to three hundred fifty (350) parts per million by weight; reduce the objectionable characteristics or constituents to within the maximum limits provided in this section; or control the quantities and rates of discharge of such waters or wastes. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for approval of the public works director and the engineering division of the state board of health. No construction of such facilities shall be commenced until approved by the director in writing.

Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his own expense. The owner shall submit compliance reports from a qualified testing laboratory when required by the director.

(c) If necessary for the proper handling of liquid wastes containing grease or oil in excessive

amounts or any flammable wastes, sand or other harmful ingredients, the public works director may require the owner to provide, at his sole expense, grease, oil and sand interceptors; except, that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the director and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

Where installed, all grease, oil and sand interceptors shall be maintained by the owner at his sole expense, in continuously efficient operation at all times.

(Code 1967, § 22-21)

**Sec. 27-63. Septic tank and scavenger waste haulers.**

(a) All persons or companies wishing to discharge scavenger wastes into the sewerage system must first obtain a scavenger waste discharge permit from the public works director. Permit applications shall include information on company ownership, identification and license number of all trucks to be used for delivery of waste to city sewerage facilities. It shall also include truck capacity and other information pertinent to discharge to the sewerage system. Permit applications shall be signed by a responsible owner or manager of the company applying for permission to discharge. All waste-hauling equipment operated by companies with permits shall be registered with the public works department and shall be identifiable by display of an assigned registration number and the truck capacity in gallons.

- (1) The permit provided for in this section shall be issued by the public works director to all applicants who comply with the terms and conditions set forth in this section, upon the payment of a permit fee established by resolution of the city council.

- (2) The permit issued as provided for in this section shall expire one (1) year after the date of issue.
- (3) Noncompliance with any part of this section or subsequent regulations shall subject the permit holder to revocation of its permit to utilize the services of the city sewerage system for disposal of scavenger wastes. Reissuance of a permit to discharge after revocation shall be at the discretion of the public works director and may be made subject to such conditions as he deems appropriate.

(b) The director may establish such regulations as are deemed necessary to control the discharge of scavenger wastes to the city sewerage system.

(c) Normal wastes from septic tanks, sewage treatment plants, etc., may be discharged routinely. Permission to discharge other wastes that are not readily biodegradable or are not known to be compatible to the operation of waste water treatment plants shall be refused. Special request must be made to the public works department prior to discharge of any materials of questionable acceptability. Some specific reasons for refusal of service shall include:

- (1) Material deleterious to treatment plant operation or operators, such as oils, greases, gasoline, toxics, volatile solvents, sand, metallic particles or paints;
- (2) Materials which would cause unusual expense in handling and treatment, unless prior arrangements have been made for the payment of additional cost of service;
- (3) Materials which would inhibit the performance of the treatment plant, such as acids, plating wastes or toxic materials.

The discharge of scavenger wastes shall be permitted only at locations and during such hours as shall be established by the director of public works. The discharge of scavenger wastes to the sewerage system at any other location is forbidden.

(d) Fees and charges for treatment of normal scavenger wastes shall be based on the costs of providing such services and on the expected overall average characteristics of such discharges, as

determined by the public works director. The director also may designate characteristics on which to base charges in special situations, such as discharges from sewage holding tanks, on submission of proof that waste discharges have other-than-expected overall average concentrations and with provision of positive identification procedures. Charges may be billed at monthly intervals or at the discretion of the director, and shall be considered delinquent if not paid within thirty (30) days of billing date. Delinquency in payment shall be a basis for revocation of the permit. The fees shall be established by resolution of the city council. (Code 1967, § 28-30)

#### Sec. 27-64. Prohibited substances.

(a) It shall be unlawful for any person to discharge or cause to be discharged to the sanitary sewers:

- (1) Any storm water, surface water, groundwater, roof runoff, surface drainage, cooling water or unpolluted process waters that may constitute inflow as defined in this chapter;
- (2) Pollutants which create a fire or explosion hazard to the system or treatment plant;
- (3) Solid or viscous pollutants in amounts that will cause obstruction to the flow in sewers or other interference or damage with the system or treatment plant;
- (4) Any waters or wastes containing toxic, radioactive, poisonous or other substances in sufficient quantity to injure or interfere with any sewage treatment process, cause corrosive structural damage, constitute a hazard to humans or create any hazard to the sewerage system or in receiving waters of the sewage treatment plant;
- (5) Any waters with a pH less than 5 or greater than 9.5;
- (6) Any waters with a temperature greater than one hundred fifty (150) degrees Fahrenheit (sixty-six (66) degrees centigrade);
- (7) Any water or waste greater than the following parameters (mg/l);

<i>Substance</i>	<i>Milligrams per liter</i>
Total grease, oil, etc. ....	100.00
Dissolved sulfides .....	0.5
Cyanide (includes Cyanates) .....	0.1
Arsenic .....	0.1
Barium .....	10.0
Boron .....	10.0
Cadmium .....	0.1
Chromium VI .....	0.5
Copper .....	10.0
Lead .....	0.5
Manganese .....	0.5
Mercury .....	0.05
Selenium .....	0.1
Silver .....	0.5
Zinc .....	50.0

(b) The public works director shall issue and enforce, through the issuance of industrial waste water permits, other prohibitions and limitations required by state or federal law, or as the director determines necessary.

(c) There shall be no new connections from in-flow sources as defined in this chapter into the city sewerage system.  
(Code 1967, § 28-32)

Secs. 27-65—27-75. Reserved.

### ARTICLE V. INDUSTRIAL USERS AND DISCHARGE

#### Sec. 27-76. Definitions.

For the purposes of this article, the following words and terms shall have the following meanings, unless the context indicates otherwise:

*Approved laboratory procedures* means the measurements, tests and analyses of the characteristics of water and wastes in accordance with analytical procedures determined acceptable by federal guidelines as established in Title 40, Code of Federal Regulations, Part 136, or as approved by the regional administrator, U.S. Environmental Protection Agency.

*Average quality* means the arithmetic average (weighted by flow value) of all the daily determi-

nations of concentration, as that term is defined in this section made during a calendar month.

*BOD (biochemical oxygen demand)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five (5) days at a temperature of twenty (20) degrees centigrade, reported in milligrams per liter (mg/l).

*Categorical standards* means federal categorical pretreatment standards issued in accordance with section 307 of the Clean Water Act.

*COD (chemical oxygen demand)* means the quantity of oxygen consumed from a chemical oxidation of inorganic and organic matter present in the water or waste water, expressed in mg/l.

*Cooling water* means the clean waste water discharged from any heat transfer system, such as condensation, air conditioning, cooling or refrigeration.

*Daily composite sample* means a sample of effluent continuously collected over a normal operating day.

*Daily composite sample quality* means the concentration of some parameter tested in a daily composite sample, as that term is defined in this section, and reported proportional to flow.

*Daily determination of concentration.* For composite samples, daily determination of concentration shall be the same as daily composite sample quality, as that term is defined in this section. For grab samples, the daily determination of concentration shall be the arithmetic average (weighted by flow value) of all grab sample qualities, as that term is defined in this section, determined for any calendar day.

*Department* means the public works department.

*Director* means the public works director.

*Discharged* means the disposal of sewage, water or any liquid from any sewer user into the sewerage system.

*Domestic waste* means a typical residential-type waste which requires no pretreatment under the provisions of this chapter before discharging into the sanitary sewer system, excluding all commercial, manufacturing and industrial wastes.

*Establishment or plant* means any establishment or plant producing liquid waste, with or without suspended solids, required to be discharged into the city sewer system.

*Grab sample* means the concentration of some parameter tested in a grab sample, as that term is defined in this section.

*Industrial discharge (waste)* means any introduction into the POTW of a nondomestic pollutant which:

- (1) Is produced by a source which would be subject to any categorical standards or pretreatment requirements if such source were to be discharged to the POTW; and
- (2) Contains any substance or pollutant for which a discharge limitation or prohibition has been established by any categorical standard or pretreatment requirement.

*Industrial waste* means:

- (1) Any nonresidential user of the sewer system who causes an industrial discharge; or
- (2) Any nonresidential user of the sewer system which either discharges or produces a waste which potentially could be discharged to the POTW which would be subject to any categorical standard or pretreatment requirement; or
- (3) Has control over the disposal of a waste as described in (1) and (2) above; or
- (4) Has the right of possession and control over any property which produces a waste as described in (1), (2) or (3) above.

*Industrial user permit* means the permit granted by the city which each industrial user must first obtain prior to causing or allowing any industrial discharge to the POTW.

*Inflows* means water other than waste water that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street-wash waters or drainage.

*Interference* means inhibition or disruption of the sewer system treatment process or operations as the result of the discharge of any pollutant capable of causing or significantly contributing to the:

- (1) Violation of any NPDES permit standard which has been imposed on the city; or
- (2) City's inability to reasonably allow the maximum benefit reuse of POTW residuals; or
- (3) City's inability to reasonably provide the least expensive method of disposal for POTW residuals.

*Maintenance* means keeping the treatment works in a state of repair, including expenditures necessary to maintain the capacity (capability) for which the works were designed and constructed.

*NPDES permit* means a National Pollution Discharge Elimination System Permit, issued to the city by the EPA which imposes federal standards governing the quality of the treatment effluent discharged from the POTW.

*Permittee or permit holder* means any person, firm, association, corporation or trust which owns, operates, processes or controls an establishment or plant being operated under a valid industrial waste permit to discharge waste into the city sewer system.

*Pollutant* means any dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, cellar dirt, and industrial, municipal and agricultural wastes.

*POTW* means publicly owned treatment works and connecting sewer collection system which are owned and/or operated, in whole or in part, by the city and which provide the city with waste water collection and disposal services.

*POTW residuals* means all POTW effluent and/or solids, including sludge, scum, screenings and grit, which are the byproduct of waste water treatment operations and which must be discharged to the environment for ultimate disposal and/or reuse.

*Pretreatment* means the physical, chemical, biological or other treatment of any industrial dis-

charge, prior to discharge to the POTW, for the purpose of:

- (1) Reducing the amount of concentration of any pollutant; or
- (2) Eliminating the discharge of any pollutant; or
- (3) Altering the nature of any pollutant characteristic to a less harmful state.

*Pretreatment requirements* means all of the duties or responsibilities imposed upon POTW users by this chapter.

*Producer* means any person, firm, association, corporation or trust which owns, operates, processes or controls an establishment or plant, whether or not a permittee.

*Replacement* means those expenditures made for obtaining and installing equipment, accessories and/or appurtenances during the useful life of the treatment works which are necessary to maintain the capacity and performance of the treatment works for which they were designed and constructed.

*Slug load* means any pollutant discharged to the POTW in such volume or strength as to cause interference. In particular, any pollutant concentration, quantity or flow rate which, during any period of fifteen (15) minutes or more is greater than five (5) times the average twenty-four-hour concentration, quantity or flow rate for such pollutant during normal operation.

*Standard industrial classification* means a coded classification of industries based upon economic activity developed by the U.S. Department of Commerce, as published in the "Standard Industrial Classification Manual, 1972," Office of Management and Budget.

*Standard methods* means the procedure as described in the most current edition of "Standard Methods for the Examination of Water and Waste Water," published by the American Health Association, or the most current edition of "Manual of Methods for Chemical Analysis of Water and Wastes," published by the U.S. Environmental Protection Agency.

*Suspended solids (SS)* means solids measured in milligrams per liter that either float on the surface of or are in suspension in water, waste water or other liquids and which are largely removable by a laboratory filtration device, as defined in the standard methods as defined in this section.

*System design capacity* means the design capacity for normal domestic waste water as established by accepted engineering standards.

*Total organic carbon (TOC)* means the total of all organic compounds expressed in milligrams per liter as determined by the combustion infrared method prescribed by approved laboratory procedures.

*Treatment parameter* means a fundamental characteristic of sewage around which treatment is designed, such as, but not limited to, flow, BOD, suspended solids and phosphorus.

*User* means any person, lot, parcel of land, building, premises, municipal corporation or other political subdivision that discharges, causes or permits the discharge of waste water into the city sewerage system.

*Waste water* means any liquid or water-carried pollutant, including an industrial discharge, which is introduced into the POTW from any dwelling, commercial building, industrial facility or institution.

(Code 1967, § 28-23)

#### **Sec. 27-77. Enforcement; penalties.**

(a) Charges levied pursuant to this article shall be collected by the management services department. The public works director shall make and enforce such rules and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the city's sewerage system and for the construction and use of the sewers and connections to the sewerage system. Sewer design and construction and infiltration and exfiltration test shall conform to Maricopa Association of Governments specifications, as same may be amended from time to time. The regulation, collection, rebating and refunding of such

sewer charges shall be the responsibility of the management services department. The public works director shall have the authority to deny or condition new sources of sewage or increases from existing sources to the sewerage system.

(b) The director shall have the authority to regulate the volume and flow rate of discharge to the sewage works, and to establish permissible limits of concentration for various specific substances, materials, waters or wastes that are prohibited from entering the sewage works.

(c) The admission into the public sewers of any waters or waste having:

- (1) A five-day biochemical oxygen demand greater than three hundred (300) milligrams per liter by weight;
- (2) Containing more than three hundred fifty (350) milligrams per liter by weight of suspended solids;
- (3) Containing any quantity of substances having the characteristics described in section 28-20; or
- (4) Having an average daily flow of greater than twenty-five thousand (25,000) gallons;

shall be subject to the review and approval of the director.

(d) The director shall impose charges on any user of the city's sewage works who discharges wastes having a strength greater than normal sewage or containing nonpermissible quantities or prohibited substances into the public sewer system. The charges so imposed shall be based on the extra costs incurred by the city in surveillance, sampling and testing of the discharges, for additional operating and maintenance expenses, or for any other action required to identify, handle, process or supplement normal activities due to the unauthorized discharge of excessive strength or unusual character wastes, plus overhead charges. Failure by a user so charged to pay the charges and to provide such corrective measures as may be required to prevent further unauthorized discharges, after due notice by the director and being given a reasonable time to comply, shall be sufficient cause to discontinue sewer service to the premises.

(e) Inspections of every facility that is involved, either directly or indirectly, with the discharge of waste water to the city's sewage system may be made by the public works director or his designate as he deems necessary.

These facilities shall include, but not be limited to, sewers; sewage pumping plants; pollution control plants; all industrial processes; industrial waste water generation, conveyance and pretreatment facilities; devices and connecting sewers; and all similar sewage facilities. Inspections may be made to determine that such facilities are maintained and operated properly and are adequate to meet the provisions of this article.

Access to all of the above facilities or to other facilities directly or indirectly connected to the city's sewage systems shall be to authorized personnel of the city at all reasonable times, including those occasioned by emergency conditions. Any permanent or temporary obstruction to easy access to the sewage facility to be inspected shall promptly be removed by the facility user or owner at the written or verbal request of the director or his designate, and shall not be replaced.

If consent to inspect has been sought and refused, or if facts or circumstances reasonably justify a failure to seek such consent, the director shall follow the procedures to obtain a search warrant.

(f) The director shall issue or amend (as applicable) industrial user permits within sixty (60) days of receiving the application for such permit or amended permit. Once issued, a permit:

- (1) Will be for a period of time not to exceed two (2) years. A permit may be terminated by revocation by the director or upon voluntary surrender of the permit by the permittee at an earlier date;
- (2) Is not transferable by the permittee;
- (3) Will specifically identify all applicable discharge prohibitions and limitations which the director will enforce.

(g) The director shall receive and analyze all self-monitoring reports and notices submitted by industrial users.

(h) The director shall randomly sample and analyze effluent from POTW users and conduct those

surveillance and inspection activities needed to identify, independently of any information supplied by users, occasional or continuing noncompliance with any categorical standard or pretreatment required.

(i) The director shall investigate instances of noncompliance with any categorical standard or pretreatment requirement when notice of any actual or probable noncompliance has been received by the director or any representative of the director.

(j) The director shall notify POTW users of noncompliance with categorical standards or pretreatment requirements discovered by the director. Such notice shall also contain a demand for any appropriate corrective action, which is necessary to meet the applicable requirements of this article. Any POTW user will be allowed opportunity to respond to an order of the director before any enforcement action against such user is initiated. Where there is endangerment to the health and welfare of persons, however, the director may halt or prevent a discharge without providing opportunity to respond to any such order.

(k) The director shall comply with the public participation requirements of 40 CFR Part 105 in connection with the city's enforcement of any categorical standard.

(l) The director shall impose appropriate penalties for noncompliance with any of the requirements of this article. Such penalties may include any or all of the following:

- (1) Suspension or revocation of any industrial user permit for the failure of an industrial user to comply with the pertinent requirements of such permit;
- (2) Termination of POTW services;
- (3) Restricting or otherwise limiting allowable discharges;
- (4) Requesting that the city attorney commence criminal and/or civil action against any user violating any requirement of this article.

(m) The director shall:

- (1) Determine which actual or threatened discharge to the POTW will cause interference with the POTW or will present (or

may present) an imminent or substantial endangerment to the health or welfare of any person and/or the environment;

- (2) Abate any actual or threatened discharge which would violate any categorical standard or pretreatment requirement imposed by this article. In the minimum the director will be able to promptly plug or disconnect any sewer service connection to the POTW;
- (3) Correct or mitigate any injury to the environment, the POTW or to any other property as a result of any discharge in violation of a categorical standard or pretreatment requirement imposed by this article.

(n) The director shall annually publish, in the largest daily newspaper published in the city, public notice of all industrial users who at least once during the preceeding twelve-month period were not in substantial compliance with any categorical standard or pretreatment requirement imposed by this article. This same notice shall also summarize all enforcement actions taken by the city during the same twelve-month period.

(o) The director shall provide all POTW users with notice of:

- (1) Applicable changes in federal and state law governing the disposal/reuse of pollutants produced by any industrial user, regardless of whether or not such pollutants are disposed of by discharge to the POTW;
- (2) The adoption of, and any substantial amendment of, this article. In addition, the director shall file with the city clerk three (3) copies of all federal statutes and regulations cited by this article in order to allow regulated users adequate opportunity to be informed of the applicable federal requirements incorporated in this article by reference.

(Code 1967, § 28-24)

#### **Sec. 27-78. Sewer charges.**

(a) It is hereby determined necessary for the protection of the public health, safety and welfare and to conform with federal, state and local laws

and regulations that a system of charges for sewerage service be established which allocates the cost of providing sewerage service to each user in such a manner that the allocated costs are proportionate to the cost of providing sewerage service to that user insofar as those costs can reasonably be determined. A proportionate charge shall be made to all users that discharge waste water, either directly or indirectly, into the city sewerage system. Such charges shall be based on the rates established pursuant to subsections (d) and (e) below. In addition, each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the sewage treatment works shall pay for such increased costs.

(b) There are hereby established the following sewer charges which shall be in lieu of any other city sanitary sewer service charges:

- (1) Sewer use charge;
- (2) Sewerage system capacity charge.

(c) For the purpose of determining the sewer use charge, users shall be assigned by the public works department to subcategories of user classifications as required.

(d) A rate schedule for the sewer use charge shall establish separate rates for each subcategory of user classification established by the public works director as required in subsection (c) of this section. Rates shall be designed to recover the cost of rendering sewerage services for the year during which the rates shall be in effect. Rates shall be established maintaining adequate fund reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for service.

The management services director shall submit annually to the city council not later than sixty (60) days prior to the end of the fiscal year an annual sewer report, including a recommended rate schedule for each category of user classification for the following fiscal year. The report shall contain data utilized in determining the rate schedule. The rate schedule shall be in the form of a resolution adopted by the city council.

The sewer use charge for each user classification will be determined according to the following rate calculation formula:

User charge = (users contribution, MG x \$/MG) +

$$\left[ \frac{\text{Users BOD loading x \$/lb.}}{1,000 \text{ lb.}} \right] - \left[ \frac{\text{Users SS loading x \$/lb.}}{1,000 \text{ lb.}} \right]$$

$$\left[ \frac{\text{Fixed O\&M}}{\# \text{ of customers}} \right] - \left[ \frac{\text{*Cost of monitoring/testing}}{\# \text{ of indus./commercial customers}} \right]$$

\*Applies only to industrial/commercial users.

Operating and maintenance costs consist of:

- (1) Salaries and benefits of employees engaged in providing sewerage service;
- (2) Operating expenses, including parts, materials and services, incurred in providing sewerage service;
- (3) Applicable equipment and/or appurtenances replacement costs necessitated by the provision of sewerage services;
- (4) Appropriate indirect costs of the public works department and other city departments in rendering sewerage-related services such as purchasing, accounting, billing and administration.

(e) The sewerage system capacity charge is established for the purpose of providing revenue to help finance and to more equitably distribute the cost of the construction of necessary additions to both the sewer system and the sewage treatment facilities.

The funds received from the collection of such charges shall be deposited daily by the management services director who shall credit them to a special fund from which the city council may authorize the payment of the cost and expense of the construction of the sanitary sewerage system, regulator chambers, storm standby tanks, pumping stations and sewage treatment works and for the payment of the cost and expense of extensions to or the enlargement of same.

The charge so exacted shall be set annually by resolution of the city council. Cost factors to be considered in establishing this charge shall include annual debt service requirements for the retirement of sanitary sewer bonds and/or long-term construction contracts, annual depreciation costs and other pertinent factors as determined by the city council.

(f) A sewer bill may be rendered on a monthly, quarterly or annual basis. The bill shall distinguish between the sewer use charge and the sewerage system capacity charge.

(g) Sewer user charge rates shall be reviewed by the city council at least biennially. Such reviews shall result in revision of user charges to accomplish the following:

- (1) Maintain the proportionate distribution of operation and maintenance costs among users and user classes;
- (2) Generate sufficient revenue to pay the total costs necessary to the proper operation and maintenance of the sewerage system;
- (3) Apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly.

(h) Each user will be notified at least annually, in conjunction with a regular bill, of the sewer use charge rate and that portion of the total bill attributable to operations, maintenance and replacement costs for sewer service.

(i) The sewer user charge system as set forth in this article shall take precedence over any terms or conditions of agreements or contracts between the city users which are inconsistent with the requirements of Public Law 95-217 and federal regulations issued pursuant thereto.

(j) Each sewer charge rendered under or pursuant to this chapter is hereby made a lien upon the corresponding lot, parcel of land, building or premises served by a connection to the sanitary sewerage system of the city.

(k) There shall be established the following funds or accounts into which the sewer charges levied in this section shall be distributed:

- (1) Sewerage system operations, maintenance and replacement;
- (2) Sewerage system debt service;
- (3) Sewerage system construction and expansion.

The distribution of sewer charges shall be as follows:

- (1) Sewer use charge revenues shall be allocated to the sewerage system operations, maintenance and replacement fund or account.
- (2) Sewerage system capacity charge revenues shall be allocated as follows:
  - a. That portion of the charge levied to service the debt of sanitary sewer bonds or long-term construction contracts shall be allocated to the sewerage system debt service fund or account.
  - b. The remainder of the charge shall be allocated to the sewerage system construction and expansion fund or account.

The utilization of the fund or accounts shall be as follows:

- (1) Sewerage system operations, maintenance and replacement fund or account shall be utilized for personal services, operational expenses and equipment replacement expenses associated with the provision of sewerage system services.
  - (2) Sewerage system debt service fund or account shall be utilized in servicing the debt retirement of sanitary sewer bonds or long-term construction contracts.
  - (3) Sewerage system construction or expansion fund or account shall be utilized for the construction or expansion costs associated with the sewer system and the sewage treatment facilities.
- (l) Determination of waste water quantity.
- (1) For industrial users with installed water meters, the charges established in this section shall become effective from and after each user's first regular meter reading after the issuance of the industrial waste permit.

- (2) Any user who fails or refuses to install a water meter to any source of water supply used, within thirty (30) days after written notice by the public works director to do so, shall be charged on water usage estimated by the director.
- (3) If a user discharges sanitary sewage, industrial wastes, water or other liquids into the city sewerage system, either directly or indirectly, and it can be shown by such party to the satisfaction of the director that a portion of the water as measured by the water meter or meters does not and cannot enter the sewerage system, then the director may determine in such manner and by such method as he may find practicable the percentage of metered water entering the sewerage system. The quantity of water used to determine the sewer charge shall be that percentage, so determined, of the water measured by the water meter or meters; or the director may require or permit the installation of acceptable additional water or sewer meters at such party's expense and in such a manner as to determine the quantity of water actually entering the sewerage system as so determined. If such additional water or sewer meters are installed, an additional charge shall be made to cover the cost of reading and computing the flow of each such meter and such additional charge shall be added to each sewer charge bill rendered.
- (4) After the installation of the measuring equipment is approved by the public works director, it shall be the obligation of such industrial user to conduct a test on such measuring equipment at least once every twelve (12) months to determine its accuracy and the results thereof shall be furnished in writing to the director. Those users seeking renewal of an industrial wastewater discharge permit or an interim industrial waste water discharge permit shall file the results as part of the report required by section 28-27 of this chapter. It shall also be the industrial user's responsibility to notify the public works department within a reasonable time in advance so that the department may, if it chooses, have a witness present during such test. If upon any such test the percentage of accuracy is found to be within the accuracy tolerance as established by the manufacturer's specifications, such measuring equipment shall be determined to have correctly measured the quantity delivered to the sewer system. If, however, upon any such test the percentage of accuracy is found to be in excess of the accuracy tolerance specified by the manufacturer's specifications, then such measuring equipment shall be immediately adjusted to register correctly the quantity delivered to the sewer system. The billings to such industrial user shall be adjusted for a period extending back to the time when the inaccuracy began, if such time is ascertainable, or for a period extending back one-half of the time elapsed since the date of the last test or the date of the last adjustment, if the time is not ascertainable.
- (5) All users for which the water supply is from other suppliers of water shall furnish to the city either a certified meter reading of water delivered to its plant or company, or a copy of the billing from the water supplier. In this event, the user's charges will be calculated and the same conditions will apply as if the city were the supplier of water to the user.
- (6) For residential and commercial users with installed water meters, the charges established in this section shall become effective from and after each user's first regular meter reading.
- (m) Determination of waste water quality.
- (1) Testing by direct sampling, utilizing recognized field techniques, equipment and procedures, will be used for all industrial users. The BOD (5) tests shall be considered the standard test, however, COD or TOC tests may be substituted in cases where it has been determined by the public works director that the BOD (5) test is not representative of actual waste water loading. Waste water characteristics shall be determined by the public works department on the basis

of monitored waste water discharged, a certified statement from the user, or on the best available data as to the characteristics of such discharges.

- (2) Any change in the ongoing process(es) employed by a user contributing industrial waste which results in a variation of more than twenty-five (25) percent in one (1) or more of the effluent loading concentrations shall be reported to the public works department within thirty (30) days of such change.
- (3) If it is determined through testing that a significant variation exists between the user's certified data and the discharge characteristics monitored by the public works department, the city may adjust the sewer use charge based on the monitored data from the original date of certification, unless written communication has occurred notifying the department of changes in loading and giving specific dates of changes.
- (4) Designated discharge. Where sampling and gauging of a specific user is not practical for physical, economic, safety or other reasons, the public works director may designate values for concentrations of the wastes discharged into the sewerage system for all users in the same standard industrial classification or subclassification.

(Code 1967, § 28-25)

#### Sec. 27-79. General requirements.

All industrial users shall:

- (1) Comply with the categorical standards, pretreatment requirements, and all other requirements imposed by this article upon POTW users.
- (2) Comply with the orders of the director;
- (3) Prior to the discharge of waste water to the POTW by any new user thereafter, file a written notice with the director which identifies the:
  - a. Name and address of the existing or prospective user;
  - b. Business location(s) served or to be served by the POTW;
  - c. Nature, concentration and amounts of any substance present at, or intended to be present at, such business location(s) which, if discharged to the POTW, could constitute an industrial discharge;
  - d. Nature and concentration of all pollutants currently discharged to the POTW from such business location(s).
- (4) File an annual POTW user report with the director by the first of January of each year commencing January 1, 1985, which provides an update to the information obtained pursuant to subsection 27-80, paragraph (3). This reporting requirement does not apply to industrial users operating pursuant to an industrial user permit.
- (5) Carry out, and maintain an adequate record of, all self-inspection and self-monitoring activities necessary for the user to know at all times whether or not such user is introducing any industrial discharge to the POTW.
- (6) Assist the director to determine the exact nature, concentration and volume of any pollutant intended for discharge to the POTW. Therefore, upon request, any user or industrial user shall promptly:
  - a. Allow the examination and copying of all relevant records or documents available to the user;
  - b. Allow the inspection of all business locations served by the POTW, including all pretreatment equipment, methods and activities utilized by the user at such locations;
  - c. Install and maintain, at the user's expense, convenient and adequate monitoring and/or sampling point(s) needed by the director for monitoring and/or sampling purposes;
  - d. Allow the taking and removal of samples from any waste water discharged or intended for discharge to the POTW;
  - e. Provide the director with any other information, including, but not limited to, chemical analyses of waste water

- and architectural or engineering design data, drawings, etc., which are reasonably needed by the director for the purpose of determining such user's compliance with the requirements of this article.
- (7) Not cause an industrial discharge without having first obtained, or applied for, an industrial user permit pursuant to this article.
- (8) Comply with the demand of the director to immediately halt any actual or threatened discharge to the POTW when the director has given notice that such actual or threatened discharge:
- a. Presents or may present an imminent or substantial endangerment to the health or welfare of any person or to the environment; or
  - b. Will cause interference with POTW operations.
- (9) Immediately give notice to the director of any discharge, including an accidental discharge, which is in violation of any categorical standard, pretreatment requirement, or permit condition imposed by this article. Such notice shall also describe the:
- a. Location of the discharge;
  - b. Known or estimated nature, concentration and volume of the discharged pollutant(s);
  - c. Type of assistance desired from the city;
  - d. Corrective action(s) undertaken, being undertaken, and/or to be undertaken by the user. Any user causing such a discharge shall also initiate all appropriate corrective action(s) required by the director which are needed to:
    1. Prevent injury to human health or safety, or to the environment, the POTW and/or any other property;
    2. Promptly repair all or part of any injury or damage caused by such discharge; and
    3. Ensure that such a discharge does not occur again.
- (10) Pay all sewer fees charged by the city for the waste water collection and disposal services provided by the POTW pursuant to the requirements of any city ordinance. Such service fees will apply equally to all POTW users and will be determined by each user's proportionate share of the POTW operating and maintenance costs. In turn, the proportionate share will be based on such factors as the strength, volume and flow rate of the waste water discharged to the POTW by each user.
- (11) Reimburse the city for all extraordinary expenses reasonably incurred by the department in ensuring such POTW user's compliance with the applicable requirements of this article. An extraordinary expense is any cost not otherwise reimbursed from the normal collection of sewer fees. Therefore, extraordinary expenses include, but are not limited to, the costs in:
- a. Issuing permits;
  - b. Conducting inspection, surveillance and monitoring activities;
  - c. Obtaining laboratory analyses of waste samples;
  - d. Taking enforcement actions against users not in compliance with the requirements of this article; and
  - e. Carrying out any measure needed for the protection of human health or safety, the environment, the POTW or any other property in order to correct or mitigate any harm caused by the violation of any categorical standard or pretreatment requirement.
- (12) Be financially responsible for all injury, damage and/or loss suffered by any person as a result of any industrial discharge by such user which violates any categorical standard, pretreatment requirement or permit condition enforced pursuant to this article. In particular, such user shall be liable for the:
- a. Personal injury suffered by any person as a result of such discharge;

- b. Costs reasonably incurred by any person in correcting or otherwise mitigating any adverse environmental impact which resulted from such discharge; and
- c. Economic loss and property damage suffered by any person as a result of such discharge.

(13) Existing industrial users shall certify compliance with this article within ninety (90) days of its effective date, or submit application for a new permit.

(Code 1967, § 28-26)

**Sec. 27-80. Specific requirements.**

In addition to all other requirements, each industrial user who discharges an industrial discharge into the sewer system shall also:

- (1) Obtain an industrial discharge permit from the director. Any application for a permit or an amended permit shall contain the information specified by 40 CFR 403.12(b)(1) through (b)(7) and CFR 403.12(c)(1) through (c)(3). Any person intending to commence any new industrial discharge(s), or any additional industrial discharge(s) not already allowed pursuant to an existing permit, shall first obtain a new or an amended industrial discharge permit, as applicable, from the director prior to initiating such discharge(s).
- (2) Comply fully with all requirements and conditions of any industrial user permit. Once a permit is issued, no industrial user shall:
  - a. Make any new or increased industrial discharge;
  - b. Otherwise make any change in the nature of its industrial discharge(s) if such change will cause any new or increased industrial discharge.
- (3) Provide all of the pretreatment necessary to comply with the categorical standards and pretreatment requirements imposed by this article.
- (4) Maintain a continuous discharge record which clearly identifies the:

- a. Dates and times of all industrial discharge(s); and
- b. Nature, concentration(s) and volume(s) of all such discharges.

(5) Provide the director with all the same self-monitoring reports and notices which the industrial user is required to submit to the POTW or to any other authority in accordance with the provisions of 40 CFR Part 403.12. In particular, the industrial user shall meet the requirements of:

- a. Notices which must be filed with the director within one hundred eighty (180) days of the adoption of any categorical standard, including a compliance schedule;
- b. Notices which must be filed with the director within ninety (90) days of any final compliance date;
- c. Reports which must be filed with the director by the industrial user in June and December of each year;
- d. The immediate notice which must be given to the director after a slug load release of any industrial discharge;
- e. The sampling and analysis of pollutants discharged to the POTW;
- f. The maintenance of records by the industrial user.

(Code 1967, § 28-27)

**Sec. 27-81. Confidentiality of information.**

(a) Information and data on a user obtained from reports, questionnaires, permit application, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. To claim this trade secret protection, the user must specify at the time of submitting his reports or information that part he desires to protect.

(b) When requested by the person furnishing a report, the portions of a report which might dis-

close trade secrets or secret processes shall not be made available upon written request to governmental agencies for uses related to this article, the National Pollutant Discharge Elimination System (NPDES) permit, state disposal system permit and/or the pretreatment program; provided, however that such portion of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Waste water constituents and characteristics will not be recognized as confidential information.

(Code 1967, § 28-28)

#### **Sec. 27-82. Stricter provisions to prevail.**

Upon the effective date of any federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this article, shall immediately supersede these limitations.

(Code 1967, § 28-29)

#### **Sec. 27-83. Accidental discharges.**

(a) Each permittee shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this article.

(b) For countermeasures to be taken by the city to minimize damage to the sanitary sewer system and/or degradation of the receiving waters, a permittee shall notify the city immediately upon accidentally discharging wastes in violation of this article. This notification shall be followed within fifteen (15) days of the date of occurrence by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent future occurrence. Such notification will not relieve the permittee of liability for any expense, loss or damage to the sanitary sewer system, or for any fines imposed on the city on account thereof and/or for any enforcement action pursuant to this occurrence.

(c) In order that officers, agents and employees of permittees will be informed of the city's requirements, permittees shall make available to their employees copies of this article together with such other waste water information and notices which may be furnished by the city from time to time for the purpose of improving and making

more effective water pollution control. A notice shall be furnished and permanently posted on the permittee's bulletin board advising officers, agents and employees whom to call in case of an accidental discharge in excess of the limits authorized by the permit.

(d) Any possible connection or entry point for a hazardous and/or prohibited substance to the permittee's plumbing or drainage system shall be appropriately labeled to warn operating personnel against discharge of such substance in violation of this article.

(Code 1967, § 28-31)

#### **Sec. 27-84. Pretreatment requirements.**

(a) Pretreatment will be required in the following instances, and the public works director shall submit to the applicant the pretreatment levels which must be obtained:

- (1) If the director determines upon the initial application for a permit under this article that the proposed industrial waste must be pretreated by the applicant to lower the level of any of the components of the industrial waste before discharge to the city sewer.
- (2) If the city must improve the discharge from its waste water treatment plant to the receiving stream as a result of directives from federal or state regulatory agencies, orders or judgments from courts of competent jurisdiction, or changes in the discharge permit for the city's waste water treatment plant or plants, then and in that event the director will require that a permit holder install or enlarge pretreatment facilities to lower the affected component of the permittee's industrial waste discharge.
- (3) If any waste water prohibited under the conditions of this article is produced, such producer shall pretreat the waste water to the extent required to comply with the standards established in this article before discharging to any city sewer.
- (4) If the director determines that a permittee, because of plant expansion and/or changes in plant operations, has increased either the strength or volume of the discharge,

the director may require additional pretreatment to lower the level of the volume and/or any components of the industrial waste before discharge, unless such permittee has previously made industrial cost recovery payments for reservation of additional industrial capacity.

Pretreatment facilities required under the foregoing subsections of this section shall be provided, operated and maintained at the permit holder's expense.

(b) Any sludge or other material removed from the industrial waste by the pretreatment facility shall be disposed of in accordance with applicable federal, state and local laws.

(c) Dilution of waste discharged to the city sanitary sewer system is prohibited, whether accomplished by the combination of two (2) or more waste streams by a producer or producers or by the addition of other liquids solely for the purpose of diluting the quality of the waste discharge. One (1) or more producers may, upon application and approval by the public works director, combine industrial waste streams prior to discharge to the city sanitary sewer system if, and only if, such combination of industrial waste streams produces a combined discharge of better quality than the two (2) industrial waste streams would have been if discharged separately. However, if one (1) or more producers are allowed to mix industrial waste streams to produce a better discharge, the user charge established in this article based on the quality of its industrial waste streams prior to combination shall be paid to the city.

(d) Detailed plans showing any pretreatment facilities shall be submitted to the director for approval before construction of the facilities. The review of such plans will in no way relieve such permit holders from the responsibility of modifying and operating the facilities to produce an effluent complying with the established conditions of the permit. Any subsequent, significant changes in the approved facilities or method of operation shall be reported to the director and the director of the department of public health, and must be reviewed and approved by the director as complying with the provisions established in this article.

(e) After the construction plans for such pretreatment plants have been approved and a permit issued, the plans shall be placed on file in permanent, reproducible form with the director, without cost to the city, before a building permit will be issued.

(f) The city will enforce federal pretreatment regulations as set forth in 40 Code of Federal Regulations Part 403.

(Code 1967, § 28-33)

#### **Sec. 27-85. Penalties and remedies.**

(a) There shall be a penalty imposed if any user shall:

- (1) Exceed quantity discharge limitations as set forth in this article or as made part of an industrial waste water permit;
- (2) Permit the discharge of excessive concentrations of substances limited by this article or by an industrial waste water permit issued pursuant to this article;
- (3) Permit the discharge of any substance prohibited by this article or by a permit issued pursuant to this article;
- (4) Fail to pay any applicable sewer charge established by this article;
- (5) Knowingly misrepresent or omit any pertinent information from application permits or reports required by this article.

(b) Any violation of this article shall constitute a misdemeanor, and shall be punishable as set forth in section 1-7, of this Code.

(c) Fines imposed for violation of this article shall approximate the economic benefit derived by the offender, or the maximum fine permitted by law, whichever is greater.

(d) In addition to the penalties set forth in subsections (b) and (c) above, the public works director may discontinue water, sewer and/or refuse services to a noncomplying user who has violated any of the provisions of this article. Discontinuance of water, sewer and/or refuse services will not occur until the noncomplying user has been notified that he is not in compliance with the

terms and provisions of this article and has been given a reasonable time in which to come into compliance. The public works director may assess the reasonable cost incurred by the city in disconnecting and/or reconnecting such water, sewer and/or refuse service.  
(Code 1967, § 28-33.2)

Secs. 27-86—27-100. Reserved.

**ARTICLE VI. SEWER DEVELOPMENT FEES**

**Sec. 27-101. Purpose.**

Due to the increasing costs associated with the expansion of the city's sewer system, it is now necessary to implement a method of direct cost recovery from persons, firms or corporations responsible for new physical development within the city to provide a source of funding for the city's continued capital investment in the system.  
(Code 1967, § 28-34)

**Sec. 27-102. 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:

*Commercial/industrial user* means any user or establishment not defined as a dwelling unit.

*Detached dwelling unit* means any dwelling unit located on its own lot and not sharing a common wall with or not having adjoining walls with another dwelling unit.

*Developer* means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for new physical development within the city and creating a demand for city sewer service.

*Development* means any improvement which creates a demand for city sewer service.

*Dwelling unit* means a room or group of rooms within a building containing cooking accommodations. An apartment, mobile home and recreational vehicle shall be considered a dwelling unit.

*Townhouse* means any dwelling unit located on its own lot and sharing a common wall with or having adjoining walls with another dwelling unit.  
(Code 1967, § 28-35)

**Sec. 27-103. Fee schedule; collection; exemptions; disposition.**

(a) The sewer development fee to be charged by the city is established in accordance with the following schedule:

*Sewer Development Fee*

*User Classification*

**Dwelling Unit:**

Detached dwelling unit per unit, including mobile manufactured homes .....	\$ 705.00
Townhouses .....	705.00
Condominiums, multifamily dwellings and recreation vehicles, per unit .....	705.00

**Commercial/Industrial User:**

*Water Meter Size (inches)*

3/8 .....	\$ 705.00
1/2 .....	1,090.00
1 .....	1,730.00
1 1/2 .....	3,385.00
2 .....	5,285.00
3 .....	10,435.00
4 .....	17,305.00
6 .....	34,070.00

(b) The fee imposed by this article shall be collected by the building safety director, who shall be charged with the administration of this article. The fee for each dwelling unit or, in the case of commercial and industrial construction, the fee for connection shall be collected by the building safety director prior to the issuance of a building permit, and the fee with respect to any mobile home or recreation vehicle space shall be collected prior to the issuance of a construction permit for the development of a mobile home or recreation vehicle park. The building safety director shall not issue a building permit or construction permit until the fees required by this article have been paid.

(c) Any separate water meter installed for irrigation purposes only will not be included in the calculation of the sewer development fee. In addition, no sewer development fee will be collected for the installation of fire lines provided such line is not served by a water meter.

(d) All revenue received from the sewer development fee shall be deposited in a utility revenue account to be used for capital expansion and enlargement of the city sewer system and/or for the retirement of debt service, both principal and interest, related to sewer system development.

(Code 1967, § 28-36; Ord. No. 936.6A, 3-15-84; Ord. No. 936.7, 6-6-85; Ord. No. 86.63, 10-9-86; Ord. No. 88.80, 1-26-89)

**Sec. 27-104. Effective date.**

This article shall become effective and have application to all work for which building permits are applied for on or after April 28, 1989.

(Code 1967, § 28-37; Ord. No. 936.6A, 3-15-84; Ord. No. 936.7, 6-6-85; Ord. No. 86.63, 10-9-86; Ord. No. 88.80, 1-26-89)

## Chapter 28

### SOLID WASTE\*

- Art. I. In General, §§ 28-1-28-10
- Art. II. Administration and Enforcement, §§ 28-11-28-20
- Art. III. Authorized Collectors, §§ 28-21-28-30
- Art. IV. Containers, §§ 28-31-28-40
- Art. V. Commercial Collection, §§ 28-41-28-50
- Art. VI. Solid Waste Disposal, §§ 28-51-28-60
- Art. VII. Fees, §§ 28-61-28-70
- Art. VIII. Recycling Containers, §§ 28-71-28-76

#### ARTICLE I. IN GENERAL

##### Sec. 28-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Alley* means any public space or thoroughfare twenty (20) feet or less in width which has been dedicated or granted for public use.

*City manager* means the city manager or his designated representative.

*Commercial establishment* means any public or private place, building or enterprise utilized for the conduct of business or industrial enterprise, but not to include any residential or multifamily dwelling units.

*Contractor* means a person, persons or corporate entity engaged in the business of collecting, hauling or transporting commercial solid waste or special material in the city for disposal or any other purpose.

*Commercial solid waste* means all garbage and trash generated by commercial establishments except special materials and hazardous wastes.

*Fence* means any barrier erected, installed or planted to mark the boundaries of any lot or parcel of land and made of posts and wire, boards or similar materials or formed by a dense row of shrubs or trees.

*Freestanding wall* means any masonry barrier erected or constructed to mark the boundaries of any lot or parcel of land and made of masonry, concrete or similar materials and standing alone on its own foundation free of supporting frame or attachment.

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

*Hazardous wastes* means all wastes that are hazardous by reason of their pathological, explosive, flammable, radiological or toxic nature, including, but not limited to, all wastes defined as hazardous by Arizona Revised Statutes, Section 36-2821.

*Refuse* means garbage, trash, commercial solid waste and special material.

*Solid waste* means any garbage, trash, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous wastes.

*Special materials* means items such as furniture, major appliances and mattresses which are too large to be deposited in residential containers

\*Cross references—Placement of handbills in public places, § 3-18; location restrictions for billboards with reference to streets, § 3-42; sewers and sewage disposal, Ch. 27.

State law reference—City to provide for solid waste disposal, A.R.S. § 36-3121.

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## Chapter 28

### SOLID WASTE\*

- Art. I. In General, §§ 28-1-28-10
- Art. II. Administration and Enforcement, §§ 28-11-28-20
- Art. III. Authorized Collectors, §§ 28-21-28-30
- Art. IV. Containers, §§ 28-31-28-40
- Art. V. Commercial Collection, §§ 28-41-28-50
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- Art. VII. Fees, §§ 28-61-28-70
- Art. VIII. Recycling Containers, §§ 28-71-28-76

#### ARTICLE I. IN GENERAL

##### Sec. 28-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Alley* means any public space or thoroughfare twenty (20) feet or less in width which has been dedicated or granted for public use.

*City manager* means the city manager or his designated representative.

*Commercial establishment* means any public or private place, building or enterprise utilized for the conduct of business or industrial enterprise, but not to include any residential or multifamily dwelling units.

*Contractor* means a person, persons or corporate entity engaged in the business of collecting, hauling or transporting commercial solid waste or special material in the city for disposal or any other purpose.

*Commercial solid waste* means all garbage and trash generated by commercial establishments except special materials and hazardous wastes.

*Fence* means any barrier erected, installed or planted to mark the boundaries of any lot or parcel of land and made of posts and wire, boards or similar materials or formed by a dense row of shrubs or trees.

*Freestanding wall* means any masonry barrier erected or constructed to mark the boundaries of any lot or parcel of land and made of masonry, concrete or similar materials and standing alone on its own foundation free of supporting frame or attachment.

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

*Hazardous wastes* means all wastes that are hazardous by reason of their pathological, explosive, flammable, radiological or toxic nature, including, but not limited to, all wastes defined as hazardous by Arizona Revised Statutes, Section 36-2821.

*Refuse* means garbage, trash, commercial solid waste and special material.

*Solid waste* means any garbage, trash, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous wastes.

*Special materials* means items such as furniture, major appliances and mattresses which are too large to be deposited in residential containers

\*Cross references—Placement of handbills in public places, § 3-18; location restrictions for billboards with reference to streets, § 3-42; sewers and sewage disposal, Ch. 27.

State law reference—City to provide for solid waste disposal, A.R.S. § 36-3121.  
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and which the public works director determines is acceptable for pickup pursuant to Section 28-52(d) of this chapter. Dirt, rocks, construction and/or demolition materials are not special materials.

*Trash* means combustibles such as paper, wood, yard trimmings or brush and noncombustibles including metal, glass, stones and dirt.  
(Ord. No. 86.47, § 2, 7-10-86)

**Secs. 28-2—28-10. Reserved.**

## ARTICLE II. ADMINISTRATION AND ENFORCEMENT

### Sec. 28-11. Administration and enforcement.

The director of public works or his authorized representative is designated as administrator and enforcing officer to all provisions of this chapter.  
(Ord. No. 86.47, § 2, 7-10-86)

### Sec. 28-12. Violations.

Any violation of this chapter shall constitute a misdemeanor, and shall be punishable as set forth in Section 1-7 of this Code.  
(Ord. No. 86.47, § 2, 7-10-86)

**Secs. 28-13—28-20. Reserved.**

## ARTICLE III. AUTHORIZED COLLECTORS

### Sec. 28-21. Collection to be by city or licensed collectors; requirements for issuance of license; terms of license; enforcement of license requirements.

Collection of commercial solid waste and special material may be by a contractor licensed by the city to perform such work. Such license will be issued by the city under the following conditions:

(a) The city must have satisfactory evidence that the contractor possesses the necessary equipment and qualifications to collect, transport and dispose of commercial solid waste and special material in a manner satisfactory to the city and in

conformity with the state or county department of health laws, rules and regulations.

(b) The contractor desiring a license to collect commercial solid waste and special material shall submit an application to the city manager together with a sixteen thousand five hundred dollar (\$16,500.00) license bond and an annual per-vehicle fee of one thousand dollars (\$1,000.00) each. An annual audit will be performed by the city to establish the contractor's gross receipts from the collection within the city. The resultant annual fee shall be two (2) per cent of the gross receipts should such percentage exceed the one thousand dollar (\$1,000.00) per-vehicle fee remitted at the time of application; otherwise, the one thousand dollar (\$1,000.00) fee will constitute the annual fee per vehicle.

The contractor's application shall include the name, business and residence addresses of all owners, partners, general managers and principal officer, as well as business references and such other information as deemed necessary.

Any license granted by the city manager shall be nontransferable and may be suspended or cancelled by him upon failure or refusal of a licensee to comply with the provisions of this chapter and after notice and hearing respecting the same. The license shall run for the fiscal year commencing July 1 and ending June 30. Application for renewal shall be made at least thirty (30) days prior to expiration of current license. Fees may be prorated monthly on licenses issued during the fiscal year.

(c) The contractor will be expected to furnish the city with any available equipment to assist the city in the collection of commercial solid waste during and for any period of time when the city might be unable to serve any or all of its commercial customers. The city will pay the contractor for such service based on the contractor's current standard rates for servicing commercial bulk containers.

(d) Any person who has a license for the collection and disposal of refuse revoked, has been refused a license or who is affected by any notice issued in connection with the enforcement of any

provision of this chapter may request and shall be granted a hearing on the matter before the city council, provided such person shall first file with the city manager a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day the notice was served. Upon receipt of such petition, the city council shall set a time and place for such hearing and shall give the petitioner special written notice thereof. Should the city council concur that there has been a violation of this chapter, they may take such action as is justified.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-22. Insurance and surety bond required of contractors.**

(a) Contractors will obtain, keep in force and maintain public liability and property damage insurance in the sum of one million dollars (\$1,000,000.00) for personal injury to any one person, one million dollars (\$1,000,000.00) for personal injuries sustained by all persons in any one accident and five hundred thousand dollars (\$500,000.00) with respect to property damage arising from any single occurrence, to indemnify the contractor for loss by virtue of any disability arising from his collection, hauling and disposal activities within the city. The city will be named as co-insured. Evidence of such insurance shall be furnished to the city at the time of license application.

(b) The contractor shall provide a cash bond in the amount of five hundred dollars (\$500.00) and in a form acceptable to the city manager, such bond to be conditioned upon the payment of any charges incurred by the city in correcting any failure by the contractor to perform in accordance with the requirements of his license.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-23. Vehicle requirements.**

All vehicles used for refuse collection within the city must be inspected and approved by the city and meet the following requirements:

- (a) All vehicles must be in good condition and repair. The bodies shall be of readily cleana-

ble construction, watertight and metal-lined to the full width and height of the body, with all seams welded.

- (b) Vehicles shall be maintained and operated in a clean and neat manner so as to prevent refuse from spilling, leaking and blowing. All vehicles shall have enclosed bodies.

- (c) The outside of each vehicle must be clearly identified by the name and telephone number of the contractor operating the vehicle.

- (d) Any open-top roll off container must have a cover which prevents refuse or contents from spilling or flowing onto the roadway.

(Ord. No. 86.47, § 2, 7-10-86)

**Secs. 28-24—28-30. Reserved.**

**ARTICLE IV. CONTAINERS**

**Sec. 28-31. Containers—Use required; provision by city; capacity; exception for certain trash.**

(a) No owner, tenant, lessee or occupant of any public or private establishment or residence shall permit to accumulate upon his premises any garbage except in tightly covered, portable containers of rust-resistant metal, rubber, plastic or other similar material meeting the approval of the director of public works.

(b) The city shall provide appropriate containers for all residential dwelling units and commercial customers serviced by the mechanized collection system. Where there is an alley in the rear of residential premises, the director of public works shall assign a large city-owned container (three hundred (300) gallons) to the appropriate number of dwelling units. Small city-owned containers (ninety (90) gallons) shall be assigned to residential properties which have no alley. Commercial establishments will, under agreement with the city, receive collection service including the appropriate three hundred (300) gallon or metal bulk container ranging in size from one to eight (8) cubic yards.

(c) Certain items need not be kept in the above type containers if such trash is handled as provided in Section 28-52.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-32. Same—When not provided by city; number required.**

(a) The owner, tenant, lessee or occupant of a residential establishment not serviced by the mechanized collection system shall provide his own standard refuse containers of sufficient number to maintain a clean and sanitary condition on his premises. Containers shall not be less than ten (10) gallons nor more than thirty (30) gallons capacity and shall be of standard, tapered, noncorrosive, nonabsorbent construction. All containers shall have a lid and be equipped with suitable handles for lifting. Plastic bags are a permissible substitute.

(b) The owner, tenant, lessee or occupant of any place of business, commercial or industrial premises not served by the city shall have sufficient containers to meet their needs.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-33. Same—To be kept sanitary and in repair; replacement.**

(a) Residential and commercial refuse containers which are provided by the city shall be kept in good repair by the city. Containers will be replaced when found to be no longer serviceable through disrepair. All residential customers must maintain their plastic refuse containers in a clean and sanitary condition.

(b) Noncity-owned containers shall be kept in good repair by the owner. Such containers found to be no longer serviceable through disrepair or maintained in an unsanitary condition shall be condemned for further use. Legal notice of such condemnation shall consist of a label or tag affixed to the unsatisfactory container. Receptacles not placed in a satisfactory condition within ten (10) days shall be removed and destroyed by the city. All customers shall maintain their alleys and the area surrounding the refuse containers free from refuse and other health hazards.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-34. Same—Placement for collection; removal after collection.**

(a) Where there is an alley in the rear of the premises that is accessible for mechanized collection service, containers shall be placed at the alley. City-owned containers must be placed in a manner such that the opening is toward the alley to facilitate the proper dumping of containers by the mechanized collection trucks. The three-hundred-gallon city-owned containers shall be located on one side of the alley as determined by the public works director.

(b) Where an alley does not exist or is inaccessible, the ninety-gallon city-owned refuse container shall be placed on the sidewalk or parkway at the curb in front of the premises. Containers must be placed in such a manner that the lids open toward the street in order to facilitate proper dumping of the container by the mechanized collection vehicles.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-35. Same—Tampering with, removing prohibited.**

(a) No person shall uncover or cause to be uncovered, tip over or cause to be tipped over or molest or cause to be molested in any manner any container or refuse legally placed for removal.

(b) Each ninety-gallon city-owned refuse container shall be assigned to the property and not to the occupant of the property. No person who occupies any property to which the ninety-gallon container has been assigned may remove the container from the assigned property for any reason.

(c) No person, unless authorized by the director of public works may move or relocate any three-hundred-gallon city-owned container from its assigned location.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-36. Containers may be supplied by contractors.**

(a) Standard refuse containers, roll off bodies and refuse compactors may be supplied by the contractor. All containers, roll off bodies and refuse

compactors shall be painted and maintained in a clean, neat and sanitary manner at all times and shall have the name of the contractor identified legibly thereon.

(b) It shall be the joint responsibility of both the contractor and the commercial establishment to keep and maintain at such place sufficient standard refuse containers to accommodate the refuse disposal needs of the commercial establishment, as directed by the director of public works.

(c) All commercial solid waste shall be placed in standard refuse containers or compactors which shall be placed in an inconspicuous place and shall be relocated if so directed by the director of public works in accordance with city requirements.

(Ord. No. 86.47, § 2, 7-10-86)

**Secs. 28-37—28-40. Reserved.**

## ARTICLE V. COMMERCIAL COLLECTION

### **Sec. 28-41. Hours of commercial collection; failure of contractor to collect refuse; notice of violation of chapter.**

(a) Hours of collection of commercial solid waste and special material shall be regulated by the director of public works. Solid waste and special material shall not be removed from commercial or industrial property adjacent to residential development between the hours of 6:00 p.m. and 6:00 a.m.

(b) Refuse shall not be allowed to collect on any property in unsanitary quantities. The contractor shall, within eight (8) working hours of a telephoned request by the city, service containers at specified locations. Should the contractor fail to respond to the above request and the city elects to empty the containers and otherwise collect the refuse, the contractor shall reimburse the city at double the rates established in this Code and amendments thereto for such service. When any provision of this chapter is violated except for removal of a defective container, the director of public works shall obtain the name and address of the alleged violator and shall issue to such

party a written notice to appear before a designated representative of the director of public works at a time and date certain not more than five (5) days after the issuance of the notice, then and there to answer the violation alleged. Should such party fail to appear at the time and place specified in the notice or should such party fail to take such corrective action as the director of public works' designee may order, such designee may cause to be filed by the city prosecutor a criminal complaint against such party alleging the violation of this chapter.

(Ord. No. 86.47, § 2, 7-10-86)

### **Sec. 28-42. Inspection of commercial establishments; notice of violations.**

The city will periodically inspect commercial establishments to ensure compliance with requirements relative to standard refuse containers and the sanitary containment of refuse. Notice of violation shall be given to the owner, occupant or operator of a commercial establishment by means of tagging a defective container with a red violation tag. If a violation is not remedied within ten (10) days of the tagging of a container or receipt of the aforesaid written notice, the director of public works may have the defective container removed and disposed of.

(Ord. No. 86.47, § 2, 7-10-86)

### **Sec. 28-43. Notice of intent to commence or terminate service to commercial establishments.**

The contractor shall provide the city with written notice of intent to service any new commercial establishment prior to commencing service, including the name and address of the commercial establishment, the ownership, number and size of standard refuse containers and the days of collection. The contractor shall provide the city with a written notice of intent to service any existing commercial establishment being serviced by the city at least thirty (30) days before commencing service, including the name and address of the commercial establishment, the ownership, number and size of standard refuse containers to be serviced and the days of collection. The contractor shall provide the city and the commercial

establishment with thirty (30) days' written notice before discontinuance of service, and such termination shall be on the first days of the month. (Ord. No. 86.47, § 2, 7-10-86)

**Secs. 28-44—28-50. Reserved.**

## ARTICLE VI. SOLID WASTE DISPOSAL

### Sec. 28-51. Prohibited disposal.

The following types of refuse shall not be placed in city-owned containers:

- (a) Hazardous wastes;
- (b) Septic tank or cesspool pumpings and similar liquid waste with the exception of semi-liquid waste from city sewer cleaning equipment.

(Ord. No. 86.47, § 2, 7-10-86)

### Sec. 28-52. Uncontained trash and special material.

(a) *Collection of uncontained trash in areas served by city.* In areas served by the mechanized collection system, all trash must be placed in the city-owned refuse containers. Cardboard boxes shall be crushed or flattened before being placed in the container. Dirt, rock, construction and/or demolition materials shall not be placed in city-owned containers and the city will not provide for special collection of these materials.

(b) *Collection of uncontained trash in areas not served by or partially served by city.* In areas where refuse cannot be entirely handled in city-owned containers or where city-owned containers are not provided, grass clippings, leaves, small tree cuttings and similar material shall be placed in disposal boxes, cartons or plastic bags. Such uncontained refuse shall be placed next to the property line parallel to the alley or street in as orderly a fashion as possible.

(c) *Special trash pickup.* Where there is no alley, uncontained trash shall be placed parallel to the property generating it but shall not be placed around or adjacent to any mechanized collection container in such a manner as to interfere with

its being emptied. The department of public works will provide a special collection, free of charge, to remove uncontained trash along the street. Where an alley is accessible, the uncontained trash shall be placed in the alley parallel and next to the property generating it for a regularly scheduled removal.

(d) *Special material.* Residents desiring a pickup of special material from a public way shall call the department of public works and, upon the performance of the service, shall be required to pay for said additional service at the rate of seventy-two dollars (\$72.00) per hour. Charges will be computed to the nearest quarter hour, with a minimum charge of seventy-two dollars (\$72.00). (Ord. No. 86.47, § 2, 7-10-86)

### Sec. 28-53. Disposal of refuse on public or private property.

No person shall place or cause to be placed any garbage, debris, trash, refuse, papers or other materials upon any public or private property with the city except as specifically permitted in this chapter or at sites designated by the city council. (Ord. No. 86.47, § 2, 7-10-86)

### Sec. 28-54. Burning garbage.

No person shall burn or attempt to burn garbage within the city limits. (Ord. No. 86.47, § 2, 7-10-86)

### Sec. 28-55. Building contractors to leave areas clean.

All owners, contractors and builders of structures shall, upon the completion of any such structure, remove at their sole cost and expense all refuse of every nature, description or kind which has resulted from the building of such structure, including all lumber scraps, shingles, plaster, brick, stone, concrete and other building material, and shall place the lot and all nearby premises utilized in such construction in a clean and sightly condition.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-56. Accumulating combustible rubbish; haystacks.**

(a) No person shall place upon or permit to remain upon any roof or in any court, yard, vacant lot, alleyway or open space any accumulation of wastepaper, waste hay, grass, straw, weeds, litter or combustible or inflammable waste or rubbish of any kind. All weeds, grass, vines and other growth which endanger property or are liable to be fired shall be cut down and removed by the owner or occupant of the property.

(b) Hay may be stored in the city where the hay is properly baled and properly stacked; provided, that storage of hay does not violate the provisions of this Code or any other ordinances of the city.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-57. Dumping refuse on streets or premises prohibited.**

No person shall deposit or cause to be deposited upon any street, alley or premises in the city any garbage, trash, swill or refuse of any kind. It shall be the duty of all refuse collection personnel, public or private, to immediately clean up any refuse spilled during the collection process.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-58. Dead animals.**

Dead dogs, cats and other animals weighing less than seventy-five (75) pounds upon any public way will be removed and disposed of upon call to the department of public works. Dead animals shall not be placed in refuse containers. Condemned animals or parts of animals from slaughterhouses or similar places regardless of size will not be collected by the city.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-59. When refuse becomes city property.**

Refuse deposited in city-owned containers shall become the property of the city, and removal of any refuse shall be unlawful unless authorized by the director of public works.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-60. Reserved.**

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**ARTICLE VII. FEES**

**Sec. 28-61. Collection and dump fees generally.**

(a) Wherever garbage and trash collection services are needed, the charges for such services shall be payable monthly and shall be as follows:

- (1) *Single-family residences and multifamily residences classed as townhouses using ninety-gallon or three-hundred-gallon containers:* Six dollars and ninety-five cents (\$6.95) per month for each dwelling unit. Upon request, a residence with curbside collection will be furnished two (2) ninety-gallon containers for a charge of eleven dollars and thirty cents (\$11.30) per month.
- (2) *Duplexes:* Ten dollars and forty cents (\$10.40) per month for each duplex.
- (3) *Multifamily developments without standard metal refuse containers:* Four dollars and forty cents (\$4.40) for each dwelling unit of a multifamily development (including motel units with kitchens or kitchenettes), whether occupied or not.
- (4) *All other premises with a standard refuse container (schedule of charges):* A monthly charge based upon the container size and number of weekly pickups, all as is more particularly set forth in the following schedule:

**ONE CONTAINER**

*Container Size (Cubic Yards)*

Pickups per week	ONE CONTAINER					
	<i>Container Size (Cubic Yards)</i>					
	2	3	4	5	6	8
1	\$24.00	\$25.00	\$28.00	\$29.00	\$31.00	\$35.00
2	48.00	52.00	55.00	58.00	61.00	68.00
3	71.00	76.00	83.00	88.00	92.00	104.00
4	94.00	102.00	109.00	116.00	122.00	139.00
5	119.00	127.00	137.00	145.00	155.00	173.00
6	142.00	154.00	163.00	275.00	186.00	208.00

**TWO CONTAINERS**

*Container Size (Cubic Yards)*

Pickups per week	TWO CONTAINERS					
	<i>Container Size (Cubic Yards)</i>					
	2	3	4	5	6	8
1	\$40.00	\$42.00	\$46.00	\$49.00	\$54.00	\$60.00
2	77.00	85.00	91.00	100.00	106.00	121.00

Pickups per week	2	3	4	5	6	8
3	116.00	127.00	137.00	149.00	161.00	184.00
4	155.00	170.00	185.00	200.00	215.00	245.00
5	192.00	212.00	230.00	250.00	266.00	305.00
6	232.00	253.00	276.00	299.00	320.00	366.00

**THREE CONTAINERS**

*Container Size (Cubic Yards)*

Pickups per week	2	3	4	5	6	8
1	\$54.00	\$59.00	\$66.00	\$71.00	\$76.00	\$88.00
2	107.00	119.00	130.00	140.00	151.00	174.00
3	161.00	178.00	197.00	212.00	229.00	262.00
4	215.00	236.00	259.00	282.00	304.00	348.00
5	268.00	296.00	324.00	352.00	379.00	436.00
6	322.00	355.00	389.00	422.00	456.00	523.00

**FOUR CONTAINERS**

*Container Size (Cubic Yards)*

Pickups per week	2	3	4	5	6	8
1	\$70.00	\$76.00	\$84.00	\$89.00	\$98.00	\$114.00
2	127.00	154.00	168.00	184.00	198.00	228.00
3	203.00	229.00	250.00	274.00	295.00	340.00
4	275.00	305.00	334.00	364.00	395.00	454.00
5	344.00	380.00	419.00	456.00	492.00	568.00
6	412.00	458.00	503.00	547.00	592.00	684.00

In those instances where more than four (4) containers are utilized, the appropriate aggregate rates from the schedule will apply.

In all instances where the business, commercial and industrial premises are not serviced by means of a standard refuse container, there will be monthly charge based upon sixty-two dollars (\$62.00) per hour for time spent by city crews on the premises. This charge shall be computed on the basis of an average time per pickup over a period of not less than one week, and the city shall not be required to undertake more than one time study in each six-month period. Additional time studies will be performed upon request of the property owner to the management services director and payment of a ten dollar (\$10.00) service charge.

- (5) *Combination of uses:* In the event garbage and trash is accumulated by one customer from a combination of the above uses, the

city manager or his authorized representative is authorized and directed to establish a monthly rate which will equitably reflect the schedule of charges established herein for each type of use.

- (6) *Specialized handling:* If any customer shall establish a specialized method of handling his garbage and trash pickups which shall result in a savings of time and expense to the city, the city manager is hereby authorized to make appropriate adjustments in the above charges.

(b) Single-family dwelling accounts shall not be eligible to petition the city to temporarily discontinue refuse service.

(c) In the event that any customer shall fail to pay for garbage and trash services as provided in this chapter, the city manager or authorized representative is authorized to discontinue water service or other city services to the property until such time as payment is made.

(d) Charges for garbage and trash service to newly constructed structures shall commence upon final inspection and approval of such structures by the city building inspector unless no service is required to the property.

(Ord. No. 86.47, § 2, 7-10-86)

**Sec. 28-62. Collection and fees for areas outside city.**

(a) Refuse services may be rendered to areas outside the city at the option of the city and subject to termination at any time.

(b) The fees for collection in such areas shall be at a rate of one and one-third (1 1/3) times the fee for similar service rendered within the city.

(Ord. No. 86.47, § 2, 7-10-86)

**Secs. 28-63—28-70. Reserved.**

**ARTICLE VIII. RECYCLING CONTAINERS**

**Sec. 28-71. Permits required.**

It shall be unlawful for any person, firm or corporation to place or keep a recycling container

within the City of Tempe without having first obtained a permit therefor in compliance with this article. As used in this article, "recycling containers" shall mean any container, whether operated for profit or not, where the public is asked to bring any materials to be donated or left to be recycled, reclaimed, processed or reused, including, but not limited to, newspapers, bottles, metal cans, and used clothing and furniture. (Ord. No. 89.27, 6-29-89)

#### **Sec. 28-72. Application.**

(a) Applications for recycling container permits shall be made to the public works department on a form provided by the public works department. The application shall contain the following information:

- (1) The name and address of the owner or operator and a telephone number where the owner or operator or an agent of the owner or operator can be reached.
- (2) The location, size and type of proposed recycling container.

(b) The application shall be accompanied by a written statement from the owner of the property where the container is to be placed, granting his permission for the placement of the container.

(c) If the application is for the placement of a container on a developed site as a condition precedent to obtaining a permit under this article, the property owner must obtain site plan approval from the City of Tempe Community Development Department with regard to the placement, color, screening, signage and any other condition of or pertaining to the container as set forth in Tempe Zoning Ordinance 808. (Ord. No. 89.27, 6-29-89)

#### **Sec. 28-73. Containers.**

(a) Each recycling container shall have a firmly closing lid and have a capacity of not less than three (3) cubic yards and not greater than six (6) cubic yards. The container shall be constructed of painted metal, rubber, plastic or alternate material with written approval of the public works director or his designee.

(b) Containers shall be clearly marked to identify the materials requested to be left for recycling, the name of the operator or owner of the recycling container, and a telephone number where the owner, operator or agent of the owner or operator may be reached at any time. The size of the sign or markings on any side of the container shall not exceed twenty-five (25) percent of the total area of the same side of the container.

(c) The exterior color of the container shall be a solid color approved by the public works director.

(d) No container shall identify a religious or nonprofit corporation without the written permission of such nonprofit or religious corporation; said permission must be submitted at the time application is made for a recycling container permit. (Ord. No. 89.27, 6-29-89)

#### **Sec. 28-74. Litter and trash prohibited.**

(a) No person shall place any litter, garbage or trash at any recycling container, and no person shall place any materials in any recycling container except the materials named on the outside of the container. No person shall leave any materials outside of a container.

(b) Each recycling container owner shall provide frequent enough pickups and clean up of the general area to prevent any materials from being left outside the containers. (Ord. No. 89.27, 6-29-89)

#### **Sec. 28-75. Enforcement and penalties.**

(a) The public works department is assigned the responsibility of enforcing this article and is granted the authority expressly granted and/or impliedly needed and necessary for enforcement.

(b) For a violation of this article, the public works department or their designee may revoke a permit which has been issued under this article upon ten (10) days' notice to the permit holder, who may request a hearing with the public works department prior to the expiration of the ten-day notice period.

(c) The public works director or his designee is also authorized to commence an action in Tempe

Municipal Court against the operator or owner, or agent of the owner or operator, of a recycling container which is in violation of this article.

(d) Any person violating any of the provisions of this article shall be liable for the imposition of penalties pursuant to Tempe City Code 1-7.

(e) Each day that a violation of this article is permitted to continue or occur by the defendant shall constitute a separate offense.

(Ord. No. 89.27, 6-29-89)

#### **Sec. 28-76. Impoundment.**

(a) In addition to the penalties provided for in Section 28-75, any recycling container which is in violation of this article may be removed at the operator's or owner's expense. Said container shall be impounded until the operator or owner reimburses the City of Tempe for the cost of removal and storage. In the event the operator or owner of an impounded recycling container has not reimbursed the city for the cost of removal and storage and has not retrieved the container within sixty (60) days of its removal, the city may dispose of said container.

(b) Prior to the removal and impoundment of a recycling container, the city shall conspicuously attach a notice to said container. The notice shall specify the Tempe City Code section which the container is in violation of and shall specify a date at least ten (10) days after the posting of the notice when the container will be removed and impounded if the container has not been brought into compliance.

(c) Violations of this article are in addition to any other violation enumerated within the Tempe ordinances and Code and in no way limits the penalties, actions or abatement procedures which may be taken by the city for any violation of this article which is also a violation of any other ordinance of the city or statute of the State of Arizona.  
(Ord. No. 89.27, 6-29-89)

Chapter 29

**STREETS AND SIDEWALKS\***

- Art. I. In General, §§ 29-1-29-15  
Art. II. Encroachments and Other Activities in Public Rights-Of-Way, §§ 29-16-29-35  
Art. III. Trees and Landscaping in Public Rights-Of-Way and Parks, §§ 29-36-29-60  
Art. IV. Sidewalk Construction, §§ 29-61-29-64

**ARTICLE I. IN GENERAL**

**Sec. 29-1. Use of public rights-of-way; permit.**

(a) No person shall erect, maintain or use any booth, stand, counter or vehicle upon any public street, sidewalk, alley or other public right-of-way, for any purpose whatsoever, without first obtaining a permit from the management services director or his authorized representative. Such permit shall only be issued upon specific recommendation of the public works director and the police chief, or their authorized representatives.

(b) Any person issued a permit under subsection (a) of this section shall also comply with all other applicable sections of the Code and all other applicable laws, ordinances and regulations issued under the authority of laws or ordinances.  
(Code 1967, §§ 23-40, 23-41)

**Sec. 29-2. Adjacent property owners to maintain sidewalks, gutters, alleys.**

(a) It shall be the duty of all persons to keep the sidewalks in front of the premises owned, occupied or controlled by them and the land that lies between the back of the curb and the right-of-way on the side of the street on which their premises are located in good repair and free and clear of all grass, weeds and rubbish.

(b) Such persons shall also:

- (1) Keep the branches of all trees growing along such sidewalks so trimmed and cut as not to interfere with the free use of any part of

the sidewalk or street by the public for travel;

- (2) Keep all irrigating and waste ditches appertaining to, running by or adjacent to such premises, together with the borders thereof, in good repair so as to prevent the escape of water therefrom and so as not to obstruct the easy and natural flow of the water therein;
- (3) Maintain each alley that is adjacent to their premises free of weeds and debris to the center line of such alley.

(Code 1967, § 30-2)

**Sec. 29-3. Dustproofing alleys.**

(a) All alleys used by vehicular traffic for access to abutting parking areas within the city shall be maintained in a dust-free condition by the using property owners. Upon the failure of using property owners to properly maintain an alley in a dust-free condition, the city manager may recommend to the city council that a particular alleyway or portion thereof be dustproofed at the expense of those abutting property owners using the alley for access to their parking areas. Upon approval by the city council, the city manager shall send or cause to be sent a written notice by certified mail to the owners of record adjacent to such alley or portion thereof to abate the condition. If such owners of record to whom written notice has been sent neglect, fail or refuse for more than sixty (60) days from the date of mailing such notice to dustproof such alley or

\*Cross references—Advertising and signs, Ch. 3; design review, Ch. 11; obstruction or interfering with use of public ways, § 22-4; naming of streets, § 25-36 et seq.

State law reference—General authority relative to streets, A.R.S. §§ 9-276, 9-601 et seq.

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portion thereof to the satisfaction of the public works director, the city council may direct the city manager to cause the alley to be dustproofed and to charge the abutting property owners using the alley for vehicular access to their property, such charge to be prorated on a frontage basis.

(b) Within thirty (30) days after the necessary dustproofing has been completed and the cost of same determined by the city, the public works director shall send written notice to the abutting property owners of their pro rata share of the cost of such dustproofing. If remittance has not been received by the city within thirty (30) days from and after mailing such notice to the abutting property owners of record, the public works director shall prepare duplicate copies of the notice and claim of lien and send one (1) copy to the owner of record and record the remaining copy with the office of the county recorder within ten (10) days after the expiration of such thirty-day remittance period. From and after the date of recording such notice and claim of lien with the county recorder, the city shall have a lien upon the buildings, grounds and premises for the amounts owed by the respective property owners. The city shall have the right to bring an action to enforce the lien in the superior court of the county at any time after the recording of the notice and claim of lien, but failure to enforce the lien shall not affect its validity. The recorded lien shall be prima facie evidence of all matters recited therein and in the regularity of all proceedings prior to the recording thereof. Prior charges for the purposes provided in this section shall not be a bar to a subsequent charge or charges for the aforementioned purposes and any number of liens on the same lot or tract of land may be enforced in the same action.

(Code 1967, §§ 30-20, 30-21)

#### Sec. 29-4. Working within right-of-way.

(a) For the purposes of this section, the following words or phrases shall have the meanings respectively ascribed to them by this subsection:

- (1) *Motor vehicle* means any vehicle required to be licensed or registered under the laws of the state.

- (2) *Protective devices* include, but are not limited to, orange vest (daytime), reflectorized orange vest (nighttime), traffic cones, barricades, flashing lights, flares and any other traffic-control device as required by the city.

- (3) *Right-of-way* means all of that property used as a traveled portion of public roadways for motor vehicles lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of law for street purposes.

- (4) *Worker* means any person whose duties cause his presence in the right-of-way.

(b) No person shall perform any work within the right-of-way until he is properly equipped with protective devices.

(c) Any persons violating any of the provisions of this section shall be guilty of a misdemeanor and punishable as set forth in section 1-7 of this Code.

(Code 1967, § 30-7.1)

Secs. 29-5—29-15. Reserved.

## ARTICLE II. ENCROACHMENTS AND OTHER ACTIVITIES IN PUBLIC RIGHTS-OF-WAY

### Sec. 29-16. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

*Public rights-of-way* means that property used as public thoroughfares and lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of the law for street, alley, walk or utility purposes.

*Sidewalk* means that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent lines, intended for use of pedestrians.

*Street* means the entire width between the boundary lines of every way, when any part thereof is open to the use of the public for purposes of vehicular travel.

*Vehicle* means a conveyance which is self-propelled.  
(Code 1967, § 30-3)

#### Sec. 29-17. Applicability.

This article shall be the rules and regulations governing encroachments upon and work within the public rights-of-way in the city.  
(Code 1967, § 30-4)

#### Sec. 29-18. Administration; enforcement.

(a) The city engineer or his authorized agent is designated as administrator and enforcing officer of this article. He shall formulate rules and regulations necessary for carrying this article into effect. Those rules and regulations shall be subject to city council approval, by resolution.

(b) Violators of this article shall be notified in writing. The notification shall state specifically the nature of the violation and a request that it be corrected. If a violation has not been corrected after the second notice, the third letter shall be sent by certified mail. If a violation is not corrected within thirty (30) days after the third notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this Code.

(c) In addition to any penalty imposed therefor by the court, violators of this article shall be required to reimburse the city for any expenses incurred as a result of the violations.

(d) The city engineer, with approval of the city manager, may revoke any license or permit issued under the provisions of this article. The decision to revoke a permit or license may be appealed directly to the city council. Any such appeal shall be in the form of a written petition to the city council and shall be filed with the city clerk not later than ten (10) days after the date the license or permit is revoked.  
(Code 1967, § 30-7)

#### Sec. 29-19. General regulations.

(a) No work of any nature shall be performed in a public right-of-way, except under a permit issued by the city engineer, unless otherwise allowed by this Code or any other ordinance of the city. The city engineer shall provide the forms for and set forth the rules, regulations and procedures governing the issuance of permits.

(b) The standard specifications and details of the city are made a part of this article and incorporated in this article by reference. All work performed in a public right-of-way shall be accomplished in accordance with these specifications and details.

(c) All permittees shall give the city engineer twenty-four (24) hours' notice before commencing any work within a public right-of-way.

(d) Permit fees shall be set by the city council by resolution. The city engineer with the concurrence of the city manager shall provide the city council with a list of the various classes of permits and the recommended charge for each class.

(e) A notice of completion shall be prepared by the city engineer and filed by the city clerk in the office of the county recorder on all work performed for the city by contract in a public right-of-way, the total contract price of which exceeds two thousand dollars (\$2,000.00).  
(Code 1967, § 30-6)

#### Sec. 29-20. Discharge of water from private premises.

No person shall flow, discharge or run from his premises, residence or place of business upon any street, alley or public right-of-way within the city any water or other liquid unless authorized, in writing, by the city engineer.  
(Code 1967, § 30-7(a))

#### Sec. 29-21. Creating obstructions.

No person shall, or cause any person in his employ to, obstruct or place any obstruction upon, across or along any street, alley or public right-of-way so as to hinder the free and proper use thereof. Temporary obstructions may be permitted, in writing, by the city engineer for construction pur-

poses and for the moving of buildings, when it can be shown that an undue hardship would result or when such an obstruction is necessary for the preservation of the public safety. No such obstruction shall be left in place for a period of time longer than permitted to accomplish its purpose.

(Code 1967, § 30-7(b))

**Sec. 29-22. Soliciting, selling in right-of-way.**

No portion of any public right-of-way shall be used for soliciting, merchandising, vending or selling of any nature, except where otherwise allowed by this Code or any other ordinance of the city.

(Code 1967, § 30-7(d))

**Sec. 29-23. Signs, other advertising structures in right-of-way.**

No lights, banners or advertising structures shall be placed within, upon or across a public right-of-way, except by permit granted upon application to the city engineer. Signs placed outside of the public right-of-way and near thereto shall not encroach upon the right-of-way, except as provided by the sign encroachment diagram incorporated by reference in this article, and on file with the city clerk, entitled "Right-of-Way Sign Encroachment." Such a permit shall be granted upon a showing that the public safety and welfare will not be endangered thereby.

(Code 1967, § 30-7(g))

**Secs. 29-24—29-35. Reserved.**

**ARTICLE III. TREES AND LANDSCAPING IN PUBLIC RIGHTS-OF-WAY AND PARKS**

**Sec. 29-36. Purpose.**

It is in the best interests of the city that rules and regulations be adopted for the planting and maintenance of trees and landscaping in the public rights-of-way and parks in the city.

(Code 1967, § 30-8)

**Sec. 29-37. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings re-

spectively ascribed to them by this section, unless the context clearly indicates a different meaning:

*Public park* means any area under the jurisdiction and administration of the city regularly used for recreation or landscaping and not otherwise classified.

*Public right-of-way* means all that property used as public thoroughfares, and lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of law for street, alley or walkway purposes. Areas used exclusively for utility purposes are specifically excluded.

(Code 1967, § 30-9)

**Sec. 29-38. Enforcement.**

The public works director shall be the enforcing authority over all plantings within public rights-of-way and over all plantings in public parks.

(Code 1967, § 30-10)

**Sec. 29-39. Specifications.**

All planting, landscaping and maintenance of planting and landscaping performed in public rights-of-way and public parks shall be accomplished in accordance with city standard specifications for planting and landscaping which shall be the subject of a resolution of the city council.

(Code 1967, § 30-11(A))

**Sec. 29-40. Supervision of planting, etc.; city to provide necessary forms, regulations.**

(a) The director of parks and recreation shall have general technical and supervisory control of all planting, setting out, location, placement, removal, trimming and care of all trees and shrubs in public parks and public rights-of-way.

(b) The public works director shall be responsible for providing all forms and rules and regulations necessary to carry this article into effect.

(Code 1967, § 30-11(B))

**Sec. 29-41. Permits.**

No person shall plant, move, remove or replace any tree or shrub in a public right-of-way except

by permission of the public works director. This shall not apply to grass and shrubs having a potential growth of less than two (2) feet in height, except that no such low-growing grass or shrubs shall be allowed to grow over or overhang any sidewalk, alley or walkway. Except as set forth in section 29-42, such permission may, within the discretion of the public works director, be orally given.

(Code 1967, § 30-11(C))

**Sec. 29-42. Continuing permits for licensed contractors.**

Licensed landscape contractors and utility companies upon written application to and approval by the public works director may be granted continuing permits to perform landscaping, planting, trimming of trees and landscaping maintenance in public rights-of-way without securing written permission for each separate job; however, this shall not relieve such contractors from the responsibility of orally notifying the public works director prior to performing the work, and any work performed by such licensed contractors shall comply with city standard specifications for planting and landscaping. Permission granted to a licensed contractor or utility company shall continue until revoked, and the public works director shall revoke any permit issued under this section for non-conformance with the provisions of this article.

(Code 1967, § 30-11(D))

**Sec. 29-43. Implementation of planting program.**

(a) Programs for planting or landscaping may be implemented by personal application to, and approval by, the public works director, or by the improvement district procedure as provided in this section.

(b) Persons interested in planting or landscaping on public rights-of-way shall make application to the public works director who shall review their proposal in accordance with requirements of this article. He shall make any necessary changes or recommendations that may be necessary in the proposal and may grant permission for such planting or landscaping. No planting or landscaping shall be done until permission has been granted

except as otherwise provided herein, and where required, a maintenance agreement shall be executed between the public works director and the permittee.

(c) Planting and landscaping may be accomplished by improvement district pursuant to the laws of the state.

(Code 1967, § 30-12)

**Sec. 29-44. Responsibility for maintenance.**

Unless there is a specific agreement between the property owner and the city relieving the property owner of responsibility, the property owner shall be responsible for the irrigation and maintenance of trees, grass and shrubs planted in public rights-of-way abutting the owner's property. Maintenance of city-authorized plantings in medians and parks shall be the responsibility of the parks and recreation department.

(Code 1967, § 30-13)

**Sec. 29-45. Designation of types, varieties.**

The authority to designate the kind and variety of shrubbery, palms, trees, grass or flowers to be planted shall be vested in the public works director with the concurrence of the director of parks and recreation. The owners of property fronting on streets and public rights-of-way may request of the public works director that the shrubbery, palms, trees, grass or flowers to be planted shall be of a certain kind or variety.

(Code 1967, § 30-14)

**Sec. 29-46. Prohibited species.**

It shall be unlawful to plant Eucalyptus, Elm, Willow, Cottonwood or Poplar trees in any public right-of-way.

(Code 1967, § 30-15)

**Sec. 29-47. Nuisance tree and shrubs.**

(a) Any tree or shrub which overhangs or is within the public right-of-way which in the opinion of the public works director endangers the life, health, safety or property of the public shall be declared a public nuisance and the director of parks and recreation shall remove or trim such tree or shrub.

(b) Nothing contained in this section shall be deemed to impose any liability upon the city, its officers or employees, or to relieve the owner of any private property from the duty to keep any tree or shrub upon his property under his control in such a condition as to prevent it from constituting a public nuisance.

(c) No specie of tree having a potential growth higher than twenty (20) feet shall be planted directly under any public utility overhead line. (Code 1967, § 30-16)

**Sec. 29-48. Violations; remedies.**

Any person violating the provisions of this article shall be notified by the public works director in writing by certified mail, addressee only with return receipt requested, mailed to the violator at his last-known residence address. If any person to whom written notice has been mailed neglects, fails or refuses for more than thirty (30) days after receiving such notice to correct a violation, the public works director shall have authority to take the necessary remedial action and charge the cost thereof to the owner of the property abutting the right-of-way. The public works director shall prepare a verified statement and account of all expenses incurred by the city, or occasioned by or incidental to correcting the violation and file such verified statement and account with the management services director. (Code 1967, § 30-17)

**Sec. 29-49. Creation of lien for unpaid costs of remedial action.**

Upon receipt of the verified statement and account as set forth in section 29-48, the management services director shall prepare duplicate copies of a notice of lien and record one (1) copy with the office of the county recorder, and within ten (10) days thereafter serve by certified mail the remaining copy of such notice of lien upon the owner of such property abutting the right-of-way if he can be found within the county. From and after the date of recording such notice of lien with the county recorder all expenses incurred in connection with or incidental to correcting the violation and as fixed and determined by such verified statement and account will serve as a lien upon

such property and shall be charged and assessed upon and against such property and shall be collected in the same manner as city improvement district assessments. (Code 1967, § 30-18)

**Secs. 29-50—29-60. Reserved.**

**ARTICLE IV. SIDEWALK CONSTRUCTION**

**Sec. 29-61. Council resolution.**

(a) The city council may pass a resolution providing for the construction of sidewalks, in which the sidewalks to be constructed shall be briefly described. The resolution shall state the width and location of the sidewalk to be constructed. The resolution shall order and direct that the construction of the sidewalk shall be made by the owners of the abutting property and also that in the event of the failure of the abutting property owners to construct such sidewalks, the city shall do the work and the expense shall be charged to the abutting property owners.

(b) The resolution shall be published in a daily newspaper in five (5) successive issues and the superintendent of streets shall cause to be placed along the line of the proposed improvements a copy of the resolution. (Code 1967, § 30-22)

**Sec. 29-62. Notice to abutting property owners.**

In addition to the posting of the copy of the resolution mentioned in the preceding section, the superintendent of streets shall notify the owner of each lot or parcel abutting upon any sidewalks to be constructed of the passage of the resolution and notify them that they shall commence work within thirty (30) days from the date of the notice and that, upon failing to commence such work and complete the same within thirty (30) days, the city will proceed to construct the sidewalk and make the same a lien upon the abutting lot or parcel and have such lien extended as a tax against the property to be collected at the next period at which city taxes may become due and payable. (Code 1967, § 30-23)

**Sec. 29-63. Failure of owner to comply; construction by city; recovery of costs.**

(a) It shall be the duty of the owner of any lot or parcel abutting upon any proposed sidewalk to proceed to construct such sidewalk as provided by the terms of the resolution of the city council. Upon the failure of the owner to comply with the resolution and the notice provided in the preceding section, the city shall have the right to construct the sidewalks and assess the costs and expenses thereof to the abutting property owner.

(b) At the time of development of the property adjacent to and abutting such improvements, the city council shall fix, levy and assess the amount to be repaid upon such property and collect the amounts of such improvements as county taxes are collected. All statutes providing for the levy and collection of state and county taxes, including collection of delinquent taxes and sale of property for nonpayment of taxes are applicable to the assessments provided for in this article.

(Code 1967, § 30-24)

**Sec. 29-64. Contracts awarded by city.**

The city may contract for the construction of any sidewalk. Such contracts shall specify a reasonable time for the completion of the improvement. All work must be done under the direction of the city engineer subject to such rules and regulations relating to the supervision of the work as the city council may order and direct.

(Code 1967, § 30-25)

after the statement is rendered by either personally serving or mailing to such owner, occupant or lessee, at his last-known address by certified or registered mail, or the address to which the water charges billing was sent. This written notice shall indicate that the city may impress and secure a lien on the subject property unless the owner, occupant or lessee brings his delinquent bill current within thirty (30) days from service or receipt of the letter, and in addition, pays any penalties that may be due pursuant to section 33-57. The notice shall also contain a statement that the owner, occupant or lessee may appeal the delinquency to the city council by filing such appeal within the thirty-day time period after receipt of such notice.

- (2) If the owner, occupant or lessee of the property does not bring his delinquency current or successfully prosecute his appeal to the city council within the thirty (30) days from service or receipt of the registered or certified letter, the management services director may prepare duplicate copies of a notice and claim of lien and file one (1) copy with the county recorder and within a reasonable time thereafter service or mail by registered or certified mail the remaining copy with the owner, occupant or lessee of the property. The notice and claim of lien shall be made under oath by the management services director or his duly authorized representative and shall contain the following:
- a. A description of the property sufficient for its identification;
  - b. The name of the owner or reputed owner of the property if known, otherwise the name of the occupant or lessee to whom service was rendered;
  - c. The amount of the delinquent bill.

(b) From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure and order of sale. The city shall have the right to bring an action to enforce the lien in the county superior court at

any time after its recording, but failure to enforce the lien by such action shall not affect its validity. The recorded notice and claim of lien shall be prima facie evidence of the truth of all matter recited therein and of the regularity of all proceedings prior to the recording therein.

(c) A prior recording for the purposes provided in this section shall not be a bar to a subsequent recording of a lien for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.  
(Code 1967, § 35-19)

**Secs. 33-59—33-70. Reserved.**

### ARTICLE III. WATER FOR IRRIGATION

#### Sec. 33-71. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

*Association* means the Salt River Valley Water Users' Association, a corporation.

*Kent Decree* means the decision and decree dated March 1, 1910, entered by the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, in the case of Patrick T. Hurley, plaintiff, vs. Charles F. Abbott, et al., defendant, being Civil Cause No. 4564, and all supplemental decrees subsequent thereto.

*Lot or tract* means a single parcel of land in one (1) compact body in one (1) owner or under one (1) possession or control.

*Turnout* means the place at and the gate or structure by which water may be diverted from a ditch or conduit and delivered into the control of the owner or occupant of a lot or tract. The turnout may be either upon or immediately contiguous to the lot or tract or at the intake of the private ditch or conduit under the control or subject to the use of the owner or occupant of the lot or tract.

after the statement is rendered by either personally serving or mailing to such owner, occupant or lessee, at his last-known address by certified or registered mail, or the address to which the water charges billing was sent. This written notice shall indicate that the city may impress and secure a lien on the subject property unless the owner, occupant or lessee brings his delinquent bill current within thirty (30) days from service or receipt of the letter, and in addition, pays any penalties that may be due pursuant to section 33-57. The notice shall also contain a statement that the owner, occupant or lessee may appeal the delinquency to the city council by filing such appeal within the thirty-day time period after receipt of such notice.

- (2) If the owner, occupant or lessee of the property does not bring his delinquency current or successfully prosecute his appeal to the city council within the thirty (30) days from service or receipt of the registered or certified letter, the management services director may prepare duplicate copies of a notice and claim of lien and file one (1) copy with the county recorder and within a reasonable time thereafter service or mail by registered or certified mail the remaining copy with the owner, occupant or lessee of the property. The notice and claim of lien shall be made under oath by the management services director or his duly authorized representative and shall contain the following:

- a. A description of the property sufficient for its identification;
- b. The name of the owner or reputed owner of the property if known, otherwise the name of the occupant of lessee to whom service was rendered;
- c. The amount of the delinquent bill.

(b) From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure and order of sale. The city shall have the right to bring an action to enforce the lien in the county superior court at

any time after its recording, but failure to enforce the lien by such action shall not affect its validity. The recorded notice and claim of lien shall be prima facie evidence of the truth of all matter recited therein and of the regularity of all proceedings prior to the recording therein.

(c) A prior recording for the purposes provided in this section shall not be a bar to a subsequent recording of a lien for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.  
(Code 1967, § 35-19)

**Secs. 33-59—33-70. Reserved.**

### ARTICLE III. WATER FOR IRRIGATION

#### Sec. 33-71. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

*Association* means the Salt River Valley Water Users' Association, a corporation.

*Kent Decree* means the decision and decree dated March 1, 1910, entered by the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, in the case of Patrick T. Hurley, plaintiff, vs. Charles F. Abbott, et al., defendant, being Civil Cause No. 4564, and all supplemental decrees subsequent thereto.

*Lot or tract* means a single parcel of land in one (1) compact body in one (1) owner or under one (1) possession or control.

*Turnout* means the place at and the gate or structure by which water may be diverted from a ditch or conduit and delivered into the control of the owner or occupant of a lot or tract. The turnout may be either upon or immediately contiguous to the lot or tract or at the intake of the private ditch or conduit under the control or subject to the use of the owner or occupant of the lot or tract.

*Water* means only that water which may be delivered from time to time by the association to the city for distribution to land to which water has been decreed by the Kent Decree, and which may from time to time be agreed upon between the association and the city council.  
(Code 1967, § 35-20)

**Sec. 33-72. Applicability.**

The only lands to which the provisions of the article shall be applicable are those within the city; and if any lot or tract shall at any time be served directly by the association, then during the time such service shall continue the provisions of this article shall not be applicable to such lot or tract.  
(Code 1967, § 35-21)

**Sec. 33-73. Application for water service.**

Before water will be distributed by the city to any lot or tract under this article, the owner or occupant thereof shall pay a five-dollar application fee and execute and file in the office of the management services director an application for water service on a form to be furnished by the management services director.  
(Code 1967, § 35-22; Ord. No. 624.11, § I, 1-10-85)

**Sec. 33-74. Charges.**

Charges for providing the irrigation service shall be established by council resolution.

**Sec. 33-75. Delinquent charges; discontinuance of service.**

Whenever any person has failed to pay the cost of irrigation water in accordance with the provisions of this article, and the same has become delinquent, a notice shall be mailed stating that fifteen (15) days from date of mailing the city shall seal such person's irrigation valve, and no irrigation water shall be delivered therefrom until the lot owner or person desiring the irrigation service reinstated has paid, in addition to all other charges, the sum of ten dollars (\$10.00) for the reinstating services. Such sum of ten dollars (\$10.00) shall be paid to the management services director prior to such time irrigation water service is reinstated.  
(Code 1967, § 35-24; Ord. No. 624.11, § I, 1-10-85)

**Sec. 33-76. Conditions for distribution.**

(a) Water for any lot or tract under this article will be delivered at the turnout selected by the city, and the city shall be in no way responsible for, and will exercise no control over, such water beyond the turnout. The acceptance of an application by the city shall in no way obligate it to provide the means of the conveyance of the water or the distribution thereof beyond the turnout.

(b) The failure of the owner or user of any ditch or conduit beyond a turnout to keep such ditch or conduit in a suitable condition for the carriage and distribution of water shall be sufficient cause for the city to refuse to distribute or deliver water at such turnout until such ditch or conduit shall be put in a condition acceptable to the city.  
(Code 1967, § 35-25)

**Sec. 33-77. Manner of use.**

Water distributed to any lot or tract under this article shall be used on such lot or tract and not elsewhere; and if any such water is used or permitted to escape outside such property, or if such water is wasted wilfully or by gross carelessness, the application under which such water is being distributed will be cancelled by the city and all rights of the applicant under such application shall thereupon cease and terminate.  
(Code 1967, § 35-26)

**Sec. 33-78. Breaking valve seal.**

No person shall disturb or break the irrigation valve seal after the same has been placed thereon by the city.  
(Code 1967, § 35-27)

**Secs. 33-79—33-90. Reserved.**

**ARTICLE IV. WATER DEVELOPMENT FEES**

**Sec. 33-91. Purpose.**

Due to the increasing costs associated with the expansion of the city's water system, it is now necessary to implement a method of direct cost recovery from persons, firms or corporations responsible for new physical development within

the city to provide a source of funding for the city's continued capital investment in the system. (Code 1967, § 35-28)

**Sec. 33-92. 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:

*Commercial/industrial user* means any user or establishment not defined as a dwelling unit.

*Detached dwelling unit* means any dwelling unit located on its own lot and not sharing a common wall with or not having adjoining walls with another dwelling unit.

*Developer* means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for new physical development with the city and creating a demand for city water service.

*Development* means any improvement which creates a demand for city water service.

*Dwelling unit* means a room or group of rooms within a building containing cooking accommodations. An apartment, mobile home and recreational vehicle shall be considered a dwelling unit.

*Townhouse* means any dwelling unit located on its own lot and sharing a common wall with or having adjoining walls with another dwelling unit. (Code 1967, § 35-29)

**Sec. 33-93. Schedule; exemptions; disposition.**

(a) The water development fee to be charged by the city is established in accordance with the following schedule:

<i>Water Development Fee</i>	
<i>User Classification</i>	
<b>Dwelling Units:</b>	
Detached dwelling unit per unit, including mobile and manufactured homes .....	\$ 680.00
Townhouses .....	680.00
Condominiums, multifamily dwellings and recreation vehicles, per unit .....	680.00

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**Commercial/Industrial user**

*Water Meter Size (inches)*

5/8 .....	\$ 680.00
3/4 .....	1,020.00
1 .....	1,630.00
1 1/2 .....	3,210.00
2 .....	4,970.00
3 .....	9,840.00
4 .....	16,310.00
6 .....	32,080.00

(b) The fee imposed by this article shall be collected by building safety director who shall be charged with the administration of this article. The fee for each dwelling unit or, in the case of commercial and industrial construction, the fee for each connection shall be collected by the building safety director prior to the issuance of a building permit, and the fee with respect to any mobile home or recreation vehicle space shall be collected prior to the issuance of a construction permit for the development of a mobile home or recreation vehicle park. The building safety director shall not issue a building permit or construction permit until the fees required by this article have been paid.

(c) No water development fee will be collected for the installation of fire lines, providing such line is not served by an individual water meter.

(d) All revenue received from the water development fee shall be deposited in a utility revenue account to be used for capital expansion and enlargement of the city water system and/or for the retirement of debt service, both principal and interest, related to water system development. (Code 1967, § 35-30; Ord. No. 937.5, 3-15-84; Ord. No. 937.6, 6-6-85; Ord. No. 86-64, 10-9-86; Ord. No. 88.81, 1-26-89)

**Sec. 33-94. Effective date.**

This article shall become effective and have application to all work for which building permits are applied for on and after April 28, 1989. (Code 1967, § 35-31; Ord. No. 937.5, 3-15-84; Ord. No. 937.6, 6-6-85; Ord. No. 86-64, 10-9-86; Ord. No. 88.81, 1-26-89)

Secs. 33-95—33-99. Reserved.

## ARTICLE V. CROSS-CONNECTION CONTROL

### Sec. 33-100. Purpose.

The purpose of this article is to protect the public water supply of the City of Tempe from the possibility of contamination or pollution by isolating within the user's system such contaminants or pollutants which could backflow into the public water supply; and to provide for the monitoring and enforcement of a continuing program of backflow prevention, which will prevent the contamination or pollution of Tempe's potable water supply.

(Ord. No. 87.57, § 33-100, 1-28-88)

### Sec. 33-101. Responsibility.

(a) *The department.* The public works department (hereinafter called the "department") of the City of Tempe is invested with the authority and responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provisions of this article and to prevent water from unapproved sources to enter the potable water system. No water service connection to premises of a type specified in this article shall be installed or maintained unless the public water supply is protected as required by this article.

(b) *The user.* The user shall not allow any pollutants and contaminants to enter the public potable water system from the point of delivery from the public potable water system. The user shall at his own expense install, operate, test and maintain approved backflow preventive assemblies as directed by the department.

(Ord. No. 87.57, § 33-101, 1-28-88)

### Sec. 33-102. Definitions.

The following words and terms, when used in this article, shall have the following definitions, unless the context clearly indicates otherwise:

*Approved.* Accepted by the department as meeting an applicable specification stated or cited in this article, and as suitable for the proposed use.

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*Auxiliary water supply.* Any water supply on or available to the premises other than the public potable water supply, including, but not limited to, water from another purveyor's public potable water supply, treated effluent, wastewaters or industrial fluids.

*Backflow.* The reversal of the normal flow of water caused by either backpressure or backsiphonage.

*Backflow preventer.* An assembly or means designed to prevent the reversal of the normal flow of water caused by either backpressure or backsiphonage.

- (a) *Air gap.* The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of said vessel. An approved air-gap shall be at least double the diameter of the supply pipe, measured vertically, above the overflow rim of the vessel, and in no case less than one (1) inch.
- (b) *Reduced pressure principle assembly.* An assembly of two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent differential pressure relief valve located between the check valves and, at the same time, below the first check valve. The unit shall include properly located test cocks and tightly closing shutoff valves at each end of the assembly. The entire device shall meet the design and performance specifications as determined by a recognized laboratory and approved by the department for backflow prevention assemblies. To be approved, these devices must be readily accessible for in-line testing and maintenance.
- (c) *Double check valve assembly.* An assembly of two (2) independently operating approved check valves with tightly closing shutoff valves on each end of the check valves, plus properly located test cocks for the testing of each check valve. The entire assembly shall meet the design and performance specifications as determined by a recognized laboratory and approved by the department

for backflow prevention assemblies. To be approved these devices must be readily accessible for in-line testing and maintenance.

- (d) *Pressure vacuum breaker assembly.* An assembly containing an independently operating loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly will be equipped with properly located test cocks and tightly closing shutoff valves located at each end of the assembly.

*Backpressure.* The flow of water or other liquids, mixtures or substances under pressure into the distribution pipes of a potable water supply system from any source or sources other than the intended source.

*Backsiphonage.* The flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply from any source other than its intended source caused by the reduction of pressure in the potable water supply system.

*Contamination.* An impairment of the quality of the potable water by sewage, industrial fluids or waste liquids, compounds or other materials to a degree which creates an actual or potential hazard to the public health through poisoning or through the spread of disease.

*Cross-connection.* Any physical connection or arrangement of piping or fixtures between two (2) otherwise separate piping systems, one (1) of which contains potable water and the other nonpotable water or industrial fluids through which, or because of which, backflow may occur into the potable water system. This would include any temporary connections, such as swing connections, removable sections, four-way plug valves, spools, dummy section of pipe, swivel or change-over devices or sliding multiport tube.

*Pollution.* The presence of any foreign substance (organic, inorganic or biological) in the water which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does ad-

versely and unreasonably affect such waters for domestic use.

*Tester certified.* The term "certified tester" shall mean a person who has proven his/her competency to the satisfaction of the department. Each person certified to make competent tests or to repair, overhaul and make reports on backflow prevention assemblies shall be conversant with the applicable laws, rules and regulations and have had experience in plumbing or pipe fitting or have other qualifications which are equivalent in the opinion of the department.

*Water, nonpotable.* Water which is not safe for human consumption.

*Water, potable.* Any water which, according to recognized standards recognized by the City of Tempe, is safe for human consumption.

*Water, service connection.* The terminal end of the service connection from the public potable water system at its point of delivery to the user's water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. Unprotected takeoffs from the service line will not be permitted upstream of any meter or any backflow prevention device located at the point of delivery to the user's water system. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the public potable water system.  
(Ord. No. 87.57, § 33-200, 1-28-88)

### Sec. 33-103. Approval.

(a) Each backflow preventive assembly required hereunder shall be approved by the department prior to installation, and shall be installed by and at the expense of the user.

(b) The department may approve backflow assemblies when such devices have received approval from the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California, American Water Works Association (A.W.W.A.), and the manufacturer has a local parts and service center.

(c) Assemblies shall be specified and located on the construction plans for all new buildings, additions with new services, and changes of use of existing buildings where required by Section 33-105. Approval shall be obtained prior to issuance of the building permit. This section does not apply to building permits applied for prior to the effective date of this article except as provided in Section 33-110.

(Ord. No. 87.57, § 33-300, 1-28-88)

**Sec. 33-104. Installation of devices.**

(a) Assemblies shall be installed at the service connection or near the property line but in all cases before the first branch line leading off of the service line, and in an accessible location approved by the department.

(b) Backflow preventive assemblies shall have at least the same cross-sectional area as the water service and or meter. In those instances where a continuous water supply is necessary, two (2) sets of backflow preventive assemblies shall be installed in parallel, if the water supply cannot be temporarily interrupted for the testing of assemblies.

(c) No bypass shall be installed around backflow preventive assemblies.

(d) Double check valve assemblies may be installed below ground in a vault if approved, in writing, on a case-by-case basis by the department. Double check valve assemblies installed in vaults shall have sufficient clearance provided to permit testing in place or removal for maintenance, as prescribed in the standard details. Copies are available upon request from department.

(e) A reduced pressure principle backflow preventive assembly shall be installed aboveground. Assemblies installed shall be accessible for testing as not to endanger the tester. Under no conditions, except as provided for herein, will backflow prevention assemblies be installed less than twelve (12) inches or more than twenty-four (24) inches above grade level.

(f) All pressure-type backflow preventive assemblies which are designed for periodic field testing shall be equipped with gate valves on both the upstream and the downstream side of the assembly. In addition, test cocks shall be provided and

located so that test equipment may be connected to the assembly at such points that the pressure in each pressure zone may be detected and, in addition, a test cock shall be located upstream of the upstream gate valve as close as possible to the upstream gate valve.

(Ord. No. 87.57, § 33-400, 1-28-88)

**Sec. 33-105. Premises or systems requiring approved backflow preventive devices.**

(a) An approved backflow preventive assembly of the type specified in this section shall be the minimum installation of each service connection (whether from a fire hydrant, temporary, regular or other water service connection) to the following type of premises or systems:

<i>Premises Requiring Approved Backflow Preventive Devices</i>	<u>Type of Assembly Required</u>			
	<i>Double Check</i>	<i>Reduced Pressure</i>	<i>Air Gap</i>	<i>Pressure Vacuum Breaker</i>
Air craft and missile plants		X		
Animal clinics, animal grooming shops		X		
Automotive repair with steam and/or acid cleaning equipment or solvent facilities		X		
Auxiliary water systems (interconnected)		X		
Auxiliary water systems (noninterconnected)	X			
Beverage bottling plants	X			
Breweries	X			
Buildings greater than 3 stories or 34 feet in height	X			
Buildings with house pumps or potable water storage	X			
Buildings with sewer ejectors (inadequate on-site protection)		X		
Buildings with sewer ejectors (adequate on-site protection)	X			
Canneries, packinghouses and reduction plants		X		
Car wash facilities		X		
Centralized heating and air conditioning plants		X		
Chemical plants		X		
Chemically treated potable or nonpotable water systems		X		
Civil works (government-owned or operated facilities not open for inspection by the department)		X		
Commercial laundries		X		
Dairies and cold storage plants	X			
Dye works		X		
Film processing labs		X		
Food processing	X			
High school and colleges	X			
Holding tank disposal stations		X		
Hospitals and mortuaries		X		
Medical and dental buildings	X			
Sanitariums, rest and convalescent homes	X			
Irrigation systems (premises having nonpotable piping 1 inch and larger)	X			X

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<i>Premises Requiring Approved Backflow Preventive Devices</i>	<u>Type of Assembly Required</u>			
	<i>Double Check</i>	<i>Reduced Pressure</i>	<i>Air Gap</i>	<i>Pressure Vacuum Breaker</i>
Irrigation systems (premises having separate systems)		X		
Labs using contaminating materials		X		
Manufacturing, processing and fabricating plants using contaminating materials		X		
Mobile home parks	X			
Motion picture studios		X		
Oil and gas production facilities		X		
Plating plants		X		
Power plants		X		
Radioactive materials processing		X		
Restricted, classified or other closed facilities		X		
Rubber plants		X		
Sand and gravel plants		X		
Sewage and storm drainage facilities		X		
Shopping centers	X			
Any premises where a cross-connection is maintained		X		
Water trucks, hydraulic sewer cleaning equipment		X	X	
Any premises where water supplied by the city is subject to deterioration in sanitary quality and its entry into the public water system		X		

(b) Fire protection systems will be required to have the following type of protection:

<i>Premises Requiring Approved Backflow Preventive Devices</i>	<u>Type of Assembly Required</u>			
	<i>Double Check</i>	<i>Reduced Pressure</i>	<i>Air Gap</i>	<i>Pressure Vacuum Breaker</i>
Direct connection from public water system (noncontaminating)	X			
Direct connection from public water system (contaminating)		X		
With pump and/or storage tank		X		
With auxiliary supply (Ord. No. 87.57, § 33-500, 1-28-88)		X		

**Sec. 33-106. Approved backflow preventive devices.**

(a) As designated in Section 33-103(b) the standard installation at each service connection to premises or each system requiring an approved backflow preventive assembly shall be a model and size approved by the department.

(b) The term "approved backflow preventive assembly" means an assembly approved by the department and may mean an assembly that has been manufactured in full conformance with the standards established by the American Water Works Association—AWWA C506-78 most recent revised publication "Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Assemblies," and have met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research (FCCCHR) of the University of Southern California established by specifications of backflow prevention assemblies, Section 10 of the most current issue of the "Manual of Cross-Connection Control," which will be available for inspection.

(c) Backflow preventive assemblies which may be subject to backpressure or backsiphonage that have been fully tested and have been granted a certificate of approval by FCCCHR may be listed on the current list of "Approved Backflow Prevention Assemblies," which will be made available upon written request to the department. (Ord. No. 87.57, § 33-600, 1-28-88)

**Sec. 33-107. Maintenance, testing and records.**

(a) The user shall maintain accurate records of tests and repairs made to backflow prevention devices and provide the department with copies of such records. The records shall be on forms approved by the department and shall include the list of materials or replacement parts used.

(b) Testing, maintenance and repairs to such devices shall be made at the customer's expense by a certified backflow prevention device tester that is approved by the department or any other agency designated by the department to prescribe test methods or to certify or approve persons to conduct such tests. It shall be the duty of the user

to see that these tests are made at the time of the initial installation and at least once a year, on the anniversary date of the initial inspection.

(c) The user shall notify the department fifteen (15) days in advance when the annual tests are to be done, so that an official representative of the department may witness the tests if so desired.

(d) Following the installation of any assembly, the user shall have it inspected by the department before the certificate of occupancy is issued.

(e) Following the repair, repiping, overhaul or relocation of an assembly, the user shall have it inspected by the department and tested by a certified tester.

(Ord. No. 87.57, § 33-700, 1-28-88)

**Sec. 33-108. Inspections.**

The user's system must be open for inspection at all reasonable times, and in all emergencies to authorized representatives of the department to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the department may deny or immediately discontinue service to the premises by providing a physical break in the service line until the user has corrected the condition in conformance with this article.

(Ord. No. 87.57, § 33-800, 1-28-88)

**Sec. 33-109. Discontinuance of service.**

Service of water to any premises may be discontinued by the department if a backflow preventive assembly required by this article is not installed, tested and maintained, if it has been found that a backflow preventive assembly has been removed or bypassed, or if a cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected. The department may also terminate a user's service upon twenty (20) days' notice in writing in nonemergency.

(Ord. No. 87.57, § 33-900, 1-28-88)

**Sec. 33-110. Existing devices and users.**

(a) If the department determines that a user's backflow preventive assembly does not meet cur-

rent standards, the user shall retrofit his assembly so that it will meet current standards.

(b) Whenever it is determined by the public works director or his authorized representative that a water service poses an actual or potential threat to the physical properties of the water system or potability of the public water system a device complying with this article shall be installed.  
(Ord. No. 87.57, § 33-1000, 1-28-88)

**Sec. 33-111. Penalty.**

Any violation of this article shall constitute a misdemeanor, and shall be punishable as set forth in Section 1-7, Tempe City Code.  
(Ord. No. 87.57, § 33-1100, 1-28-88)

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Ch. 4

**§ 9-461.05**

**Historical and Statutory Notes**

For effective date of Laws 1973, Ch. 178, see  
Historical and Statutory Notes following  
§ 9-461.

**§ 9-461.03. Planning department**

A. The legislative body of any municipality may establish a planning department. The officers and employees that the legislative body deems necessary for the department shall be appointed by the appointing authority of the municipality.

B. The appointing authority of each municipality may appoint a director of planning.

C. The legislative body of any municipality may employ or contract with consultants for such services as it requires.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974.

**Historical and Statutory Notes**

For effective date of Laws 1973, Ch. 178, see  
Historical and Statutory Notes following  
§ 9-461.

**§ 9-461.04. Financing**

The municipal legislative body shall provide the funds, equipment and accommodations necessary for the work of the planning agency of the municipality.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974.

**Historical and Statutory Notes**

For effective date of Laws 1973, Ch. 178, see  
Historical and Statutory Notes following  
§ 9-461.

**§ 9-461.05. General plans; authority; scope**

A. Each planning agency shall prepare and the legislative body of each municipality shall adopt a comprehensive, long-range general plan for the development of the municipality.

B. The general plan shall be so prepared that all or individual elements of it may be adopted by the legislative body and that it may be made applicable to all or part of the territory of the municipality.

C. The general plan shall consist of a statement of community goals and development policies. It shall include a diagram or diagrams and text setting forth objectives, principles, standards and plan proposals. The plan shall include the following elements:

1. A land-use element which designates the proposed general distribution and location and extent of such uses of the land for housing, business, industry, agriculture, recreation, education, public buildings and grounds,

**MUNICIPAL PLANNING**  
Ch. 4

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1. A land-use element which designates the proposed general distribution and location and extent of such uses of the land for housing, business, industry, agriculture, recreation, education, public buildings and grounds,

open space and such other categories of public and private uses of land as may be appropriate to the municipality. The land-use element shall include a statement of the standards of population density and building intensity recommended for the various land-use categories covered by the plan. The land use element shall include consideration of air quality and access to incident solar energy for all general categories of land use.

2. A circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, bicycle routes and any other modes of transportation as may be appropriate, all correlated with the land-use element of the plan.

D. The general plan shall include for cities of over fifty thousand population and may include for cities of less than fifty thousand population the following elements or any part or phase thereof:

1. A conservation element for the conservation, development and utilization of natural resources, including forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The conservation element may also cover:

(a) The reclamation of land.

(b) Flood control.

(c) Prevention and control of the pollution of streams and other waters.

(d) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(e) Prevention, control and correction of the erosion of soils, beaches and shores.

(f) Protection of watersheds.

2. A recreation element showing a comprehensive system of areas and public sites for recreation, including the following and, if practicable, their locations and proposed development:

(a) Natural reservations.

(b) Parks.

(c) Parkways and scenic drives.

(d) Beaches.

(e) Playgrounds and playfields.

(f) Open space.

(g) Bicycle routes.

(h) Other recreation areas.

3. The circulation element provided for in subsection C, paragraph 2 shall also include for cities of over fifty thousand population and may include for cities of less than fifty thousand population recommendations concerning parking facilities, building setback requirements and the delineations of such systems on the land, a system of street naming, house and building number-

## MUNICIPAL PLANNING

§ 9-461.05

### Ch. 4

ing and such other matters as may be related to the improvement of circulation of traffic. The circulation element may also include:

(a) A transportation element showing a comprehensive transportation system, including locations of rights-of-way, terminals, viaducts and grade separations. This element of the plan may also include port, harbor, aviation and related facilities.

(b) A transit element showing a proposed system of rail or transit lines or such other mode of transportation as may be appropriate.

4. A public services and facilities element showing general plans for sewage, refuse disposal, drainage, local utilities, rights-of-way, easements and facilities for them.

5. A public buildings element showing locations of civic and community centers, public schools, libraries, police and fire stations, and other public buildings.

6. A housing element consisting of standards and programs for the elimination of substandard dwelling conditions, the improvement of housing and for provision of adequate sites for housing. This element shall be designed to make equal provision for the housing needs of all segments of the community regardless of race, color, creed or economic level.

7. A conservation, rehabilitation and redevelopment element consisting of plans and programs for the elimination of slums and blighted areas and for community redevelopment, including housing sites, business and industrial sites, public building sites and for other purposes authorized by law.

8. A safety element for the protection of the community from natural and man-made hazards including features necessary for such protection as evacuation routes, peak load water supply requirements, minimum road widths according to function, clearances around structures and geologic hazard mapping in areas of known geologic hazards.

9. A bicycling element consisting of proposed bicycle facilities such as bicycle routes, bicycle parking areas and designated bicycle street crossing areas.

E. During the formulation of a general plan, the planning agency shall seek maximum feasible public participation from all geographic, ethnic and economic areas of the municipality and consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of plans may be secured and properly located sites for all public purposes may be indicated on the general plan.

F. Prior to the adoption of a general plan or a portion or element thereof, the agency shall, at least sixty days prior to the action, transmit the proposal to the legislative body and submit a review copy for information purposes to the following:

1. The planning agency of the county in which the municipality is located.

**§ 9-461.05**

**CITIES AND TOWNS**  
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2. Each county or municipality which is contiguous to the corporate limits of the municipality or its area of extraterritorial jurisdiction.

3. The regional planning agency within which the municipality is located.

4. The department of commerce or any state agency subsequently designated as the general planning agency for the state.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974. Amended by Laws 1979, Ch. 94, § 2; Laws 1981, Ch. 305, § 1; Laws 1987, Ch. 365, § 1.

**Historical and Statutory Notes**

For effective date of Laws 1973, Ch. 178, see Historical and Statutory Notes following § 9-461. to permit the future use of solar water heating equipment."

Laws 1979, Ch. 94, § 1 provides:

"The purpose of this act is to encourage the use and development of solar energy at the local level by providing local government with authority to regulate access to solar energy and to require new residences to be designed so as

**1979 Reviser's Note:**

Pursuant to authority of § 41-1304.02, in the heading of this section the words "Authority, scope of" were deleted and the words "; authority; scope" were added following the word "plans".

**Cross References**

Access to incident solar energy,

County plans, see § 11-821.

Zoning regulations, see § 9-462.01.

Solar water heating,

Building codes, counties, see § 11-861.01.

Building or plumbing codes, cities and towns, see § 9-802.01.

**Law Review Commentaries**

City sign ordinances not enacted in accordance with state statutory requirements. *Levitz v. State*, 22 *Ariz.L.Rev.* 1179 (1980).

Land development, reliance on authorized permit. *Ariz.State L.J.* 1, 1978, 137.

Private land use, public regulation. Milton R. Schroeder, *Law & Soc. Order*, 1973, p. 747.

**Library References**

Zoning and Planning ¶30.  
WESTLAW Topic No. 414.

C.J.S. Zoning and Land Planning §§ 2, 5, 12, 39.

**United States Supreme Court**

Zoning. Persons included within single family, see *Moore v. City of East Cleveland, Ohio*,

1977, 97 S.Ct. 1932, 431 U.S. 494, 52 L.Ed.2d 531.

**Notes of Decisions**

Purpose 1

**1. Purpose**

The Urban Environment Management Act, § 9-461 et seq., is a restatement of the state's

attempt to provide a uniform method of regulating the many and varied land uses under a comprehensive plan; the most potent tool to accomplish this end is zoning, but the Act requires that zoning be accomplished consistent with a master plan. *Levitz v. State* (1980) 126 *Ariz.* 203, 613 P.2d 1259.

Notes of Decisions

Delegation of power 1  
Insurance 3  
Liquor laws 4  
Salaries 2

compensation during term. *Gay v. City of Glendale* (1933) 41 Ariz. 265, 17 P.2d 811.

On change from town to city government, salary ordinance adopted by mayor and common council, previously receiving no salaries, could only affect their successors, since ordinance "increased" their compensation. *Id.*

1. Delegation of power

Municipal corporations have no inherent police power, and their powers must be delegated to them by the constitution or laws of the state. *State v. Jacobson* (App.1978) 121 Ariz. 65, 588 P.2d 358.

Subordinate bodies created by a state are created by virtue of sovereignty resting in the state, and they draw all their powers from that sovereignty and are created for the sole purpose of exercising the limited part of sovereignty delegated to them. *City of Bisbee v. Cochise County* (1938) 52 Ariz. 1, 78 P.2d 982.

2. Salaries

Town's assumption of city organization did not create new offices of mayor and councilmen, free from inhibition against increasing

3. Insurance

Municipalities and counties have implied power to provide group insurance, and to contribute to the cost thereof, for their employees, subject only to caveat of compliance with state budget laws and provision of Const. Art. 4, pt. 2, § 17, relating to compensation of public officers. Op.Atty.Gen. No. 59-119.

4. Liquor laws

Superintendent of liquor licenses and control has power to enforce liquor and narcotics laws but city police departments and county sheriff's offices have duty, as well as concurrent jurisdiction, to enforce criminal provisions of the liquor laws. Op.Atty.Gen. No. 63-15.

§ 9-275. Applicability of certain provisions to specified cities

A. The provisions of §§ 9-271 to 9-274, inclusive, shall not apply to a city operating under a special act or special charter or which has been organized prior to June 12, 1929 and is operating under the provisions of article 1, chapter 2 of this title, or any other state law or statute enacted prior to June 12, 1929, but the officers of such city, their manner of election or appointment, their term of office, duties, salaries, bonds and the filling of vacancies shall remain as provided by the special acts, charter, laws or statutes enacted prior to June 12, 1929.

B. A city or town operating under any act, special charter, law or statute of the state enacted prior to June 12, 1929, may by majority vote of its council avail itself of the benefits, privileges and provisions of this article to take effect at the holding of the next regular election in the municipality.

C. Pending the holding of the first regular election after such decision and action, the officers of the municipality and their tenure of office shall continue as theretofore, and as though such change of municipal government had not been made.

Historical and Statutory Notes

Source:

Laws 1929, Ch. 92, § 3.  
Code 1939, § 16-222.

§ 9-276. Additional powers of cities

A. In addition to the powers already vested in cities by their respective charters and by general law, cities and their governing bodies may:

Notes of Decisions

Delegation of power 1  
Insurance 3  
Liquor laws 4  
Salaries 2

compensation during term. *Gay v. City of Glendale* (1933) 41 Ariz. 265, 17 P.2d 811.

On change from town to city government, salary ordinance adopted by mayor and common council, previously receiving no salaries, could only affect their successors, since ordinance "increased" their compensation. *Id.*

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Subordinate bodies created by a state are created by virtue of sovereignty resting in the state, and they draw all their powers from that sovereignty and are created for the sole purpose of exercising the limited part of sovereignty delegated to them. *City of Bisbee v. Cochise County* (1938) 52 Ariz. 1, 78 P.2d 982.

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B. A city or town operating under any act, special charter, law or statute of the state enacted prior to June 12, 1929, may by majority vote of its council avail itself of the benefits, privileges and provisions of this article to take effect at the holding of the next regular election in the municipality.

C. Pending the holding of the first regular election after such decision and action, the officers of the municipality and their tenure of office shall continue as theretofore, and as though such change of municipal government had not been made.

Historical and Statutory Notes

Source:

Laws 1929, Ch. 92, § 3.  
Code 1939, § 16-222.

§ 9-276. Additional powers of cities

A. In addition to the powers already vested in cities by their respective charters and by general law, cities and their governing bodies may:

**FORM OF GOVERNMENT**

**§ 9-276**

**Ch. 2**

1. Lay out and establish, regulate the use, open, vacate, alter, widen, extend, grade, pave, plant trees or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds.
2. Prevent and remove encroachments or obstructions, provide for lighting and cleaning, regulate the openings for the laying of gas and water pipes and mains on streets, alleys, avenues, sidewalks, parks and public grounds.
3. Build and repair sewers, tunnels and drains.
4. Erect lights, gas or otherwise.
5. Regulate the erection of poles and wires, the laying of street railway tracks, and the operating of street railways in and upon its streets, alleys, public grounds and plazas.
6. Regulate the use of sidewalks and all structures thereunder, and require the owner or occupant of premises to keep the sidewalks in front of or along the premises free from obstruction.
7. Regulate and prevent the throwing of offensive material in and prevent injury to any street, way, alley or public grounds.
8. Construct and keep in repair bridges, viaducts, tunnels, culverts, drains, sewers and cesspools, and regulate their use.
9. Provide for the cleaning and purification of waters, watercourses and canals, and the draining or filling of ponds on private property when necessary to prevent or abate nuisances.
10. Establish markets and market houses, and regulate their use.
11. Regulate the sale of meats, poultry, fish, butter, cheese, lard, fruit, vegetables and other provisions, and provide for and regulate the inspection and the place and manner of selling them, and for the inspection of hay, grain, flour, meal and other provisions.
12. Regulate the construction, repair and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.
13. Regulate partition fences and party walls and regulate the construction and location of buildings, walls and fences on the line of a street, way or alley.
14. Prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and construction of fire escapes.
15. Fix and designate by ordinance fire limits within which no buildings having outside wooden walls shall be constructed or repaired so as to increase their value beyond a percentage to be fixed in the ordinance, and, by ordinance, prescribe special fire limits, within the general fire limits, requiring therein building material to be used and additional precautions to be observed in the construction of new buildings, and in the repairing and maintenance of buildings, as may from time to time be designated, for the prevention of fires and the spread thereof, and provide for the enforcement of the ordinance and for the appointment of a building inspector, his authority, his term of office and compensation.

16. Define nuisances and abate them, and impose fines upon persons creating or continuing nuisances.

17. Appoint a board of health, and prescribe its powers and duties.

18. Prohibit an offensive or unwholesome business or establishment within two miles of the limits of the corporation.

19. Compel the owner of any unwholesome or nauseous house or place to clean, abate or remove it, and regulate the location thereof.

20. Extend by condemnation or otherwise any street, alley or highway over or across, or construct a sewer under or through any railroad track, right-of-way or land of a railroad within its corporate limits, but where no just compensation is made to the railroad company, the city shall restore the railroad track, right-of-way or land to its former state, or in a manner so as not to impair its usefulness.

21. Establish and define sewer districts and construct sewers therein.

22. Establish and alter the grade of streets, alleys and sidewalks, and regulate the manner of using the streets and pavements in the city to protect them from injury by vehicles driven thereon. No street or sidewalk grade shall be altered after it has once been established and built unless compensation is made to abutting owners for damages done their property by the change.

23. Make local improvements by special assessments, by special taxation or otherwise, as they shall by ordinance prescribe.

24. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

B. A domestic corporation or association organized for the purpose of manufacturing gas to supply cities, or its inhabitants, or to supply cities, or its inhabitants, with water, or for the purpose of furnishing cities and the inhabitants with a sewer system, may, by consent of the governing body, erect and establish gas factories, water works and sewer plants, and lay down pipes in the streets, alleys, plazas and ways of a city, subject to such rules and regulations as the city shall by ordinance impose.

Amended by Laws 1973, Ch. 109, § 2.

**Historical and Statutory Notes**

**Source:**

Civ.Code 1901, § 465.  
Civ.Code 1913, § 1897.  
Rev.Code 1928, § 408.  
Code 1939, § 16-601.

Laws 1973, Ch. 109, § 1 provides:

"The purpose of this act is to provide authority for cities and counties to regulate lighting in areas near astronomy or meteorology laboratories."

**Reviser's Note:**

Paragraph 13, § 408, R.C.1928 (16-601, C. '39), now paragraph 18, subsection A this section, provided for the prohibition of an offensive or unwholesome business or establishment within one mile of the corporate limits. The area is changed as it now appears to conform to laws 1949, Ch. 111, § 1, now § 9-240.

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**§ 9-497**

**CITIES AND TOWNS**  
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**§ 9-497. Authority to procure liability insurance covering officers, agents and employees**

Cities and towns may expend public funds to procure liability insurance covering their officers, agents, and employees while employed in governmental or proprietary capacities.

Added by Laws 1956, Ch. 28, § 1, eff. July 14, 1956.

**Cross References**

Counties, errors and omissions and liability insurance, see § 11-261.  
State government, risk management, see § 41-621 et seq.

**Notes of Decisions**

**Tort claims 1**

**1. Tort claims**

Insured city's demand was not sufficient cause to require liability insurer to make \$100,000 offer to tort plaintiff when insurer's diligent, good-faith investigation revealed settlement value of only \$25,000. *City of Glendale v. Farmers Ins. Exchange* (1980) 126 Ariz. 118, 613 P.2d 278.

Duty of police under ordinance to remove an unattended vehicle which constitutes a hazard

is one owed the public generally, and failure of police to remove a vehicle in violation of that duty will not ordinarily give rise to liability to a member of public injured by failure to remove it, but city also owes a common-law duty to all users of city streets to keep them reasonably safe for travel and to warn users of any actual dangers known to city or which should be known to city in exercise of reasonable care, and failure of police to remove the vehicle in violation of that duty may give rise to liability to a user of a public street injured by such failure. *Lowman v. City of Mesa* (App. 1980) 125 Ariz. 590, 611 P.2d 943.

**§ 9-498. Authority for county to furnish services to city or town**

The governing body of an incorporated city or town, and the county board of supervisors of the county in which such city or town is located, may enter into an agreement whereby:

1. The county shall furnish part-time or full-time police protection to persons and property within the boundaries of such city or town, or any part thereof, as provided for in the agreement.

2. The incorporated city or town that contracts for and receives any of the services provided under the provisions of paragraph 1 shall pay to the county the amount agreed to be paid to the county for furnishing such services.

Added by Laws 1967, Ch. 99, § 1.

**§ 9-499. Removal of rubbish, trash, weeds, filth, debris and dilapidated buildings; removal by city; costs assessed; collection; priority of lien**

A. A city or town council may, by ordinance, compel the owner, lessee, or occupant of buildings, grounds, or lots to remove rubbish, trash, weeds, or other accumulation of filth or debris which shall constitute a hazard to public health and safety from buildings, grounds, lots, contiguous sidewalks, streets and alleys. Any such ordinance shall require:

**§ 9-497. Authority to procure liability insurance covering officers, agents and employees**

Cities and towns may expend public funds to procure liability insurance covering their officers, agents, and employees while employed in governmental or proprietary capacities.

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**§ 9-499. Removal of rubbish, trash, weeds, filth, debris and dilapidated buildings; removal by city; costs assessed; collection; priority of lien**

**A.** A city or town council may, by ordinance, compel the owner, lessee, or occupant of buildings, grounds, or lots to remove rubbish, trash, weeds, or other accumulation of filth or debris which shall constitute a hazard to public health and safety from buildings, grounds, lots, contiguous sidewalks, streets and alleys. Any such ordinance shall require:

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1. Reasonable written notice to the owner, occupant or lessee. Such reasonable notice shall be given not less than thirty days before the day set for compliance, and shall include the cost of such removal. The notice shall be either personally served or mailed to the owner, or lessee, 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 at his last known address.

2. Provisions for appeal to the city or town council on both the notice and the assessments.

3. That any person, firm or corporation who shall 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 shall be guilty of a misdemeanor 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 section for the removal of said rubbish, trash, filth or debris.

**B.** Such ordinance may provide that if the owner, lessee or occupant of such buildings, grounds or lots, after notice as required by ordinance, which notice shall not be less than thirty days, does not remove such rubbish, trash, weeds, or other accumulation of filth or debris and abate such condition which constitutes a hazard to public health and safety, the city or town may, at the expense of such owner, lessee or occupant, remove or cause the removal thereof.

**C.** The city or town council may prescribe by the ordinance a procedure for such removal of such abatement, and for making the actual cost of such removal or abatement, including five per cent for additional inspection and other incidental costs in connection therewith, an assessment upon the lots, and tracts of land from which such rubbish, trash, weeds or other accumulations are removed.

**D.** The ordinance may provide that the cost of removal of such rubbish, trash, weeds, filth or debris from any lot, or tract of land, shall be assessed in the manner and form prescribed by ordinance of such city or town upon the lot or tract of land from which such rubbish, trash, weeds, or other accumulations are removed. Such assessment, from the date of its recording in the office of the county recorder in which county the lot or tract of land is located, shall be a lien on said lot or tract of land, and the several amounts assessed against such lot or tract of land, until paid. Such liens shall be subject and inferior to the lien for general taxes and to all prior recorded mortgages and encumbrances of record. A sale of the property to satisfy a lien obtained under the provisions of this section shall be made upon judgment of foreclosure and order of sale. A city or town shall have the right to bring an action to enforce the lien in the superior court of the county in which the property is located 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

**§ 9-499**

**CITIES AND TOWNS**  
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matters recited therein, and of the regularity of all proceedings prior to the recording thereof.

**E.** 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.

**F.** The foregoing provisions shall apply to all cities and towns organized and operating under general law of this state, and also the cities and towns organized and operating under a special act or charter.

Added by Laws 1968, Ch. 62, § 1.

**Library References**

Municipal Corporations ¶607, 671, 693 et seq.  
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 265, 1710 et seq., 1746.

**§ 9-499.01. Powers of charter and general law cities**

Charter cities and general law cities, whether incorporated as cities pursuant to § 9-101 or having assumed a city organization pursuant to § 9-271, shall be vested with all the powers of incorporated towns as set forth in title 9, in addition to all powers vested in them pursuant to their respective charters, or other provisions of law relating to cities and towns.

Added by Laws 1974, Ch. 53, § 1, eff. May 1, 1974.

**Cross References**

City or town employees, tax deferred annuities and deferred compensation plans, see § 9-500.  
Foreign trade zones, see § 44-6501.

**§ 9-499.02. Standards for curb ramps**

**A.** The standard for construction of curbs on each side of any city or town street, or any connecting street or road for which curbs have been prescribed by the governing body of the city or town having jurisdiction thereover, shall be not less than two ramps per lineal block at the crosswalks at intersections. At the option of the city or town, such ramps may have a two foot exposed aggregate strip adjacent to the gutter. Such ramps shall comply with § 34-410.

**B.** Standards set for ramps or curbs under subsection A of this section shall not apply to any ramp or curb existing on June 12, 1975 but shall apply to all new ramp or curb construction and to all replacement ramps or curbs constructed at any point in a block which gives reasonable access to a crosswalk.

Added by Laws 1975, Ch. 137, § 1, eff. June 12, 1975. Amended by Laws 1977, Ch. 28, § 1; Laws 1985, Ch. 354, § 1, eff. Jan. 1, 1987.

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**Historical and Statutory Notes**

**1968 Reviser's Note:**

Laws 1968, Ch. 94, § 1 provided that: "The purpose of this article is to permit public agencies, if authorized by their legislative or governing body, to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental func-

tions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies. This article does not intend and shall not be construed to authorize the consolidation of public jurisdictions nor to authorize local governing bodies to delegate or contract away their legislative or governmental authority to other governmental jurisdictions."

**Cross References**

Governmental mall development, intergovernmental agreements or contracts, see § 41-1362.  
Leases of areas above or below highways to public agencies, see § 28-1865.01.  
Real estate brokers or salesmen, license applicants, investigation agreements, see §§ 32-2123 and 32-2130.  
Workers' compensation, employees of public agencies, intergovernmental agreements or contracts, see § 23-1022.

**Law Review Commentaries**

Public regulation of private land use. Milton R. Schroeder, *Law & Soc. Order*, 1973, p. 747.

Sovereign immunity for tribal businesses. 13 *Ariz. Law Rev.* 523 (1971).

**Library References**

Counties ⇐20.  
Municipal Corporations ⇐53.  
WESTLAW Topic Nos. 104, 268.

C.J.S. Counties § 43.  
C.J.S. Municipal Corporations § 106 et seq.

**Notes of Decisions**

In general 1  
Council of Government 2  
Delegation of authority 3

ment which was not incorporated as long as the department was carrying out its authorized responsibilities and the council was otherwise authorized to enter into such a contract which would be enforceable against the council. *Op. Atty.Gen. No. R75-244*, p. 115, 1975-76.

**1. In general**

Grant contracts were not subject to § 11-951 et seq. relating to intergovernmental agreements where no common authority was being exercised relative to the grant awards. *Op. Atty. Gen. No. I79-193*.

Council of government does not qualify as a governmental agency under this section relating to intergovernmental agreements and contracts so as to exclude it from the provisions of § 41-1051 et seq. (repealed; see, now, § 41-2501 et seq.) relating to contracts for outside professional services. *Id.*

Recognition of a private organization as a local health agency cannot cause the entity to become a state governmental unit for purposes of this section defining "public agency" for purposes of joint exercise of powers between the public agencies. *Op. Atty. Gen. No. I70-10*.

**3. Delegation of authority**

**2. Council of government**

Department of economic security could enter into a contract with a council of govern-

A public agency could delegate its authority to enter into intergovernmental agreements only when it is authorized by statute, charter, or other governing law to otherwise delegate its discretionary power to contract. *Op. Atty. Gen. No. I80-92*.

**§ 11-952. Intergovernmental agreements and contracts**

**A.** If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter

**Historical and Statutory Notes**

**1968 Reviser's Note:**

Laws 1968, Ch. 94, § 1 provided that: "The purpose of this article is to permit public agencies, if authorized by their legislative or governing body, to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental func-

tions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies. This article does not intend and shall not be construed to authorize the consolidation of public jurisdictions nor to authorize local governing bodies to delegate or contract away their legislative or governmental authority to other governmental jurisdictions."

**Cross References**

Governmental mall development, intergovernmental agreements or contracts, see § 41-1362. Leases of areas above or below highways to public agencies, see § 28-1865.01. Real estate brokers or salesmen, license applicants, investigation agreements, see §§ 32-2123 and 32-2130. Workers' compensation, employees of public agencies, intergovernmental agreements or contracts, see § 23-1022.

**Law Review Commentaries**

Public regulation of private land use. Milton R. Schroeder, Law & Soc. Order, 1973, p. 747.

Sovereign immunity for tribal businesses. 13 Ariz.Law Rev. 523 (1971).

**Library References**

Counties ¶20.  
Municipal Corporations ¶53.  
WESTLAW Topic Nos. 104, 268.

C.J.S. Counties § 43.  
C.J.S. Municipal Corporations § 106 et seq.

**Notes of Decisions**

**In general** 1  
**Council of Government** 2  
**Delegation of authority** 3

ment which was not incorporated as long as the department was carrying out its authorized responsibilities and the council was otherwise authorized to enter into such a contract which would be enforceable against the council. Op. Atty.Gen. No. R75-244, p. 115, 1975-76.

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## JOINT EXERCISE OF POWERS

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§ 11-952

into agreements with one another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.

**B.** Any such contract or agreement shall specify the following:

1. Its duration.
2. Its purpose or purposes.
3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.
4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
5. Any other necessary and proper matters.

**C.** No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law.

**D.** Except as provided in subsection E, every agreement or contract involving any public agency, board or commission made pursuant to this article shall, prior to its execution, be submitted to the attorney for each such public agency, board or commission, who shall determine whether the said agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency, board or commission.

**E.** A federal department or agency which is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the federal department or agency unless required under federal law.

**F.** Any agreement or contract submitted to the attorney general shall be filed with the secretary of state and shall become effective on the date provided in the agreement, but in no event prior to the date it is filed with the secretary of state. The secretary of state shall prepare a cross-index of the names of all public agencies which coordinate with the attorney general and secretary of state and file an agreement under this section.

**G.** Any agreement or contract submitted to an attorney other than the attorney general shall be filed with the secretary of state if the agreement affects more than one county and shall be filed with the county recorder if only one county is affected and shall become effective on the date provided in the agreement but in no event prior to the date it is filed with the proper officer.

**H.** Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

I. If a school district is a party to an agreement made pursuant to subsection A, the parties to such agreement may extend the duration of the agreement by notification to the proper officer with whom the agreement is filed pursuant to subsection F or G and the state board of education. Such agreement may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement.

J. Payment for services under this section shall not be made unless pursuant to a fully approved written contract.

K. A person who authorizes payment of any monies in violation of this section is liable for the monies paid plus twenty per cent of such amount and legal interest from the date of payment.

L. Notwithstanding any other provision of law, public agencies may enter into a contract or agreement pursuant to this section with the superior court, justice courts and police courts for related services and facilities of such courts for a term not to exceed ten years, with the approval of such contract or agreement by the presiding judge of the superior court in the county in which the court or courts which provide the facilities or services are located. Added by Laws 1968, Ch. 94, § 2. Amended by Laws 1977, Ch. 133, § 2, eff. May 31, 1977; Laws 1979, Ch. 110, § 1, eff. April 21, 1979; Laws 1984, Ch. 251, § 5, eff. Jan. 1, 1985; Laws 1985, Ch. 81, § 1; Laws 1988, Ch. 195, § 1.

**Historical and Statutory Notes**

For purpose and effective date provision of Laws 1984, Ch. 251, see Historical and Statutory Notes preceding § 41-2501.

**Executive Order:**

Executive Order No. 85-6, dated May 30, 1985, repealed Executive Order No. 70-1 creat-

ing the Arizona State Advisory Council on Intergovernmental Relations and Executive Order No. 73-4 relating to the Arizona State Advisory Council on Intergovernmental Relations and amending Executive Order No. 70-1.

**Cross References**

- Cancellation of state contracts, conflict of interests, public officers and employees, see § 38-511.
- Comprehensive behavioral health service system for children, interagency agreement, see § 36-3435.
- Cost for providing for county jail prisoners, see § 31-121.
- Injunctive and civil remedies, illegal payment of public monies, see § 35-212.
- Intergovernmental agreements and contracts,
  - Definition, see § 9-505.
  - Racing, fingerprints and background information, see § 5-107.01.
  - School districts and other governing bodies, see § 15-342.
  - School districts and other governing bodies, pupil achievement test data analysis and report, see § 15-743.
  - Special education programs, see §§ 15-764 and 15-765.
- Political subdivisions, exempt purchasing agreements, see § 41-2632.
- Public transportation services, contracts and agreements, see § 40-1152.
- Real estate department and public safety department, see § 32-2123.
- School districts and community college districts, agreements relating to vocational and technical education, see § 15-789.
- School lunch program agreements, exemption, see § 15-1152.
- School service programs, multidistrict, see § 15-365.
- Workers' compensation, employees of public agencies, intergovernmental agreements or contracts, see § 23-1022.

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**§ 49-124**

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**B.** Monies in the fund shall be used for commission surveys, studies, publications, internship programs, workshops and workshop equipment and in carrying out the provisions of this article.

**C.** The commission shall establish the permanent revolving fund as a separate account. The commission shall make a full accounting of its use to the department of administration annually or as required by the department of administration. Expenditures from the fund and reimbursement to the fund shall be as prescribed by rules of the department of administration.

**D.** Monies in the commission on the Arizona environment revolving fund are not subject to reversion, except that all monies in the fund in excess of twenty-five thousand dollars at the end of the fiscal year revert to the state general fund.

Added as § 41-995.03 by Laws 1986, Ch. 202, § 1, eff. Aug. 13, 1986, retroactively effective to July 1, 1986. Renumbered as § 49-124 by Laws 1986, Ch. 368, § 35, eff. July 1, 1987.

**Historical Note**

Laws 1986, Ch. 202, § 2 provides:

**"Sec. 2. Retroactivity**

"This act is effective retroactively to July 1, 1986."

For effective date provision of Laws 1986, Ch. 368, see Historical Note preceding § 49-101.

**1986 Reviser's Note:**

Pursuant to authority of § 41-1304.02, the transfer and renumbering of this section by Laws 1986, Ch. 368, § 35 as "49-995.03 as 49-124" was corrected as a manifest clerical error to read "41-995.03 as 49-124".

**ARTICLE 3. ENVIRONMENTAL NUISANCES**

*Article 3, consisting of §§ 49-141 to 49-144, was added by Laws 1987, Ch. 317, § 16, effective August 18, 1987, retroactively effective to July 1, 1987.*

**Historical Note**

Laws 1987, Ch. 317, § 49, provides:

**"Sec. 49. Retroactive effective date**

"Section 4 of this act is effective retroactively to April 17, 1987. The remainder of this act is

effective retroactively to midnight June 30, 1987."

**§ 49-141. Environmental nuisances**

The following conditions are environmental nuisances:

1. Any condition or place in populous areas which constitutes a breeding place for flies, rodents, mosquitoes and other insects which are capable of carrying and transmitting disease-causing organisms to any person or persons.
2. Any place, condition or building controlled or operated by any governmental agency, state or local, which is not maintained in a sanitary condition.
3. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

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**§ 49-124**

**ENVIRONMENT**  
Title 49

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3. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

## **ENVIRONMENTAL NUISANCES**

**§ 49-142**

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4. Any vehicle or container used in the transportation of garbage, human excreta or other organic material which is defective and allows leakage or spillage of contents.

5. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.

6. The pollution or contamination of any domestic waters.

7. The use of the contents of privies, cesspools, or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

8. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law and rule.

9. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink which is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease-causing substances or organisms.

Added by Laws 1987, Ch. 317, § 16, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

### **§ 49 i42. Cease and desist order; hearing; injunction**

A. If the director has reasonable cause to believe from information furnished to the director or from the director's own investigation that a person is maintaining an environmental nuisance or engaging in any practice contrary to the environmental laws or rules of the state, the director shall immediately serve, by certified mail, a cease and desist order on the person requiring the person to immediately cease and desist from the act.

B. Within fifteen days after receiving the order the person to whom it is directed may request the director to hold a hearing. The director shall hold the hearing as soon as practicable. If the director determines that the order is reasonable and just and that the practice engaged in is contrary to the environmental laws or rules of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with a cease and desist order issued under this section, the director may file an action in superior court in the county in which the violation occurred to restrain and enjoin the person from further violations. The court shall proceed as in other actions for injunctions.

Added by Laws 1987, Ch. 317, § 16, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

§ 49-143

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§ 49-143. Abatement of environmental nuisances

If an environmental nuisance exists on private property, the county or city board of health, the local health or environmental department or the department of environmental quality may order the owner or occupant to remove the nuisance within twenty-four hours at the expense of the owner or occupant. The order may be given to the owner or occupant personally or left at the residence of the owner or occupant. If the owner or occupant fails or refuses to comply with the order, the board or department shall cause the nuisance to be removed, and the owner, occupant or other person who caused the nuisance shall pay the expenses of removal.

Added by Laws 1987, Ch. 317, § 16, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

§ 49-144. Right to enter premises for inspection or abatement

If a county or city board of health or a local health or environmental department deems it necessary to enter a building or structure within its jurisdiction for the purpose of examining, destroying, removing or preventing an environmental nuisance and is refused entrance, any member of the board or officer of the department may make complaint of the refusal under oath to a justice of the peace. The justice shall issue a warrant directing the sheriff or other peace officer accompanied by and under the direction of at least one member of the board or department to examine, destroy, remove or prevent, between the hours of sunrise and sunset, the environmental nuisance.

Added by Laws 1987, Ch. 317, § 16, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

**§ 49-262**

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environment because of acts performed in violation of article 2 or 3 of this chapter the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

**C.** A person who violates any provision of article 2 or 3 of this chapter or a rule, permit, discharge limitation or order issued or adopted pursuant to article 2 or 3 of this chapter is subject to a civil penalty of not to exceed twenty-five thousand dollars per day per violation. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this section.

**D.** The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

**E.** All civil penalties except litigation costs obtained under this section shall be deposited in the water quality assurance revolving fund established under § 49-282.

Added as § 36-3562 by Laws 1986, Ch. 368, § 21, eff. Aug. 13, 1986. Renumbered as § 49-262 and amended by Laws 1986, Ch. 368, §§ 36, 58, eff. July 1, 1987.

<sup>1</sup> Section 49-221 et seq. or 49-241 et seq.

**Historical Note**

**Source:**

- Laws 1967, Ch. 106, § 2.
- A.R.S. former §§ 36-1864, 36-1864.01.
- Laws 1973, Ch. 158, § 224.
- Laws 1975, Ch. 168, §§ 9, 10.
- Laws 1978, Ch. 201, § 661.
- Laws 1982, Ch. 282, § 7.

The 1986 amendment revised statutory reference to reflect renumbering of provisions from Title 36 to Title 49.

For effective date provision of Laws 1986, Ch. 368, see Historical Note preceding § 49-101.

**Cross References**

Temporary emergency waivers, persons not subject to this section, see § 49-251.

**Library References**

- Health and Environment ⇄23, 25.7(19), (20), 25.15(2).
- C.J.S. Health and Environment §§ 18 et seq., 88 et seq.

**§ 49-263. Criminal violations; classification; definition**

**A.** It is unlawful to:

1. Discharge without a permit or appropriate authority under this chapter.
2. Fail to monitor, sample or report discharges as required by a permit issued under this chapter.
3. Violate a discharge limitation specified in a permit issued under this chapter.
4. Violate a water quality standard.

environment because of acts performed in violation of article 2 or 3 of this chapter the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

C. A person who violates any provision of article 2 or 3 of this chapter or a rule, permit, discharge limitation or order issued or adopted pursuant to article 2 or 3 of this chapter is subject to a civil penalty of not to exceed twenty-five thousand dollars per day per violation. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this section.

D. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

E. All civil penalties except litigation costs obtained under this section shall be deposited in the water quality assurance revolving fund established under § 49-282.

Added as § 36-3562 by Laws 1986, Ch. 368, § 21, eff. Aug. 13, 1986. Renumbered as § 49-262 and amended by Laws 1986, Ch. 368, §§ 36, 58, eff. July 1, 1987.

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Laws 1973, Ch. 158, § 224.  
Laws 1975, Ch. 168, §§ 9, 10.  
Laws 1978, Ch. 201, § 661.  
Laws 1982, Ch. 282, § 7.

The 1986 amendment revised statutory reference to reflect renumbering of provisions from Title 36 to Title 49.

For effective date provision of Laws 1986, Ch. 368, see Historical Note preceding § 49-101.

**Cross References**

Temporary emergency waivers, persons not subject to this section, see § 49-251.

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3. Violate a discharge limitation specified in a permit issued under this chapter.
4. Violate a water quality standard.

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**§ 49-264**

B. A person who with criminal negligence performs an act prohibited under subsection A of this section is guilty of a class 6 felony.

C. A person who knowingly performs an act prohibited under subsection A of this section is guilty of a class 5 felony.

D. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act prohibited under subsection A of this section is guilty of a class 2 felony.

E. A violation of any provision of this chapter for which a penalty is not otherwise prescribed is a class 2 misdemeanor.

F. The attorney general may enforce this section.

G. Monetary criminal penalties obtained under this section shall be deposited in the water quality assurance revolving fund.

H. For purposes of this section "person" has the meaning assigned to that term by § 13-105.

Added as § 36-3563 by Laws 1986, Ch. 368, § 21, eff. Aug. 13, 1986. Renumbered as § 49-263 by Laws 1986, Ch. 368, § 36, eff. July 1, 1987.

**Historical Note**

**Source:**

Laws 1967, Ch. 106, § 2.

A.R.S. former §§ 36-1858, 36-1864.02.

Laws 1975, Ch. 168, §§ 6, 10.

Laws 1978, Ch. 201, § 662.

Laws 1982, Ch. 282, § 8.

Laws 1984, Ch. 241, § 2.

For effective date provision of Laws 1986, Ch. 368, see Historical Note preceding § 49-101.

**Cross References**

Temporary emergency waivers, persons not subject to this section, see § 49-251.

**Library References**

Health and Environment ⇐25.7(24).

C.J.S. Health and Environment § 113 et seq.

**§ 49-264. Private right of action; citizen suits**

A. Except as provided in subsection B of this section, a person having an interest which is or may be adversely affected may commence a civil action in superior court on his own behalf against:

1. A person, this state and a political subdivision of this state alleging a violation of a provision of this chapter or of an order, permit, standard, rule or discharge limitation adopted or issued pursuant to this chapter. The court shall have jurisdiction to enforce a provision, order, permit, standard, rule or discharge limitation and to apply any appropriate civil penalty pursuant to § 49-262.

2. The director alleging a failure of the director to perform an act or duty under this chapter which is not discretionary with the director. The court shall have jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in either of the following cases:

**§ 49-105**

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4. A brief description of the number and nature of violations committed by each person named under paragraph 3 and a description of any enforcement action taken in response to the violations.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987.

<sup>1</sup> Section 49-201 et seq. and 49-901 et seq.

**Historical Note**

For effective date provision of Laws 1986, Ch. 368, see Historical Note preceding § 49-101.

**§ 49-106. Statewide application of rules**

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law.

Added by Laws 1987, Ch. 317, § 15, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

**Historical Note**

For applicable retroactive effective date provision of Laws 1987, Ch. 317, see Historical Note preceding § 49-141.

**§ 49-107. Local delegation of state authority**

A. The director may delegate to a local environmental agency, health department or municipality or a county board of health established under title 36, chapter 1, article 3<sup>1</sup> any functions, powers or duties which the director believes can be competently, efficiently and properly performed by the local agency if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director.

B. Monies appropriated or otherwise made available to the department for distribution to local agencies may be allocated or reallocated in a manner designed to assure that the recognized local activities and the delegated functions, powers and duties are accomplished according to the applicable standards of performance.

C. The director may terminate, for cause, all or part of the delegation and reallocate all or part of any monies that may have been conditioned on the further performance of the delegated functions, powers and duties.

Added by Laws 1987, Ch. 317, § 15, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

<sup>1</sup> Section 36-161 et seq.

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**§ 13-1601**

**§ 13-1601. Definitions**

In this chapter, unless the context otherwise requires:

1. "Damaging" means "damage" as defined in § 13-1701.
2. "Defacing" means any unnecessary act of substantially marring any surface or place, by any means, or any act of putting up, affixing, fastening, printing, or painting any notice upon any structure, without permission from the owner.
3. "Litter" includes any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous<sup>1</sup> objects, dead animals, or any foreign substance of whatever kind or description, including junked or abandoned vehicles, whether or not any of these items are of value.
4. "Tamper" means any act of interference.
5. "Utility" means any enterprise, public or private, which provides gas, electric, steam, water, sewer or communications services, as well as any common carrier on land, rail, sea or air.

Added by Laws 1977, Ch. 142, § 70, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 140, eff. Oct. 1, 1978.

<sup>1</sup> So in original. Probably should be "odoriferous".

**Historical Note**

The 1978 amendment inserted par. 1; re-numbered former pars. 1 to 4 to be pars. 2 to 5; transferred, in par. 2, "any notice" from the end of the paragraph to the position in front of the words "upon any structure"; deleted the words "private commercial" before the word "structure" in par. 2; and included "rail" in par. 5.

**Cross References**

Local boards of health, see § 36-161 et seq.  
Slaughter of animals, see § 24-601 et seq.

**Library References**

Malicious Mischief ⇐ 1.  
WESTLAW Topic No. 248.

C.J.S. Malicious or Criminal Mischief or  
Damage to Property §§ 2 to 5.  
Words and Phrases (Perm.Ed.)

**§ 13-1602. Criminal damage; classification**

- A. A person commits criminal damage by recklessly:**
1. Defacing or damaging property of another person; or
  2. Tampering with property of another person so as substantially to impair its function or value; or
  3. Tampering with the property of a utility.
  4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.
- B. Criminal damage is punished as follows:**

## § 13-1601

## CRIMINAL CODE Title 13

### § 13-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Damaging" means "damage" as defined in § 13-1701.
2. "Defacing" means any unnecessary act of substantially marring any surface or place, by any means, or any act of putting up, affixing, fastening, printing, or painting any notice upon any structure, without permission from the owner.
3. "Litter" includes any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous<sup>1</sup> objects, dead animals, or any foreign substance of whatever kind or description, including junked or abandoned vehicles, whether or not any of these items are of value.
4. "Tamper" means any act of interference.
5. "Utility" means any enterprise, public or private, which provides gas, electric, steam, water, sewer or communications services, as well as any common carrier on land, rail, sea or air.

Added by Laws 1977, Ch. 142, § 70, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 140, eff. Oct. 1, 1978.

<sup>1</sup> So in original. Probably should be "odoriferous".

#### Historical Note

The 1978 amendment inserted par. 1; re-numbered former pars. 1 to 4 to be pars. 2 to 5; transferred, in par. 2, "any notice" from the end of the paragraph to the position in front of the words "upon any structure"; deleted the words "private commercial" before the word "structure" in par. 2; and included "rail" in par. 5.

#### Cross References

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Damage to Property §§ 2 to 5.  
Words and Phrases (Perm.Ed.)

### § 13-1602. Criminal damage; classification

- A. A person commits criminal damage by recklessly:
1. Defacing or damaging property of another person; or
  2. Tampering with property of another person so as substantially to impair its function or value; or
  3. Tampering with the property of a utility.
  4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.
- B. Criminal damage is punished as follows:

**CRIMINAL DAMAGE TO PROPERTY**  
Ch. 16

**§ 13-1602**

1. Criminal damage is a class 4 felony if the person recklessly damages property of another in an amount of ten thousand dollars or more, or if the person recklessly causes impairment of the functioning of any utility.

2. Criminal damage is a class 5 felony if the person recklessly damages property of another in an amount of two thousand dollars or more but less than ten thousand dollars.

3. Criminal damage is a class 6 felony if the person recklessly damages property of another in an amount of more than two hundred fifty dollars but less than two thousand dollars.

4. In all other cases criminal damage is a class 2 misdemeanor.

Added by Laws 1977, Ch. 142, § 70, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 164, § 6, eff. Oct. 1, 1978; Laws 1982, Ch. 238, § 3; Laws 1989, Ch. 170, § 1.

**Historical Note**

**Source:**

Pen.Code 1901, §§ 259, 320, 329, 366, 367, 455, 456, 523, 527, 532, 533, 541, 543, 544, 551, 556 to 558.  
Laws 1905, Ch. 65, § 1.  
Laws 1909, Ch. 611, §§ 1 to 4.  
Laws 1912, Ch. 63, §§ 1, 2.  
Pen.Code 1913, §§ 289, 360, 368, 408, 410, 411, 437, 438, 495 to 497, 564, 570, 572 to 575, 590, 591, 611, 613, 614, 619, 624, 625, 627.  
Rev.Code 1928, §§ 4655, 4711, 4732, 4733, 4743, 4761, 4810, 4813, 4815, 4824, 4833, 4835 to 4837, 4841, 4845, 4846, 4848.  
Code 1939, §§ 43-2801, 43-2803, 43-4605, 43-4811 to 43-4813, 43-5204, 43-5507, 43-5803, 43-5804, 43-5806, 43-5808 to 43-5810, 43-5813 to 43-5815, 43-5817.  
A.R.S. former §§ 13-501 to 13-504, 13-507, 13-509, 13-511, 13-512, 13-712, 13-881 to 13-883, 13-885, 13-890, 13-892 to 13-894, 13-1003, 13-1022.  
Laws 1962, Ch. 71, § 1.  
Laws 1968, Ch. 67, § 1.  
Laws 1970, Ch. 178, § 1.

Laws 1975, Ch. 68, § 1.  
Laws 1975, Ch. 75, § 1.  
Laws 1976, Ch. 55, §§ 1, 2.  
Laws 1976, Ch. 157, § 1.

The 1978 amendment made criminal damage in par. 3 of subsec. B a "class 6 felony" rather than a "class 1 misdemeanor".

For provision of Laws 1978, Ch. 164, relating to construction and application of the Act to offenses committed before its enactment, see Historical Note following § 11-361.

For effective date provision of Laws 1978, Ch. 164, see Historical Note following § 8-203.

The 1982 amendment substituted in subsec. B, par. 3 "in an amount" for "with a value".

The 1989 amendment raised the damage amount for a class 5 felony from one thousand five hundred dollars to two thousand dollars; and, for a class 6 felony, raised the minimum damage amount from one hundred dollars to two hundred fifty dollars, and raised the maximum damage amount from one thousand five hundred dollars to two thousand dollars.

**Cross References**

Arson, see § 13-1701 et seq.

Depositing or exploding explosive with intent to injure persons or property, see §§ 13-3101, 13-3104.

Domestic violence,

Definition, see § 13-3601.

Protection order, see § 13-3602.

Jurisdiction of justice of peace, see § 22-301.

Leased premises, alteration or injury by tenant, see § 33-322.

Native plants, protection and penalty, see § 3-907.

Rubbish dumped on highway, penalty, see § 28-1873.

Solid waste management violations, criminal and civil penalties, see § 49-791.

Timber, taking from public lands, see §§ 37-501, 37-502.

Trespass generally, see § 13-1501 et seq.

§ 13-1603. Criminal littering or polluting; classification

A. A person commits criminal littering or polluting if such person without lawful authority:

1. Throws, places, drops or permits to be dropped on public property or property of another which is not a lawful dump any litter, destructive or injurious material which he does not immediately remove; or

2. Discharges or permits to be discharged any sewage, oil products or other harmful substances into any waters or onto any shorelines within the state; or

3. Dumps any earth, soil, stones, ores or minerals on any land.

B. Criminal littering or polluting is a class 2 misdemeanor. Criminal littering or polluting is a class 1 misdemeanor if the act involves placing any destructive or injurious material on or within fifty feet of a highway, beach or shoreline of any body of water used by the public.

Added by Laws 1977, Ch. 142, § 70, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 141, eff. Oct. 1, 1978.

Historical Note

Source:

- Pen.C.1901, §§ 334, 335, 541.
- Pen.C.1913, §§ 386, 387, 611.
- Rev.Code 1928, §§ 4694, 4833.
- Code 1939, §§ 43-4604, 5806.
- A.R.S. former §§ 13-603, 13-712.
- Laws 1962, Ch. 71, § 1.
- Laws 1970, Ch. 178, § 1.
- Laws 1975, Ch. 75, § 1.
- Laws 1976, Ch. 157, § 1.

The 1978 amendment inserted "or" following subsec. A, par. 2; substituted "on" for "of" in subsec. A, par. 3; deleted subsec. B which had read:

"It is no defense to any of the acts constituting criminal littering or polluting in this section that the act in question was not done with criminal negligence, recklessly, knowingly or intentionally."; and relettered former subsec. C as subsec. B.

Cross References

- Abatement of nuisance, obscene movies and pictorial publications, see § 12-811.
- Adulteration, mislabeling, and misbranding food products, see § 36-904.
- Aircraft operation, violation of regulatory provisions, see § 28-1746.
- Bawdy houses, abatement of nuisance, see § 12-801 et seq.
- Burial, duties and penalties, see § 36-831.
- Caustic alkalies and acids, violations, see § 36-1105.
- Common towel or drinking cup in public place, prohibition, see § 36-605.
- Contagious disease, see § 36-621 et seq.
- Dairies and dairying, violation of regulatory provisions, see §§ 3-610, 3-614, 3-630, 3-634.
- Eggs and egg products, violation of regulatory provisions, see § 3-737.
- Health nuisances, abatement, see § 36-601 et seq.
- Highways, encroachments as nuisance, see § 28-1870.
- House of ill-fame as nuisance, see §§ 12-802, 13-2908.
- Obscenity and indecency, see § 13-3501 et seq.
- Pesticides, violations, see §§ 3-352, 3-356.
- Plant pests and diseases as nuisances, abatement, see §§ 3-202, 3-204.
- Pollution of waters, see § 17-237.
- Pure food control, see § 36-901 et seq.
- Sanitary regulations, local boards of health, see § 36-167.
- Unsanitary premises, maintenance, see § 36-168.
- Vital statistics, violation of provisions, see § 36-340.

§ 13-1603. Criminal littering or polluting; classification

A. A person commits criminal littering or polluting if such person without lawful authority:

1. Throws, places, drops or permits to be dropped on public property or property of another which is not a lawful dump any litter, destructive or injurious material which he does not immediately remove; or

2. Discharges or permits to be discharged any sewage, oil products or other harmful substances into any waters or onto any shorelines within the state; or

3. Dumps any earth, soil, stones, ores or minerals on any land.

B. Criminal littering or polluting is a class 2 misdemeanor. Criminal littering or polluting is a class 1 misdemeanor if the act involves placing any destructive or injurious material on or within fifty feet of a highway, beach or shoreline of any body of water used by the public.

Added by Laws 1977, Ch. 142, § 70, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 141, eff. Oct. 1, 1978.

Historical Note

Source:

Pen.C.1901, §§ 334, 335, 541.  
Pen.C.1913, §§ 386, 387, 611.  
Rev.Code 1928, §§ 4694, 4833.  
Code 1939, §§ 43-4604, 5806.  
A.R.S. former §§ 13-603, 13-712.  
Laws 1962, Ch. 71, § 1.  
Laws 1970, Ch. 178, § 1.  
Laws 1975, Ch. 75, § 1.  
Laws 1976, Ch. 157, § 1.

The 1978 amendment inserted "or" following subsec. A, par. 2; substituted "on" for "of" in subsec. A, par. 3; deleted subsec. B which had read:

"It is no defense to any of the acts constituting criminal littering or polluting in this section that the act in question was not done with criminal negligence, recklessly, knowingly or intentionally."; and relettered former subsec. C as subsec. B.

Cross References

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Adulteration, mislabeling, and misbranding food products, see § 36-904.  
Aircraft operation, violation of regulatory provisions, see § 28-1746.  
Bawdy houses, abatement of nuisance, see § 12-801 et seq.  
Burial, duties and penalties, see § 36-831.  
Caustic alkalies and acids, violations, see § 36-1105.  
Common towel or drinking cup in public place, prohibition, see § 36-605.  
Contagious disease, see § 36-621 et seq.  
Dairies and dairying, violation of regulatory provisions, see §§ 3-610, 3-614, 3-630, 3-634.  
Eggs and egg products, violation of regulatory provisions, see § 3-737.  
Health nuisances, abatement, see § 36-601 et seq.  
Highways, encroachments as nuisance, see § 28-1870.  
House of ill-fame as nuisance, see §§ 12-802, 13-2908.  
Obscenity and indecency, see § 13-3501 et seq.  
Pesticides, violations, see §§ 3-352, 3-356.  
Plant pests and diseases as nuisances, abatement, see §§ 3-202, 3-204.  
Pollution of waters, see § 17-237.  
Pure food control, see § 36-901 et seq.  
Sanitary regulations, local boards of health, see § 36-167.  
Unsanitary premises, maintenance, see § 36-168.  
Vital statistics, violation of provisions, see § 36-340.

§ 5-347

AMUSEMENTS AND SPORTS  
Title 5

B. No person shall camp or park any vehicle on any boat launching area or otherwise restrict or prevent free access to any area.  
Added by Laws 1972, Ch. 166, § 2, eff. Aug. 13, 1972.

Historical Note

Source:  
A.R.S. former § 5-304.  
Laws 1958, Ch. 100, § 1.  
Laws 1959, Ch. 143, § 1.

See, also, the italicized note and Disposition Table at the head of this Chapter.

Cross References

Camping near water hole, see § 17-308.  
Camping or parking along open roads in closed areas, see § 17-455.  
Parking, see § 28-871 et seq.

§ 5-348. Dumping refuse, rubbish or debris on waterways

No person shall dump, deposit, place, throw or leave refuse, rubbish, debris, filthy or odoriferous objects, substances or other trash on any waterways or the shorelines of any waterways of the state.  
Added by Laws 1972, Ch. 166, § 2, eff. Aug. 13, 1972.

Historical Note

Source:  
A.R.S. former § 5-311.  
Laws 1958, Ch. 100, § 1.

See, also, the italicized note and Disposition Table at the head of this Chapter.

Cross References

Water quality control, see § 49-201 et seq.

Law Review Commentaries

Environmental impact statement. Robert M. Lynch, 14 Ariz. Law Rev. 717 (1972).

Notes of Decisions

Grants 1

1. Grants

If construction of water pollution control facilities is abandoned or if appropriated funds granted by state department of health to political subdivisions or other eligible applicants for construction of such facilities are used by the eligible agencies for projects other than those agreed upon in the grant agreement, terms of agreement will have been broken, and state may then take legal steps necessary to recover for the general fund the funds conveyed by the grant. Op. Atty. Gen. No. R76-118, p. 87, 1976-77.

Appropriation to state department of health for allocation of state grants to political subdivisions or other eligible applicants for con-

struction of water pollution control facilities would remain both unexpended and unencumbered until such time—prior to June 30, 1974, as grant agreements were accepted and signed by political subdivisions and other eligible applicants; but, upon signing of the grant agreements, the funds would become a state grant to the various eligible agencies and would be removed from the special legislative reversion mandate, and state could not thereafter revoke its own grants, even though construction had not begun on the water pollution control facilities and though the money had not in fact been expended or paid out by the various grantees. Id.

If grant agreement, whereby state department of health allocated funds appropriated by the legislature to political subdivisions or other eligible applicants for construction of water pollution control facilities, was signed subse-

BOATING A  
Ch. 3

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§ 5-349.

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§ 5-391

AMUSEMENTS AND SPORTS  
Title 5

BOATING  
Ch. 3

§ 5-391. Enforcement; violation; classification

A. Any person who violates any provision of this chapter, except § 5-342, subsection A, B or C, and subsections F and G of this section or any rule or regulation issued thereunder, is guilty of a class 3 misdemeanor. Any person who violates § 5-342, subsection A, B or C is guilty of a class 1 misdemeanor.

B. All peace officers of the state, counties and cities shall enforce the provisions of this chapter and all laws and regulations relating to the operation of watercraft.

C. In the enforcement of this chapter, the operator of the watercraft upon being hailed by any peace officer shall stop immediately and lay to, or maneuver in such a way as to permit the peace officer to come aboard or alongside. The operator may be ordered ashore to correct any unlawful condition, or issued a written warning, or written repair order, or issued a citation for any violation of this chapter.

D. In the enforcement of this chapter, the provisions of §§ 13-2506 and 13-3903 shall apply.

E. Each failure to obey an order or to comply with a warning order issued under the provisions of subsection C of this section shall constitute a separate offense punishable as a separate violation of this chapter.

F. A person is guilty of a class 6 felony who knowingly removes from, defaces, obliterates, changes, alters or causes to be removed, defaced, obliterated, changed or altered a factory, engine, serial, outdrive, lower unit, power trim or hull identification number or mark on a watercraft.

G. A person is guilty of a class 2 misdemeanor who:

1. Knowingly displays or has in his possession a fictitious, stolen, revoked or altered certificate of number, department issued number or annual decal.

2. Lends to or knowingly permits the use of his certificate of number, department issued number or annual decal on a watercraft for which those items have not been issued.

H. Upon receipt of notice of conviction of a person under subsection F or G of this section, the department may revoke the numbers and decals issued to the watercraft which was involved in the violation and any other watercraft owned by the person convicted.

Added by Laws 1972, Ch. 166, § 2, eff. Aug. 13, 1972. Amended by Laws 1978, Ch. 201, § 35, eff. Oct. 1, 1978; Laws 1983, Ch. 248, § 2; Laws 1985, Ch. 37, § 2.

Historical Note

Source:

- A.R.S. former §§ 5-312, 5-313.
- Laws 1958, Ch. 100, § 1.
- Laws 1959, Ch. 143, § 6.
- Laws 1968, Ch. 184, §§ 6, 7.
- Laws 1970, Ch. 125, § 9.

See, also, the italicized note and Disposition Table at the head of this Chapter.

The 1978 amendment, in subsec. A, classified the violation of the chapter as a class 3 misdemeanor, and deleted the clause which provided for punishment of a fine of not more than three hundred dollars, of imprisonment for not more than ninety days, or both.

For effective date provision of Laws 1978, Ch. 201, see Historical Note following § 1-215.

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§ 5-392.

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1 Section 13

### 33 § 1316

#### Note 9

1975, 526 F.2d 1027, motions granted 560 F.2d 589, 568 F.2d 284, certiorari denied 98 S.Ct. 1467, 435 U.S. 914, 55 L.Ed.2d 505.

#### 10. Presumptions

Regulations promulgated by Administrator imposing effluent limitations guidelines for inorganic chemicals manufacturing industry for both new and existing sources are presumptively applicable to permit applications issued by state and will control unless pre-

sumption is rebutted in connection with claim in application for permissible variance, modification or exception. *E.I. du Pont de Nemours & Co. v. Train*, C.A.4, 1976, 541 F.2d 1018, affirmed in part, reversed in part on other grounds 97 S.Ct. 965, 430 U.S. 112, 51 L.Ed.2d 204.

#### 11. Review of Administrator's action

*See Notes of Decision under section 1369 of this title.*

### § 1317. Toxic and pretreatment effluent standards

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication

## Note 9

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(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication

any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent agencies, and Federal departments and agencies.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) New sources of pollutants into publicly owned treatment works

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

**(d) Operation in violation of standards unlawful**

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

(June 30, 1948, c. 758, Title III, § 307, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 856, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 53(a), (b), 54(a), 91 Stat. 1589-1591).

**Historical Note**

**1977 Amendment.** Subsec. (a)(1). Pub.L. 95-217, § 53(a), substituted "On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list" for "The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section" and added provision for the revision of the list and for the finality of the Administrator's determination except when that determination is arbitrary and capricious.

Subsec. (a)(2). Pub.L. 95-217, § 53(a), expanded provisions covering effluent limitations and the establishment of effluent standards (or prohibitions), introduced provisions relating to the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title, added provision that published effluent standards take into account the extent to which effective control is being or may be achieved under other regulatory authority, added provision for a sixty day minimum period following publication of proposed effluent standards for written comment, substituted two hundred and seventy days for six months as the period following publication of proposed standards during which period standards (or prohibitions) must be promulgated, and added provision for the finality of effluent limitations (or prohibitions) except if, on judicial review, the standard was not based on substantial evidence.

Subsec. (a)(3). Pub.L. 95-217, § 53(a), struck out provision for the immediate promulgation of revised effluent standards (or prohibitions) for pollutants or combinations of pollutants if, after public hearings, the Administrator found that a modification of such proposed standards (or prohibitions) was justified. See subsec. (a)(2) of this section.

Subsec. (a)(6). Pub.L. 95-217, § 53(b), added provision that if the Administrator determines that compliance with effluent standards (or prohibitions) within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for that category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

Subsec. (b)(1). Pub.L. 95-217, § 54(a), added provision that if, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by the works removes all or any part of the toxic pollutant and the discharge from the works does not violate that effluent limitation or standard which would be applicable to the toxic pollutant if it were discharged by the source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by the works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of the toxic pollutant by the works.

**Exemption for Fort Allen in Puerto Rico.** For provisions relating to the prohibition of an exemption from this section for Fort Allen in Puerto Rico, in its use as temporary housing for Haitian refugees, see section 1-101 of